

Delegated Officer Report

Decision Maker: **Mark Warren, Managing Director Community Health and Adults Social Care (Director of Adults Services)**
and
Mike Barker, Strategic Director of Commissioning (Chief Operating Officer, CCG)

Date of Decision: **29th June 2021 / 5th July 2021**

Subject: **Implementation of 2021/22 fees for Adult Social Care and Health services**

Report Author: **Claire Hooley, Head of Joint Commissioning and Quality**

Ward (s): All

Reason for the decision: To set the fees for 2021/22 CQC regulated provision in Oldham in respect of adult health and social care funded services such as Residential and Nursing Homes and Domiciliary Care.

A report was considered and subsequently approved in May authorising the proposed rates to consult with the commissioned market in Oldham.

The report provides analysis of the feedback received through the consultation, outlines the recommended approach to implementing the fees for 2021/22 and recommends further consideration of the nursing premium in relation to fees for the residential sector.

Summary: A report was presented in May (embedded in the appendices) whereby the proposed rates for consulting with the market were approved.

The rates that we consulted with the market on were:

Table 1 – proposed 2021/22 fees
[3% increase for residential; 2.5% non-residential providers]

	Care Home Base Rate	Care at Home	Extra Care Housing	Supported living non-complex p/hour	Supported living complex p/hour	SL Sleep ins Per night	PAs
2020/21 rates	£525	£15.56	£14.57	£14.57	£16.05	£80	£10/hr £65/night sleep-ins

		£17.56 OL3 area					
2021/22 rates	3% £540.75	2.5% £16.75 £18.75 OL3 area	2.5% £15.68	2.5% £15.68	2.5% £17.27	No change £80	No change £10/hr £65/night sleep-ins

The provider consultation took place between 3rd – 18th June.

Responses were received from 22% of residential providers and 19% of non-residential providers.

Non-residential consultation:

From a non-residential provider basis, feedback received included:

- lengthy implementation period
- seeking clarity on the locality's position on sleep in rates
- one provider advised that their insurance premiums had risen by 30%
- two providers advised that they are paying National Living Foundation wage rates and will continue to as long as they can afford, which depends on the rate agreed by commissioners.

However, overall, the feedback was in acceptance of the fees that we have proposed. It is therefore recommended that the non-residential rates are implemented at a 2.5% increase to 2020/21 rates, as presented in the table 2.

Table 2 – non-residential rates: 2.5% increase

	Care at Home	Extra Care Housing	Supported living non-complex p/hour	Supported living complex p/hour	SL Sleep ins Per night	PAs
2020/21 rates	£15.56 £17.56 OL3 area	£14.57	£14.57	£16.05	£80	£10/hr £65/night sleep-ins
2021/22 rates	2.5% £16.75 £18.75 OL3 area	2.5% £15.68	2.5% £15.68	2.5% £17.27	No change £80	No change £10/hr £65/night sleep-ins

Residential consultation

Feedback received from residential providers represented 22% of the current in borough commissioned market, however, presented as a proportion of beds, a total of 31% of the market responded to the consultation. Of this one third were nursing residential providers.

Feedback received included:

- Nearly 80% of the residential providers who responded to the consultation accepted the 3% increase and thanked 'Team Oldham' for the support provided during the course of the pandemic response.
- noted that there was no change to the care home premiums, including the dementia and nursing premiums. One home advised that this then doesn't provide a true 3% uplift across the residential rates as the 3% only applies to the base rate
- one home sought clarification on the percentage uplift proposed to also apply to the specialist services delivered (this pertains to Chadderton Total Care's Young Disabled Unit (YDU) and some units in which St Georges deliver specialist services, for example the Beal, Grange and Brookdale Units provide specialist services for early onset dementia, challenging behavior and enduring mental health and is Oldham's only home offering these specialisms)
- one provider highlighted the impact of removing the bridging payment upon re-inspection by the CQC should there then be no change of CQC rating, that this would then present a net fee reduction of £4.25 per placement per week, if a current CQC Good rating was retain.

Living Wage Foundation

Two of the providers (responsible for providing 3% of the total care home beds in the borough) advised that they are currently paying staff the Living Wage Foundation rates and will do so as long as they are able. Whilst this is viewed as positive, the ability of providers to pay (and/or implement) the Living Wage Foundation rates is something that the Adult Social Care Commissioning team is acutely aware of, particularly due to the Council and CCG's ambition of its suppliers paying the Living Wage Foundation rates to all employees by the end of 2022/23. Previous engagement with the sector estimated this to be a cost pressure of between £4m and £5m. Further engagement is planned and will include a request for open book accounting. Central to this engagement activity with the care homes will be the Care Home Commissioning approach that is currently being refreshed. This work will entail a market

position statement for the residential sector, including what is required now and in the future, as well as the opportunity to update the service specification and contract agreements in place. Engagement with the sector will be supported by colleagues in Strategic Procurement and is due to commence late Summer-early Autumn 2021.

GM Benchmarking

Prior to considering options for fees in 2021/22 the commissioning team led in undertaking a benchmarking exercise with North West localities including those in Greater Manchester. The known or proposed fees are set out in the table (3) below. This table presents the main rates of services, the ranking from 1 (being the highest payment) to 10 (being the lowest payment), the rate, and the percentage increase. Oldham is highlighted in yellow and the rates presented for Oldham include the recommended rates for implementation.

Table 3 – Greater Manchester Fees 2020/21

Locality	Known Agreed or Provisional fees 2021/22														
	Residential Care			Nursing Care			Care at Home			Supported Living			PA Support		
Ranking ¹	1-10	£	%	1-10	£	%	1-10	£	%	1-10	£	%	1-10	£	%
Bolton	4	544	2.93	6	544	2.64	3	17.17	2.02	4	15.52	1.7	1	11.74	1.65
Bury	7	507.72	3.08	7	522.72	3.93	7	16.50	2.29	1	16.32	1.18	3	10.68	1.91
Manchester	6	527	4	4	562	4.07	5	16.81	2.5	-	-	-	6	9.66	2.55
Oldham	5	540.75	3	3	570.75	3	6	16.75	2.5	3	15.63	2.5	5	10.00	0
Rochdale	3	546	5.81	5	546	5.81	2	17.25	6.75	2	16.30	7.24	No set rate		
Salford	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Stockport	2	551	3.94	1	671	3.87	4	17.16	2.88	6	15.37	3.5	2	11.23	2.09
Tameside	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Trafford	1	572	>10	2	639	21.48	1	17.30	11.18	No set rates			Not agreed yet		
Wigan	8	471	2.28	8	476	2.37	8	16.40	2.24	5	15.38	2.26	4	10.42	2.16

Still, based on the responses received we can assume that 85% of the market did not contest the 3% increase proposed. It is on this basis that it is recommended that we proceed with implementing the proposed rate increase of 3% on the base rate for residential providers noting the following as a response to the feedback that was submitted:

Dementia and Nursing premium – the Dementia and Nursing premiums and accompanied services such as 1:1 rates will be reviewed as part of the Care Home Commissioning model with engagement with the sector to commence by Autumn 2021.

Bridging payment – the bridging payment was implemented in 2019/20 in recognition of the move from the Oldham based quality model for premiums to linking the quality premiums to CQC ratings. At that time, the bridging payment was intended

¹ (1 being highest; 10 being lowest rate)

to be in place for 12 months only. In acknowledgement of the impact of the pandemic the bridging payment was retained in 2020/21. However, the intention of moving to quality premiums aligned to CQC ratings remains, and therefore it is recommended that the bridging payment remains in place until the point CQC re-inspects a home. This reflects the position of CQC during the pandemic, where usual inspection activity was suspended, and only focused inspections-relating to infection prevention-were undertaken, and no ratings given.

Living Wage Rates – the Council and CCG will continue to undertake work on the impact of implementing Living Wage Foundation rates on social care provision. It is understood that ‘Team Oldham’s’ position is to have all suppliers confirming to pay Living Wage Foundation rates by the end of 2022/23, and engagement activity completed by the Adult Social Care commissioning team in 2019/20 estimated an additional requirement of up to £5 million to enable ASC commissioned providers to do this.

Increase being applied to base rate only – not all residential services have all elements applied to their payments. i.e. some are only eligible for the base rate, therefore a blanket uplift to the base rate is equitable and fair across all residential provision.

Specialist placements – it can be confirmed that a 3% increase on the cost of specialist placements is included in the proposed price increases.

What are the alternative option(s) to be considered? Please give the reason(s) for recommendation(s):

1. No change to rates – resulting in continuing to pay 2020/21 rates
2. Implement the proposed fee increases:
 - Non-residential increase 2.5%
 - Residential increase 3%
3. Commence a further consultation with alternative fee proposals

The recommended option is 2; to implement the proposed fees increases of 2.5% for non-residential and 3% for residential provision in borough. This is based on extensive analysis having been undertaken which sits alongside the strategic relevance review undertaken in 2020/21 and the care home commissioning approach to take place by Autumn 2021. Responses to the sector will be provided advising them on what the next steps are and when elements such as the dementia and nursing premiums will be reviewed.

Options 1 and 3 are not considered viable:

Option 1 does not take into consideration the mandated increases to national living wage and other legislative increases that impact on providing services. In addition, a number of providers have advised the difficulty in obtaining insurance without a substantial premium rise with some providers advising of exclusions to their insurance presenting risk to them. The insurance position is one of significant concern, locally, regionally and nationally and the care sector and insurance premiums situation as a result of the pandemic has been entered on to the Council's Risk Register and continues to be monitored.

Option 3 is not considered to be an appropriate option for this year's fees. Earlier this calendar year an open consultation process was conducted with the aim of seeking information from commissioned providers ahead of the Council's budget setting process. This assisted us with analysing data and considering an appropriate per centage increases for the relevant areas of the sector, and ultimately resulted in the non-residential sector and residential sector proposed fees increases being different at 2.5% and 3% respectively.

Consultation: including any conflict of interest declared by relevant Cabinet Member consulted.

Consultation with the commissioned provider market has taken place to support the setting of fees for 2021/22:

- open consultation
- targeted consultation on the proposed rate increases

Recommendation(s):

The recommended option is 2; to implement the proposed fees increases of 2.5% for non-residential and 3% for residential provision in borough. This is based on extensive analysis having been undertaken which sits alongside the strategic relevance review undertaken in 2020/21 and the care home commissioning approach to take place by Autumn 2021. Responses to the sector will be provided advising them on what the next steps and when elements such as the dementia and nursing premiums will be reviewed.

As part of this recommendation please note, a further Commissioning Partnership Board decision report will be prepared outlining the additional financial support for nursing providers via the nursing premium. Whilst this is being prepared, it is recommended that the other increases, which have been previously considered and approved by Commissioning Partnership Board are implemented.

Implications:

What are the financial implications?

Council (ASC) Finance implications:

As advised above, the Council has charged an Adult Social Care precept of 2% for the financial year 2021/22 (raising £1.844m). It agreed not to charge the maximum allowable of 3% in one year, preferring to take the option of deferring 1% to 2022/23.

The total cost to the Council for the revised fee uplift proposal is £1.362m. The required investment is fully contained within the additional resource available by applying the Adult Social Care Precept which will generate £1.844m.

The full cost to the Council is shown in the table below:

Care Provision	£000
Home Care	288
Extra Care Housing	57
Supported Living	252
Pas	0
Residential & Nursing	752
Other (low level providers)	13
Total	1,362

The remainder of the funding generated from the precept will be used to offset costs deriving from demand growth, increases to the complexity of care and COVID legacy.

(Danny Jackson, Senior Accountant)

NHS Oldham CCG Financial Implications:

Oldham CCG's 2021/22 Financial Plan already assumes a 2.2% uplift (Option 2) on all CHC costs. As shown in the table below, the planned costs for H1 (Quarters 1 and 2) are £6.8m for non-staff and £0.4m staff costs, with an estimated £0.6m of slippage due to the receipt of Hospital Discharge Programme funding and delays in returning to 2019/20 Business As Usual levels.

Assuming no further slippage is seen in H2 (Quarters 3 and 4), the total non-staff costs are currently estimated at £13m and staff costs at £0.9m.

Whilst there will be an element of expenditure in the non-staff costs that will not be affected by the proposed fee uplifts, for ease of calculation it has been assumed that all will be. Therefore, the worst-case scenario if 3% is applied to all CHC non-staff costs would be a pressure of £0.1m equating to 0.8% of additional costs above what has already been built into the Plan. At this stage this is an unmitigated pressure, but no guidance has been issued regarding the second half of the

year and potential continuation of the Hospital Discharge Programme, which would mitigate the pressure.

NHS Oldham CCG

Continuing Health Care Plan 2021/22

£000

	Financial Plan incl 2.2% uplift		
	H1	H2	Total
CHC non-staff	6,825	6,825	13,650
CHC non-staff - slippage	(650)		(650)
	6,175	6,825	13,000
CHC staff	425	425	850
	6,600	7,250	13,850

	Additional 0.8% uplift		
	H1	H2	Total
CHC non-staff	55	55	109
CHC non-staff - slippage	(5)		(5)
	49	55	104
CHC staff	-	-	-
	49	55	104

(Karen Ratzeburg, Senior Finance Business Partner, NHS Oldham CCG)

What are the legal implications?

An outline summary of the legal positions affecting the setting of social care rates is set out below:

When setting a fee the authority should address the effect of its decision in terms of the quality of the service provided and the sustainability of the providers.

The courts have provided some guidance with regard to the appropriate considerations of a Local Authority when setting fees in relation to the actual costs of providing care. A Local Authority has a statutory duty to provide residential accommodation to categories of adults in its area in need of care and attention which is not otherwise available to them. The duty can be discharged by contracting with a private care home provider.

Local authorities are responsible for achieving a responsive, diverse and sustainable market of service providers that can provide high quality, personalised care and support that best meets the needs of people. Local authorities must have regard to the sustainability of the market as a whole including, for example, taking care not to set fee levels below an amount which is not sustainable for providers in the long-term.

Local authorities have to act under the general guidance of the secretary of state who has issued formal statutory guidance in Local Authority Circular LAC (2004) 20 which stated at para.2.5.4 that “councils should have due regard was to be had to the actual costs of providing care and other local factors. Councils should also have due regard to Best Value requirements under the Local Government Act 1999” (the duty to consult on continuous improvement under section 3 Local Government Act 1999). It was held by the Court of Appeal that the circular did not prescribe any particular methodology which local authorities had to adopt in order to have due regard to the actual cost of providing care. An arithmetical calculation was one way of carrying out the exercise, but it was not the only way. Provided some inquiry was made by the decision maker, it was for the decision maker to decide how much attention to pay to it. In one case, the fact that the Local Authority had considered the rates and compared them to others in the region and had sought information from one of the providers and carefully considered its accounts, which was sufficient for the decision of the Authority for it to be robust.

In paragraph 3.3 of the statutory guidance “a council should be able to demonstrate that this cost is sufficient to allow it to meet assessed care needs and to provide residents with the level of care services that they could reasonably expect to receive if the possibility of resident and third-party contributions did not exist.”

Non statutory guidance “Building Capacity and Partnership in Care” points out that local authorities must not use their dominant position to drive down fees. “Fee setting must take into account the legitimate current and future costs faced by providers as well as the factors that affect those costs, and the potential for improved performance and more cost-effective ways of working.”

Consultation is necessary on this type of decision. As stated above, the statutory guidance states that “local authorities are to have due regard to the actual costs of providing care and other local factors” and to take account of the legitimate current and future costs.”

The duty to have a balanced budget must be complied with but when making financial decisions the authority must ensure that it takes account of all relevant circumstances and is able to carry out its statutory functions. The council is able to take into account its limited financial resources but must draw a reasonable balance between such limitations and its other duties, including an obligation to make decisions with an awareness of responsibilities under the Equality Act 2010. The public sector equality duties under the Equality Act 2010

extends to cover various protected characteristics, including age and disability, and therefore the Act is relevant here in that there is a potential effect on such people. Under the Act, public authorities have legal duties to have due regard in the exercise of their functions to the need to eliminate discrimination; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The law requires that this duty to pay 'due regard' should be demonstrated in the decision-making process.

Assessing the potential equality impact of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can show 'due regard'.

Case law sets out some very clear guidance on what organisations need to do in order to have 'due regard'. In particular, decision-makers need to:

- be aware of their responsibilities under the duty
- make sure they have adequate evidence (including from consultation, if appropriate) to enable them to understand the potential effects of their decisions on different people covered by the duty
- consciously and actively consider the relevant matters, in such a way that it influences decision-making
- do this before and at the time a decision is taken, not after the event
- be aware that the duty cannot be delegated to third parties who are carrying out functions on their behalf

Case law also suggests that it is good practice to document how decisions were reached. Equality Impact Assessments are not a prescribed requirement, but they provide a structured framework which enables the Council to ensure that it considers the equality impact of decisions, and to demonstrate to others that it has done so.

Consultation should always be fit for its particular purpose in the "Gunning" sense (R v Brent LBC ex p Gunning (1985) 84 LGR 168). The core elements are that:

1. consultation must be at a time when proposals are still at a formative stage;
2. the proposer must give sufficient reasons for any proposal to enable intelligent consideration and response;
3. adequate time must be given for consideration and response;
4. the product of consultation must be conscientiously taken into account in finalising any proposals.

If the Gunning principles are demonstrably and conscientiously followed in any consultation, then it is likely that the duty to consult will be discharged.

The narrative in the body of the report indicates that the Council has conducted a meaningful consultation exercise and entered into the consultation with an open mind and has considered the responses to the consultation exercise. Furthermore, the Council has been mindful of its Care Act duties and its responsibility to ensure a sustainable market and offer choice to service users. The Council has conducted a benchmarking exercise and considered the feedback from providers with regard to the costs of providing care. In the circumstances, the Council has conducted a comprehensive consultation exercise following the statutory guidance and case law in preparation for making the recommendations in this report.

(Elizabeth Cunningham-Doyle, Solicitor, Corporate)

It is important that consultation is genuine. Decision-makers need to be sincere in their efforts to seek views and they must listen and act on responses.

The requirement is that you consult for a 'proportionate amount of time' taking into account the nature and impact of the proposal.

Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response and where the consultation spans all or part of a holiday period. Policy makers should consider what if any impact there may be and take appropriate mitigating action. The amount of time required will depend on the nature and impact of the proposal (for example, the diversity of interested parties or the complexity of the issue, or even external events), and might typically vary. The timing and length of a consultation should be decided on a case-by-case basis; there is no set formula for establishing the right length. For a new and contentious policy, 12 weeks or more may still be appropriate. When deciding on the timescale for a given consultation the capacity of the groups being consulted to respond should be taken into consideration. Two weeks consultation as mentioned within the report is likely to be too short a period of time and we will be at risk of challenge if we have not either consulted or not consulted adequately. An EIA should be undertaken once consultation has taken place.

Salma Yasmeen, Principal Legal Officer, Civil Litigation Legal and Democratic

<p>What are the procurement implications?</p>	<p>There are no procurement implications.</p> <p>(Raj Ahuja, Lead Consultant – Health and Social Care Procurement – 07.05.2021)</p>
<p>What are the Human Resources implications?</p>	<p>None – the fees apply to commissioned services, not those provided in house.</p>
<p>What are the Children and Young People Implications?</p>	<p>None</p>
<p>Equality and Diversity Impact Assessment attached or not required because (please give reason)</p>	<p>None</p>
<p>What are the property implications</p>	<p>None</p>
<p>Risks:</p>	<p>Without reviewing its fees payable for adult health and social care services Oldham is at risk of not fulfilling its statutory duty outlined in the Care Act, and placing people at risk of not receiving the care and support they have been assessed as requiring.</p>
<p>Co-operative agenda</p>	<ul style="list-style-type: none"> • An Inclusive Economy: Providing an opportunity for business to new and existing providers. The proposals assists with shaping and stabilising the care market. • Co-operative Services: Reforming public services and encouraging innovation, leading to better outcomes and delivery. The proposals and the redevelopment of quality incentives underpinned by a quality improvement programme linked to market regulation, recognizes the need for commissioners and providers to play an equal part in ensuring a sustainable market with services that meet CQC requirements.

Has the relevant Legal Officer confirmed that the recommendations within this report are lawful and comply with the Council's Constitution? Yes

Has the relevant Finance Officer confirmed that any expenditure referred to within this report is consistent with the Council's budget? Yes

Are any of the recommendations within this report contrary to the Policy Framework of the Council? **No**

Reason(s) for exemption from publication:

(please delete the reasons that are not relevant and ensure the reason stated corresponds with the reason stated at the top of the report

3. Information relating to the financial or business affairs of any particular person including the Council

List of Background Papers under Section 100D of the Local Government Act 1972:

The background papers to this report contain exempt information under Schedule 12A of the Local Government Act 1972.

Report Author Sign-off:	
Claire Hooley	
Date: 24 th June 2021	

Please list and attach any appendices:-

Appendix number or letter	Description
1	 210518 CPB Fees 2021-22 options rep

In consultation with Director/Strategic Director

Signed : _____ Date: _____
Mark Warren



Commissioning Partnership Board Report

NOT FOR PUBLICATION by virtue of Paragraph(s) <> of Part 1 of Schedule 12A of the Local Government Act 1972 and it is not in the public interest to disclose the information because *Information relating to the financial or business affairs of any particular person including the Council*

Decision Maker	Cllr A Shah, Leader of the Council
Date of Decision:	27th May 2021
Subject:	Setting the rates for Adult Health and Social Care Fees 2021/22
Report Author:	Claire Hooley, Head of Joint Commissioning and Quality

Reason for the decision: To set the fees for CQC regulated provision in Oldham in respect of adult health and social care funded services such as Residential and Nursing Homes and Domiciliary Care.

Recommendations: that the Commissioning Partnership Board;

- **confirms** the preferred option on which to consult with Adult Health and Social Care Providers for fees for 2021/22
- **delegates** approval of the outcome of the consultation to the Managing Director of Community Health and Adult Social Care, and the Strategic Director of Commissioning, unless the outcome of the consultation results in the need to reconsider the options presented.

Summary: This report outlines the options on which to consult for 2021/22 Adult health and social care fees for commissioned providers.

It has been agreed that the Adult Social Care precept Oldham Council has applied to council tax in 2021/22 can be apportioned to the percentage increase of the fees paid to providers of adult social care services. This report provides options for fees for Adult Health and Social Care (AHSC) commissioned services for 2021/22 and requests approval to consult with the AHSC provider market:

- Residential and Nursing Care
- Care at Home
- Extra Care Housing
- Supported Living Services
- Personal Assistants

Since 2017, the Council has agreed additional funding for adult social care provider fees as a result of the National Living Wage and other cost pressures facing the sector. Additional funding has been provided through the Council Tax Adult Social Care precept. As a result of feedback to the market consultation, when cost pressures facing the sector have necessitated additional funding in excess of the precept, this has been made available from reserves, in order to ensure compliance with the Care Act and case law. Prior to the commencement of each financial year, the way in which this additional funding is applied is subject to:

- a review of commissioning activity
- demand and market pressures
- benchmarking with other Greater Manchester localities
- provider consultation

The fees for Continuing Healthcare (CHC) eligible care have largely mirrored those paid by the Council since 2017/18, and any variations are being addressed through the joint commissioning of adult's health and social care services such as the Care at Home joint tender which was implemented in 2019/20.

Unlike previous years, when approval on the percentage to be applied via the Adult Social Care precept of the Council Tax had already

been agreed by Members at the Council meeting prior to the provider market being consulted with, this year an open consultation was approved.

The open consultation:

- did not present potential fee increases
- included an overview of the Council and CCG's savings and efficiencies position
- asked for details on the providers' forecasted financial increases to delivering their services
- requested specifics on the financial impact providers have faced in responding to the Covid-19 pandemic
- invited particulars on the actions providers have taken in order to mitigate the financial impact of the last year.

The open consultation started 26th February and concluded 9th March (2 weeks) and received responses from 25 providers (52% residential homes; 48% community care providers).

In the 'background' section 4 at the end of this report feedback received through the consultation has been summarised into themes.

What are the alternative option(s) to be considered? Please give the reason(s) for recommendation(s):

1. **Option 1:** do nothing, maintaining 2020/21 rates to non and residential providers for 2021/22
2. **Option 2:** 2.2% increase to non and residential providers
3. **Option 3:** 3% increase for residential; 2.5% non-residential providers
4. **Option 4:** 3.5% increase to non and residential providers

Any option agreed will be subject to focused consultation with the market.

The fee options are presented in tables on pages 24 – 26.

Recommendation(s):

The recommended option on which to consult is Option 3; the hybrid model that includes the following:

- 3% increase to the residential base rate of £525 to £540.75 per week
- Retain the residential quality premiums
- Retain the bridging payment

- 2.5% increase to non-residential providers (i.e. Supported Living and Care at Home services)
- No change to the Personal Assistant rate/s

This fee increase model enables providers to pay staff wage increases following the National Minimum Wage increases (of 2.2%) and also recognises the wider yet varying impact that the pandemic has had on social care providers. For example, the impact on care homes has been reduced admissions yet increased staffing required, and whilst some of the national ringfenced funding (detailed in table 1, page 16) has gone some way to address these additional financial pressures, it is recognised that there are financial pressures in the social care provider market that this funding was specifically unable to be used to address.

Moreover, the feedback received through the open consultation undertaken earlier this year consolidates this recommendation noting that we do not have the financial resources to meet some care providers request of an above 4% fee increase. This option is felt to be fair given the financial position of both the Council, the CCG and social care providers.

This proposed option is also within the amount forecast to be generated through the Adult Social Care Council Tax precept of £1.84m, utilising an estimated £1.3m for the provider market increases, given the wider financial pressures and demands on the Adult Social Care forecasted budget.

It is proposed that the residential sector (nursing and care homes) receive a 3% increase on their base rate in the year 2021/22 (£525 to £540.75) which takes into consideration the overheads on operating building-based services. This option also further recognises the impact on this part of the social care market in paying Living Wage Foundation rates (an ambition in Oldham to achieve by the 4th quarter of 2022/23) due to care home employees being, on average, paid lower rates of pay than the non-residential sector.

The quality premiums are proposed to remain the same, keeping the additional incentive of £45 per unit per bed should a care home receive an Outstanding rating with the CQC. (There are currently no homes in Oldham with this rating.) Moreover, and linked to the quality premiums, it is proposed that the bridging payment is retained until the point whereby a home is re-inspected by CQC. Once they have been inspected, and should there be no change to their rating, the bridging payment which they receive will cease. But it is considered important that the homes have this opportunity to complete an inspection, something of which the Local Authority or Care Home has very little influence over.

Through this option, it is proposed that the Personal Assistant rates remain the same for the financial year 2021/22. This is with a view that the rates are within the current National Living Wage requirements, and also within the Living Wage Foundation rates, but also due to the lower overheads a personal assistant has compared to a care company. However, it is noted that Oldham's Personal Assistant rate has not been increased in recent years, and with the National Living Wage coupled with Oldham's ambition of achieving Living Wage Foundation status by 2022/23 this rate will need to be reviewed for the financial year 2022/23 fees.

Following CPB confirming the option on which to consult for fees in 2021/22, a further focused consultation is required with the commissioned market, to complete the fair cost of care fee setting process (Care Act duty). It is advisable to do this to ensure that providers are able to continue to provide high quality care. Following this exercise it is recommended that approval is delegated to the Managing Director of Community Health and Adult Social Care, and the Strategic Director of Commissioning, unless the outcome of the consultation results in the need to reconsider the options presented.

Implications:

The Care Act requires Councils to ensure that there are enough high-quality providers and services for people to choose from in their local area. This includes understanding the true costs of care, ensuring that providers are paying care

staff the national minimum wage and for the time spent travelling between calls, and working with providers to minimise the risk of unexpected failure.

Prior to considering options for fees in 2021/22 the commissioning team has led a consultation process with commissioned providers registered to Oldham and has also undertaken a benchmarking exercise with North West localities including those in Greater Manchester (please see table 4 in the 'background' section of the report.

Without reviewing its fees payable for adult health and social care services Oldham is at risk of not fulfilling its statutory duty outlined in the Care Act, and placing people at risk of not receiving the care and support they have been assessed as requiring.

*What are the **financial** implications?*

Council (ASC) Finance implications:

As advised above, the Council has charged an Adult Social Care precept of 2% for the financial year 2021/22 (raising £1.844m). It agreed not to charge the maximum allowable of 3% in one year, preferring to take the option of deferring 1% to 2022/23.

The total cost to the Council for the revised fee uplift proposal is £1.362m. The required investment is fully contained within the additional resource available by applying the Adult Social Care Precept which will generate £1.844m.

The full cost to the Council is shown in the table below:

Care Provision	£000
Home Care	288
Extra Care Housing	57
Supported Living	252
Pas	0
Residential & Nursing	752
Other (low level providers)	13
Total	1,362

The remainder of the funding generated from the precept will be used to offset costs deriving from

demand growth, increases to the complexity of care and COVID legacy.

(Danny Jackson, Senior Accountant)

NHS Oldham CCG Financial Implications:

Oldham CCG's 2021/22 Financial Plan already assumes a 2.2% uplift (Option 2) on all CHC costs. As shown in the table below, the planned costs for H1 (Quarters 1 and 2) are £6.8m for non-staff and £0.4m staff costs, with an estimated £0.6m of slippage due to the receipt of Hospital Discharge Programme funding and delays in returning to 2019/20 Business As Usual levels.

Assuming no further slippage is seen in H2 (Quarters 3 and 4), the total non-staff costs are currently estimated at £13m and staff costs at £0.9m.

Whilst there will be an element of expenditure in the non-staff costs that will not be affected by the proposed fee uplifts, for ease of calculation it has been assumed that all will be. Therefore, the worst-case scenario if 3% is applied to all CHC non-staff costs would be a pressure of £0.1m equating to 0.8% of additional costs above what has already been built into the Plan. At this stage this is an unmitigated pressure, but no guidance has been issued regarding the second half of the year and potential continuation of the Hospital Discharge Programme, which would mitigate the pressure.

NHS Oldham CCG
Continuing Health Care Plan 2021/22
£000

	Financial Plan incl 2.2% uplift		
	H1	H2	Tot
CHC non-staff	6,825	6,825	13,65
CHC non-staff - slippage	(650)		(65)
	6,175	6,825	13,00
CHC staff	425	425	85
	6,600	7,250	13,85

	Additional 0.8% uplift		
	H1	H2	Tot
CHC non-staff	55	55	10
CHC non-staff - slippage	(5)		(
	49	55	10
CHC staff	-	-	-
	49	55	10

(Karen Ratzeburg, Senior Finance Business Partner, NHS Oldham CCG)

What are the **procurement** implications?

There are no procurement implications.

(Raj Ahuja, Lead Consultant – Health and Social Care Procurement – 07.05.2021)

What are the **legal** implications?

An outline summary of the legal positions affecting the setting of social care rates is set out below:

When setting a fee the authority should address the effect of its decision in terms of the quality of the service provided and the sustainability of the providers.

The courts have provided some guidance with regard to the appropriate considerations of a Local Authority when setting fees in relation to the actual costs of providing care. A Local Authority has a statutory duty to provide residential accommodation to categories of adults in its area in need of care and attention which is not otherwise available to them. The duty can be discharged by contracting with a private care home provider.

Local authorities are responsible for achieving a responsive, diverse and sustainable market of service providers that can provide high quality,

personalised care and support that best meets the needs of people. Local authorities must have regard to the sustainability of the market as a whole including, for example, taking care not to set fee levels below an amount which is not sustainable for providers in the long-term.

Local authorities have to act under the general guidance of the secretary of state who has issued formal statutory guidance in Local Authority Circular LAC (2004) 20 which stated at para.2.5.4 that “councils should have due regard was to be had to the actual costs of providing care and other local factors. Councils should also have due regard to Best Value requirements under the Local Government Act 1999” (the duty to consult on continuous improvement under section 3 Local Government Act 1999). It was held by the Court of Appeal that the circular did not prescribe any particular methodology which local authorities had to adopt in order to have due regard to the actual cost of providing care. An arithmetical calculation was one way of carrying out the exercise, but it was not the only way. Provided some inquiry was made by the decision maker, it was for the decision maker to decide how much attention to pay to it. In one case, the fact that the Local Authority had considered the rates and compared them to others in the region and had sought information from one of the providers and carefully considered its accounts, which was sufficient for the decision of the Authority for it to be robust.

In paragraph 3.3 of the statutory guidance “a council should be able to demonstrate that this cost is sufficient to allow it to meet assessed care needs and to provide residents with the level of care services that they could reasonably expect to receive if the possibility of resident and third-party contributions did not exist.”

Non statutory guidance “Building Capacity and Partnership in Care” points out that local authorities must not use their dominant position to drive down fees. “Fee setting must take into account the legitimate current and future costs faced by providers as well as the factors that affect those costs, and the potential for improved

performance and more cost-effective ways of working.”

Consultation is necessary on this type of decision. As stated above, the statutory guidance states that “local authorities are to have due regard to the actual costs of providing care and other local factors” and to take account of the legitimate current and future costs.”

The duty to have a balanced budget must be complied with but when making financial decisions the authority must ensure that it takes account of all relevant circumstances and is able to carry out its statutory functions. The council is able to take into account its limited financial resources but must draw a reasonable balance between such limitations and its other duties, including an obligation to make decisions with an awareness of responsibilities under the Equality Act 2010. The public sector equality duties under the Equality Act 2010 extends to cover various protected characteristics, including age and disability, and therefore the Act is relevant here in that there is a potential effect on such people. Under the Act, public authorities have legal duties to have due regard in the exercise of their functions to the need to eliminate discrimination; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The law requires that this duty to pay ‘due regard’ should be demonstrated in the decision-making process.

Assessing the potential equality impact of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can show ‘due regard’.

Case law sets out some very clear guidance on what organisations need to do in order to have ‘due regard’. In particular, decision-makers need to:

- be aware of their responsibilities under the duty
- make sure they have adequate evidence (including from consultation, if appropriate) to enable them to understand the potential effects

of their decisions on different people covered by the duty

- consciously and actively consider the relevant matters, in such a way that it influences decision-making
- do this before and at the time a decision is taken, not after the event
- be aware that the duty cannot be delegated to third parties who are carrying out functions on their behalf

Case law also suggests that it is good practice to document how decisions were reached. Equality Impact Assessments are not a prescribed requirement, but they provide a structured framework which enables the Council to ensure that it considers the equality impact of decisions, and to demonstrate to others that it has done so.

Consultation should always be fit for its particular purpose in the “Gunning” sense (R v Brent LBC ex p Gunning (1985) 84 LGR 168). The core elements are that:

1. consultation must be at a time when proposals are still at a formative stage;
2. the proposer must give sufficient reasons for any proposal to enable intelligent consideration and response;
3. adequate time must be given for consideration and response;
4. the product of consultation must be conscientiously taken into account in finalising any proposals.

If the Gunning principles are demonstrably and conscientiously followed in any consultation, then it is likely that the duty to consult will be discharged.

The narrative in the body of the report indicates that the Council has conducted a meaningful consultation exercise and entered into the consultation with an open mind and has considered the responses to the consultation exercise. Furthermore, the Council has been mindful of its Care Act duties and its responsibility to ensure a sustainable market and offer choice to service users. The Council has conducted a benchmarking exercise and considered the feedback from providers with regard to the costs of providing care. In the

circumstances, the Council has conducted a comprehensive consultation exercise following the statutory guidance and case law in preparation for making the recommendations in this report.

(Elizabeth Cunningham-Doyle, Solicitor, Corporate)

It is important that consultation is genuine. Decision-makers need to be sincere in their efforts to seek views and they must listen and act on responses.

The requirement is that you consult for a 'proportionate amount of time' taking into account the nature and impact of the proposal.

Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response and where the consultation spans all or part of a holiday period. Policy makers should consider what if any impact there may be and take appropriate mitigating action. The amount of time required will depend on the nature and impact of the proposal (for example, the diversity of interested parties or the complexity of the issue, or even external events), and might typically vary. The timing and length of a consultation should be decided on a case-by-case basis; there is no set formula for establishing the right length. For a new and contentious policy, 12 weeks or more may still be appropriate. When deciding on the timescale for a given consultation the capacity of the groups being consulted to respond should be taken into consideration. Two weeks consultation as mentioned within the report is likely to be too short a period of time and we will be at risk of challenge if we have not either consulted or not consulted adequately. An EIA should be undertaken once consultation has taken place.

Salma Yasmeen, Principal Legal Officer, Civil Litigation Legal and Democratic

*What are the **Human Resources** implications?*

There are no direct staffing implications for the Council. If option 3 is agreed, it provides the financial support to ensure that commissioned

care providers fulfil their legal obligations in relation to their staff's pay.

Emma Gilmartin, Strategic HR Business Partner
Not applicable

Equality and Diversity Impact Assessment

*What are the **property** implications*

There are no property implications

Risks:

Without reviewing its fees payable for adult health and social care services Oldham is at risk of not fulfilling its statutory duty outlined in the Care Act, and placing people at risk of not receiving the care and support they have been assessed as requiring.

Has the relevant Legal Officer confirmed that the recommendations within this report are lawful and comply with the Council's Constitution/CCG's Standing Orders? Yes

Has the relevant Finance Officer confirmed that any expenditure referred to within this report is consistent with the S.75 budget? Yes

Are any of the recommendations within this report contrary to the Policy Framework of the Council/CCG? No

Reason(s) for exemption from publication:

3. Information relating to the financial or business affairs of any particular person including the Council

Reason for urgent report

This item has not been published on the forward plan for the required 28 clear days and therefore, the Chairman of the Overview and Scrutiny Committee has given his consent to this item being considered under the general exception rules.

Reason why this Is a Key Decision

(1) to result in the local authority incurring expenditure or the making of savings which are, significant (over £250k) having regard to the local authority's budget for the service or function to which the decision relates; or

- (2) to be significant in terms of its effects on communities living or working in an area comprising two or more Wards or electoral divisions in the area of the local authority.

List of Background Papers under Section 100D of the Local Government Act 1972:

There are no background papers for this report

Report Author Sign-off:	
Claire Hooley	
Date: 18/5/2021	

Please list any appendices:-

Appendix number or letter	Description

1. Background

- 1.1 Since 2017, the Council has agreed additional funding for adult social care provider fees as a result of the National Living Wage and other cost pressures facing the sector. Additional funding has been provided through the Council Tax Adult Social Care precept. As a result of feedback to the market consultation, when cost pressures facing the sector have necessitated additional funding in excess of the precept, this has been made available from reserves, in order to ensure compliance with the Care Act and case law. Prior to the commencement of each financial year, the way in which this additional funding is applied is subject to:
- a review of commissioning activity
 - demand and market pressures
 - benchmarking with other Greater Manchester localities
 - provider consultation
- 1.2 The fees for Continuing Healthcare (CHC) eligible care have largely mirrored those paid by the Council since 2017/18, and any variations are being addressed through the joint commissioning of adult's health and social care services such as the Care at Home joint tender which was implemented in 2019/20.
- 1.3 The purpose of this report is to present options for consulting with the Adult Health and Social Care provider market.

Open Consultation

- 1.4 Unlike previous years, when approval on the percentage to be applied via the Adult Social Care precept of the Council Tax had already been agreed by Members at the Council meeting prior to the provider market being consulted with, this year an open consultation was approved. The open consultation:
- did not present potential fee increases
 - included an overview of the Council and CCG's savings and efficiencies position
 - asked for details on the providers' forecasted financial increases to delivering their services
 - requested specifics on the financial impact providers have faced in responding to the Covid-19 pandemic
 - invited particulars on the actions providers have taken in order to mitigate the financial impact of the last year.

In section 4 of the report the feedback providers have given is summarised into themes.

2. Current position

2.1 Covid-19 impact

It is widely reported that providers of adult social care services have faced unprecedented pressures as a result of the pandemic. Maintaining safe staffing

levels, providing personal protective equipment (PPE), vaccinations, enhanced cleaning, testing regimes have all contributed to rising costs. Whilst some of these costs have been mitigated by the Governments ringfenced grants, the majority of providers have reported struggling to meet escalating costs which has been combined with seeing income levels fall. Paragraph 2.3 details the support put in place locally and the ringfenced grants via DHSC.

2.2 Workforce impact of Covid-19

We are also aware of the impact to the care workforce as a result of the pandemic. Skills for Care has been tracking this, and in May 2020 published findings:

- 46% of responding providers reported a decrease in demand (compared to 26% reporting an increase)
- 34% of providers advised that they urgently needed more staff
- 33% of responding providers reported they were experiencing recruitment difficulties (a major issue for 9%).

In terms of current staff vacancy rates for regulated provision nationwide the roles with the biggest degree are registered managers and registered nurses, both featuring at 9%. We have also been aware that some of Oldham's Care Homes have made use of the furlough scheme, therefore reducing the available capacity (of beds) in the Care Home market.

Oldham's current position of care homes without a registered manager is tracking below the national situation where a third of homes (14 homes) have not currently got a CQC registered manager in place. This is of concern to the ASC Commissioning and Quality Service as we are aware that without a registered manager in place the quality of the service delivered is affected and subsequently likely to have an impact of the homes' registration. For example, 57% (8 homes) are currently rated Requires Improvement, with the remaining 43% rated Good with the CQC. We continue to work with the home to support them to maintain and improve quality standards through the monitoring arrangements in place.

2.3 Covid-19 support for providers

Additional financial support has been provided both locally and nationally to Oldham's care providers recognizing the impact the Covid-19 pandemic has and continues to have on the safe delivery of services. The support to providers has included;

Locally:

- 5% increase on the base rate for 2020/21 across all commissioned services, in line with national guidance.
- 90% bed occupancy guarantee from 15th May 2020 date until the end of October 2020 (for Care Homes)
- Paying on commissioned rather than delivered hours for care at home and extra care housing support
- An Additional Expenditure Panel in place until 31st October 2020.

Nationally – ringfenced and passported to care providers:

A total of £7,249,868 has been allocated to Oldham's social care providers. Further details are presented in table 1 below.

Table 1 – national funding ringfenced to Adult Social Care provider sector

Title of fund	Amount	Dates	Applicable Measures
Infection Control Grant – Round 1	£2,316,590	13 th May – 30 th September 2020	<ul style="list-style-type: none"> - supporting staff to self-isolate as appropriate and receive normal wages in doing do - Limiting staff movement between care settings - support additional recruitment of additional staff - limit the use of public transport - providing accommodation for staff who choose to stay separately from their families in order to limit social interaction outside work
Infection Control Grant – Round 2	£2,275,868	1 st October 2020 – 31 st March 2021	<ul style="list-style-type: none"> - supporting staff to self-isolate as appropriate and receive normal wages in doing do - Limiting staff movement between care settings - limit the use of public transport - providing accommodation for staff who choose to stay separately from their families in order to limit social interaction outside work - supporting safe care home visiting
Rapid Flow Testing Fund	£577,264	2 nd December 2020 – 31 st March 2021	<ul style="list-style-type: none"> - Paying for staff costs associated with training and carrying out LFD testing - Costs associated with recruiting staff to facilitate increased testing - Costs associated with the creation of a separate testing area where staff and visitors can be tested and wait for their result - Costs associated with disposal of testing equipment
Workforce Capacity Fund	£561,777	19 th January – 31 st March 2021	<ul style="list-style-type: none"> - Provide additional care staff where shortages arise - Support administrative tasks so experienced and skilled staff can focus on providing care - Help existing staff to take on additional hours with overtime payment or covering childcare costs
Infection Control and Testing Fund	ICF: £878,214 Rapid Testing: £640,337	1 st April – 30 th June 2021	<ul style="list-style-type: none"> - reduce the rate of Covid-19 transmission within and between care settings through effective infection prevention and control practices and increase uptake of staff vaccination; - conduct rapid testing of staff and visitors in care homes, high risk supported living and extra care settings, to enable close contact of visiting where possible.

2.4 Whilst the support from the Department of Health and Social Care (DHSC) has been welcomed, how the funding can be applied is restricted to the measures

NOT FOR PUBLICATION by virtue of Paragraph(s) <> of Part 1 of Schedule 12A of the Local Government Act 1972 and it is not in the public interest to disclose the information because Information relating to the financial or business affairs of any particular person including the Council listed within each grant. For example, in each of the grant conditions the DHSC stipulates the following:



The grant must not be used for fee uplifts, expenditure already incurred or activities which the local authority has earmarked or allocated expenditure or activities which do not support the primary purpose of the Fund.

And:

This funding cannot be used to address general financial pressures that providers might be experiencing.

Once in receipt of the funding local authorities are required to report monthly on how much of the funding has been allocated and a percentage of the fund due to be allocated against each measure. This requires monthly scrutiny of circa 100 reports and reporting back to DHSC.

2.5 Occupancy levels in Oldham's Care Homes

Covid-19 has had a particular impact on the occupancy levels in Oldham's care homes. Prior to the outbreak of Covid-19, vacancy levels were consistently running at an average of 4-5% (circa 80 beds) which provided a balance of demand and available occupancy, accepting that for some areas of specialism such as nursing care for those living with a dementia, vacancy levels were nearer to 1% and often demand outstripped supply. As of the week ending 9th April 2021, vacancy levels across Oldham's care homes are averaging at 20% with the lowest occupancy reported at 54% for two of the 43 care homes registered in Oldham.

2.6 Living Well at Home agenda

The Living Well at Home agenda is also likely to have had an impact on the capacity across the sector. This priority forms part of the Greater Manchester Adult Social Care Transformation Programme and aims to support people to stay well and independent in their own homes and communities of choice as well as to ensure high quality support when needed. It also aims to ensure that interventions and prevention models are in place so that people can avoid entering into long term support services. The impact of this way of operating is being closely monitored through our commissioned care at home services, which includes monitoring any increase/fluctuations of domiciliary care packages.

2.7 Insurance premiums

Early on in the pandemic adult social care commissioners became aware of the challenges faced by providers in obtaining insurance. To further understand the impact on costs and service delivery the North West Association of Directors Adult Social Services (NW ADASS) conducted surveys with commissioners and providers of adult social care.

Through their research, NW ADASS report that 77 out of the 115 providers (67%) that submitted information advised that their insurance premiums had increased. Furthermore, on average the increase was 68% or £24,032. More concerning was

that despite these increases in insurance costs, the following issues were raised by providers:

- There was no Covid-19 cover in their new policies
- The highest price would have had an impact on the providers' ability to pay more than the national living wage/hourly wages
- There are fewer residents but higher financial costs
- Limited insurers in the market, therefore a limited choice for providers.

This issue has been raised with central government on a number of occasions both by the Greater Manchester Health and Social Care Partnership, and by the ADASS region and national body.

2.8 Sustainability review – Care Act duties

In the Summer of 2020, a care home sustainability review was completed. The purpose of this review was to provide an understanding of the strategic relevance of care homes in the borough in recognition of the temporary financial support that was agreed to be in place (as referred to in paragraph 2.3 above), and to support our understanding of where market failure might be most likely to occur, and our response to this (based on strategic relevance assessment). Due to the impact of occupancy levels, the LWAH agenda and an increase in complex care home admissions, the strategic relevance work will be refreshed in 2021/22 with the objective of presenting a market position statement alongside the commissioning intentions for care homes.

2.9 CQC inspections – change of regime

In May 2020, in response to Covid-19, the CQC announced changing its approach to inspecting the safety and quality of care. As result, the number of inspections undertaken was reduced and/or carried out remotely and/or as a focused inspection on a particular theme, for example, infection control. The 'Emergency Support Framework' was designed to help local CQC inspection teams give targeted advice, guidance and support to providers and staff working in health and social care. The Commissioning and Quality service are aware of a total of 7 inspections being carried out on CQC regulated services in 2020/21 compared to 13 in the year prior.

The Care Quality Commission plans to launch its new strategy in May 2021 which was consulted on in January 2021. During the 12-week consultation period feedback was sought on the CQC's proposed themes of:

- **Meeting people's needs:** the CQC would like to transform the way it collects and understands experiences of people and local communities who face inequalities, to make sure services meet their needs.
- **Promoting safe care for people:** the CQC wants to lead the establishment of universal safety culture across health and social care.
- **Smarter regulation:** the CQC wants to gather and use information differently, with the aim of collecting information only once.
- **Driving and supporting improvement:** using lessons learned through its State of Care report, the CQC wants to do more to drive improvements in the quality of care.

A collated response was submitted by the Oldham health and social care system to this consultation.

3. Adult Social Care Fees

3.1 Oldham's current rates are outlined in the tables below

Table 2 – Residential rates for 2020/21 (previous year also included)

	2019/20 rate	2020/21 rate
Base rate	£500	£525
PQuIP engagement	£10	£10
CQC Good	£25	£25
CQC Outstanding	£45	£45
Oldham Quality Good	n/a	n/a
Oldham Quality Excellent	n/a	n/a
Dementia premium	£45	£45
Mental disorder premium	£84	£84
12 month bridging payment for homes currently rated as “excellent” under the Oldham scheme and Requires Improvement with CQC*	£10	£10
12 month bridging payment for homes currently rated as “excellent” under the Oldham scheme and Good with CQC*	£20	£20
Nursing premium – payable for all nursing placements	£30	£30

Table 3 – Non-residential rates for 2020/21 (previous year also included)

	Care at Home	CHC Care at Home	Extra Care Housing	Supported living non-complex p/hour	Supported living complex p/hour	SL Sleep ins Per night	PAs
2019/20 rates	£15.56 £17.56 OL3 area	RGN/RMN £21.72 Enhanced £16.56	£14.57	£14.57	£16.05	£80	£10/hr £65/night sleep-ins
2020/21 rates	£16.34 £18.34 OL3 area	TBC	£15.30	£15.30	£16.85	£80	£10/hr £65/night sleep-ins

3.2 We are aware that work is ongoing across Greater Manchester on proposals for the 2021/22 fees on which localities are consulting with their locality providers. Table 1 below illustrates Oldham's current position (2020/21) in relation to other areas for the most significant areas of spend. As is the case in Oldham, most localities have aligned their rates across Local Authorities (LAs) and Clinical Commissioning Groups (CCGs).

Table 4 – Greater Manchester Fees 2020/21

Locality	2020/21 fees									
	Residential Care		Nursing Care		Care at Home		Supported Living		PA Support	
Ranking ²	1-10	£	1-10	£	1-10	£	1-10	£	1-10	£
Bolton	2	530	5	530	2	17.33	3	15.26	2	10.85
Bury	6	502.95	8	502.95	7	16.13	1	16.13	1	15.54
Manchester	5	507	4	540	4	16.40	-	-	5	9.00
Oldham	3	525	3	555	5	16.34	2	15.30	4	10.00
Rochdale	4	516	7	516	6	16.16	4	15.20	-	-
Salford	-	-	-	-	-	-	-	-	3	10.25
Stockport	2	530	1	646	3	16.68	5	14.85	4	10.00
Tameside	1	539	2	570	1	18.05	6	14.66	-	-
Trafford	7	475	6	526	9	15.56	-	-	6	8.75
Wigan	8	461	9	465	8	16.04	5	15.04	-	-

It is worth noting that Oldham's fee structure also includes the payment element of quality premiums which is linked to a provider's CQC inspection rating. When the base rate is added to the quality premium a provider receives elevates Oldham's payable rates higher in the table above, with the average weekly cost of care being:

- Residential care £630 p/week
- Nursing care £670 p/week

Further, many of the Greater Manchester localities also pay enhancements over and above the base rate, which can make like for like comparisons difficult. To improve our understanding of Oldham's position in Greater Manchester, and to inform future benchmarking exercise, more detailed work is planned to clarify what elements are included in benchmarking data in different localities.

3.2 NW ADASS cost of care benchmarking

Oldham is feeding into a North West Cost of Care Benchmarking exercise which will support fee setting in forthcoming years. The exercise will see a review of the rising costs compared with the true cost of care delivery therefore calculating care costs for commissioned providers based and delivering support in the North West.

3.3 National Living Wage

In November 2020 Government announced the 2021 National Living Wage and National Minimum Wage rates to come into force from April 2021. The National Living Wage will increase by 2.2 per cent from £8.72 to £8.91, and will be extended to 23 and 24 year olds for the first time.

² (1 being highest; 10 being lowest rate)

Last's year's increase (for over 25 year olds) was 6.2% and 4.8% in the year before.

Whilst in the recent years Oldham's Adult Social Care has sought to match increases through the rates commissioned providers can claim, changes that have been made to the frequency of payments on payment cycles and easing of administrative burdens has benefitted providers.

There continues to be contractual requirements for providers to pay their employees at least the minimum wage. However, with Oldham's ambition to be a Living Wage employer (which includes its suppliers paying living wage rates) further analysis is required, and this work will progress seeking advice from legal and finance departments.

3.4 Living Wage ambition

The Foundation Living Wage is separate to the Government's National Minimum Wages and is calculated independently based on what people need to get by. Accreditation for organisations is awarded by the Living Wage Foundation who can demonstrate that they pay the Foundation Living Wage to their directly employed staff, plus their contractors and suppliers providing work under contracts lasting longer than eight consecutive weeks, also pay the Foundation Living Wage.

Every November the Foundation Living Wage is increased, to consider increasing pressures on household budgets, and organisations have six months to uplift their hourly rate for their employees, following the announcement. In November 2020, the LWF was calculated to be £9.50 per hour for 2021/22.

Oldham Council (and it is understood that the CCG has ambitions to do the same) have received accreditation from the Foundation Living Wage in November 2019. As part of the 'phased accreditation' we are due to pay all of our suppliers (where they are contracted to provide labour for eight consecutive weeks or more for two or more hours per week) within three years.

This means that as well as Oldham Council (and potentially the CCG) ensuring that its employees are paid the Living Wage, its suppliers and contractors must also commit to paying the Living Wage. This means all health and social care providers would be required to pay the Living Wage, therefore a potential financial impact on health and social care budgets.

In Summer 2019, the Council and CCG undertook an engagement exercise with health and social care providers to assess the range of wages paid to their employees and to further understand the financial implications for implementing the Living Wage Foundation rates in Oldham.

Through this engagement activity providers advised that they would struggle to implement paying their staff the minimum Living Wage rates without further investment from the Council and CCG in their fees. For example, businesses have pointed out that by paying their staff the National Living Wage Foundation rates will also have implications on other, higher paid staff, as they would be required to review all rates of employee pay. They have also advised that this in turn would impact insurances and other overheads costs.

Based on the information received and analysis undertaken by the ASC Commissioning team it is recommended to acknowledge the pressure facing health and social care providers in meeting the Living Wage Foundation rates. It is therefore recommended that a phased implementation approach takes place with Adult Health and Social Care Commissioned providers due to the impact on them and the Council and CCG in the rates that we pay them due to the impact likely to be felt by an already unpredictable sector, and subsequent further investment required via the Council and CCG in paying for the services they provide.

It is also recommended that further work is undertaken across all contracted providers and suppliers of both the CCG and Council to further understand the implications of Oldham becoming a Living Wage Foundation accredited member. Clarity is required as whether the council as part of a wider corporate programme will be undertaking the analysis of the implications of the Council becoming a Living Wage Foundation accredited employer.

3.4 Sleep in case

In a pivotal and much anticipated judgment for the social care sector, the Supreme Court ruled in March 2021 that workers are not entitled to the National Minimum Wage for all time spent on a sleep-in shift. In the judgment, the appeal of Mencap worker Mrs Tomlinson-Blake was dismissed on the basis that the sleep-in provisions in the National Minimum Wage Regulations are clearly intended to mean that a worker who is permitted (and expected) to sleep during a shift and only required to respond to emergencies, is not entitled to have those hours included in the NMW calculation. In reaching their decision, the Supreme Court Justices were guided by the recommendations of the Low Pay Commission, which the Government is bound to follow and which are clear that sleep-in shifts should not attract NMW.

Commissioners and care employers have been awaiting a decision which could have had potentially major consequences for the sector had the decision gone the other way.

What the decision means is that care commissioners and employers can continue with the practice of paying a flat rate for sleep-in shifts safely knowing that they are abiding by the NMW regulations.

The Adult Social Care Commissioning Team continues to work with providers on this, ensuring that any time which their sleep-in workers spend awake is remunerated at NMW rates. In addition, we also have an eye to assessing that a distinction is made between on-call arrangements and sleep-in shifts as the former *does* attract NMW.

4. **Feedback from providers through the open consultation**

- 4.1 The open consultation started 26th February and concluded 9th March (2 weeks) and received responses from 25 providers (52% residential homes; 48% community care providers).

4.2 The feedback received through the consultation is summarised below:

A number of providers wished to thank Oldham for the support provided in its pandemic response.

PPE costs

Whilst a number of providers acknowledged the support of Oldham's Emergency PPE Hub, and the government portals, many have also advised that the increased costs have inevitably led to increased costs to their overall running and delivery of the services. The ringfenced grants to care homes have not covered PPE costs.

CQC inspection regime

The changes proposed by CQC's inspection regime is welcomed, particularly if Oldham continues to align its quality premiums to the CQC rating and CQC undertaking more frequent inspections.

Removal of the Bridging Payment

The 'Bridging Payment' was introduced recognising the change to applying quality premiums from Oldham's Quality model and the alignment to the premiums to the CQC rating where there would be some providers adversely impacted by this change. Providers have asked that for commissioners to consider keeping the bridging payment in place until the point a home is re-inspected by CQC. Once a home has been re-inspected by CQC they have had the opportunity to improve their rating.

Staff Morale

It cannot be underestimated the impact felt on the social care workforce. Many providers have referred to a low morale and it being their priority to increase this, however, this often comes with increased wages which relates directly to the fees commissioners are able to set.

Percentage uplift

Where providers have submitted a percentage uplift this has ranged from up to 4.9% in the residential sector and a specification of at least 2.2% in the non-residential sector.

A care home broke this down as:

This includes a [SIC] NMW increase of 2.2%, an increase of 1.1% on food costs due to Brexit and 1.6% for the remainder of the costs.

Developments

As a result of the pandemic response and direction from Central Government the whole of the economy was having to reorganise the way work was conducted (non-face to face meetings etc.) so too was the health and social care sector. Many providers have used this as an opportunity to invest in technologies and many cite electronic care plans being introduced which has been beneficial on many counts from the ability to liaise with health professionals to ensuring family members are kept up to date with their loved ones' care needs.

Vacancy and Financial impact

Prior to the pandemic, a number of Care Homes have had waiting lists for admissions. As referenced through this report vacancies have increased, inevitably having a major impact on cashflow and resources.

Keeping up to date with changing government guidelines

One care home advised that it has been incredibly stressful keeping up to date with the changing government guidelines throughout the pandemic and has advised on the increased administrative burden this has placed on the sector.

Insurance Premiums

One care home advised their insurance premium renewal has doubled since prior to the pandemic.

One Supported Living provider advised a 25% increase on their insurance premiums, whilst another advised 53% increase.

5. Options (including recommended option)

5.1 The total funding anticipated to be received through the application of the Adult Social Care Council Tax precept (agreed at 2% for 2021/22 with a further 1% precept to be charged in 2022/23) is £1.844m in 2021/22. Taking into account the current volume and projected demand for adult social care services the options presented have been developed in consultation with finance colleagues from both the council and CCG.

5.2 Given the above context, the profile of different parts of the market and the benchmarking and demand position, the options to be considered to present to the market for consideration are:

Option 1: do nothing, maintaining 2020/21 rates to non and residential providers for 2021/22

Table 5 – Option 1 fees – no change

	Care Home Base Rate	Care at Home	Extra Care Housing	Supported living non-complex p/hour	Supported living complex p/hour	SL Sleep ins Per night	PAs
2020/21 rates	£525	£15.56 £17.56 OL3 area	£14.57	£14.57	£16.05	£80	£10/hr £65/night sleep-ins
2021/22 rates	No change	No change	No change	No change	No change	No change	No change

Option 2: 2.2% increase to non and residential providers

Table 6 – Option 2 fees – 2.2% increase

	Care Home Base Rate	Care at Home	Extra Care Housing	Supported living non-complex p/hour	Supported living complex p/hour	SL Sleep ins Per night	PAs
2020/21 rates	£525	£15.56 £17.56 OL3 area	£14.57	£14.57	£16.05	£80	£10/hr £65/night sleep-ins
2021/22 rates	2.2% £536.55	2.2% £16.70 £18.70 OL3 area	2.2% £15.64	2.2% £15.64	2.2% £17.22	No change £80	No change £10/hr £65/night sleep-ins

Option 3: 3% increase for residential; 2.5% non-residential providers

Table 7 – Option 3 fees – 3% residential, 2.5% non-residential

	Care Home Base Rate	Care at Home	Extra Care Housing	Supported living non-complex p/hour	Supported living complex p/hour	SL Sleep ins Per night	PAs
2020/21 rates	£525	£15.56 £17.56 OL3 area	£14.57	£14.57	£16.05	£80	£10/hr £65/night sleep-ins
2021/22 rates	3% £540.75	2.5% £16.75 £18.75 OL3 area	2.5% £15.68	2.5% £15.68	2.5% £17.27	No change £80	No change £10/hr £65/night sleep-ins

Option 4: 3.5% increase to non and residential providers

Table 8 – Option 4 fees 3.5% increase

	Care Home Base Rate	Care at Home	Extra Care Housing	Supported living non-complex p/hour	Supported living complex p/hour	SL Sleep ins Per night	PAs
2020/21 rates	£525	£15.56 £17.56 OL3 area	£14.57	£14.57	£16.05	£80	£10/hr £65/night sleep-ins
2021/22 rates	3.5% £543.38	3.5% £16.91 £18.91 OL3 area	3.5% £15.83	3.5% £15.83	3.5% £17.44	No change £80	No change £10/hr £65/night sleep-ins

Type of Provision	20/21 rate	2.2%	2.5%	3.0%	3.5%	Hybrid – 3% res & 2.5% non res
Residential	525.00	536.55	538.13	540.75	543.38	540.75
Nursing	555.00	566.55	568.13	570.75	573.38	570.75
Home Care	16.34	16.70	16.75	16.83	16.91	16.75
Home Care OL3	18.34	18.70	18.75	18.83	18.91	18.75
ECH	15.30	15.64	15.68	15.76	15.83	15.68
SL complex	16.85	17.22	17.27	17.36	17.44	17.27
SL non-complex	15.30	15.64	15.68	15.76	15.83	15.68
Pas	10.00	10.22	10.25	10.30	10.35	10.25
Other	16.34	16.70	16.75	16.83	16.91	16.75
Total Cost	-	1,475,428	1,646,347	1,967,404	2,298,909	1,766,794
Total Cost excl PA's	-	1,119,206	1,241,549	1,481,619	1,732,193	1,361,997

5.3 The Quality Premiums for Residential Care are proposed to remain as is across all of the options; as per table 6:

Table 6 – Quality Premiums

Residential services – Quality Premiums	
	Option 1: no increase for 2020/21 rates
PQUIP engagement	£10
CQC Good	£25
CQC Outstanding	£45
Dementia Premium	£45
Mental disorder Premium	£84
12 month bridging payment for homes current rated as ‘Excellent’ under the Oldham scheme and ‘Requires Improvement’ with CQC	£10
12 month bridging payment for homes currently rated as ‘Excellent’ under the Oldham Scheme and Good with the CQC	£20
Nursing premium – payable for all nursing placements	£30
CHC 1:1 in care homes	Standard: £10.86 p/hour Enhanced: £14.11 p/hour Nursing: £17.37 p/hour

5.4 Recommended option

The recommended option on which to consult is Option 3; the hybrid model that includes the following:

- 3% increase to the residential base rate of £525 to £540.75 per week
- Retain the residential quality premiums
- Retain the bridging payment
- 2.5% increase to non-residential providers (i.e. Supported Living and Care at Home services)

- No change to the Personal Assistant rate/s

This fee increase model enables providers to pay staff wage increases following the National Minimum Wage increases (of 2.2%) and also recognises the wider yet varying impact that the pandemic has had on social care providers. For example, the impact on care homes has been reduced admissions yet increased staffing required, and whilst some of the national ringfenced funding (detailed in table 1, page 16) has gone some way to address these additional financial pressures, it is recognised that there are financial pressures in the social care provider market that this funding was specifically unable to be used to address.

Moreover, the feedback received through the open consultation undertaken earlier this year consolidates this recommendation noting that we do not have the financial resources to meet some care providers request of an above 4% fee increase. This option is felt to be fair given the financial position of both the Council, the CCG and social care providers.

This proposed option is also within the amount forecast to be generated through the Adult Social Care Council Tax precept of £1.84m, utilising an estimated £1.3m for the provider market increases, given the wider financial pressures and demands on the Adult Social Care forecasted budget.

It is proposed that the residential sector (nursing and care homes) receive a 3% increase on their base rate in the year 2021/22 (£525 to £540.75) which takes into consideration the overheads on operating building-based services. This option also further recognises the impact on this part of the social care market in paying Living Wage Foundation rates (an ambition in Oldham to achieve by the 4th quarter of 2022/23) due to care home employees being, on average, paid lower rates of pay than the non-residential sector.

The quality premiums are proposed to remain the same, keeping the additional incentive of £45 per unit per bed should a care home receive an Outstanding rating with the CQC. (There are currently no homes in Oldham with this rating.) Moreover, and linked to the quality premiums, it is proposed that the bridging payment is retained until the point whereby a home is re-inspected by CQC. Once they have been inspected, and should there be no change to their rating, the bridging payment which they receive will cease. But it is considered important that the homes have this opportunity to complete an inspection, something of which the Local Authority or Care Home has very little influence over.

Through this option, it is proposed that the Personal Assistant rates remain the same for the financial year 2021/22. This is with a view that the rates are within the current National Living Wage requirements, and also within the Living Wage Foundation rates, but also due to the lower overheads a personal assistant has compared to a care company. However, it is noted that Oldham's Personal Assistant rate has not been increased in recent years, and with the National Living Wage coupled with Oldham's ambition of achieving Living Wage Foundation status by 2022/23 this rate will need to be reviewed for the financial year 2022/23 fees.

Following CPB confirming the option for fees in 2021/22, a further focused consultation is required with the commissioned market, to complete the fair cost of care fee setting process (Care Act duty). It is advisable to do this to ensure that providers are able to continue to provide high quality care. Following this exercise it is recommended that approval is delegated to the Managing Director of Community Health and Adult Social

NOT FOR PUBLICATION by virtue of Paragraph(s) <> of Part 1 of Schedule 12A of the Local Government Act 1972 and it is not in the public interest to disclose the information because Information relating to the financial or business affairs of any particular person including the Council Care, and the Strategic Director of Commissioning, unless the outcome of the consultation results in the need to reconsider the options presented.

