

# Health and Adult Services

## Care Market Financial Sustainability Policy

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## 1. Background

North Yorkshire Council is committed to ensuring people who have care and support needs can choose from a vibrant, diverse, high quality and fairly priced care market.

While the Council has a duty to promote the efficient and effective operation of the adult care market, it also has a responsibility to deliver value for money. This means ensuring finite resources are allocated to deliver the best and most cost-effective outcomes.

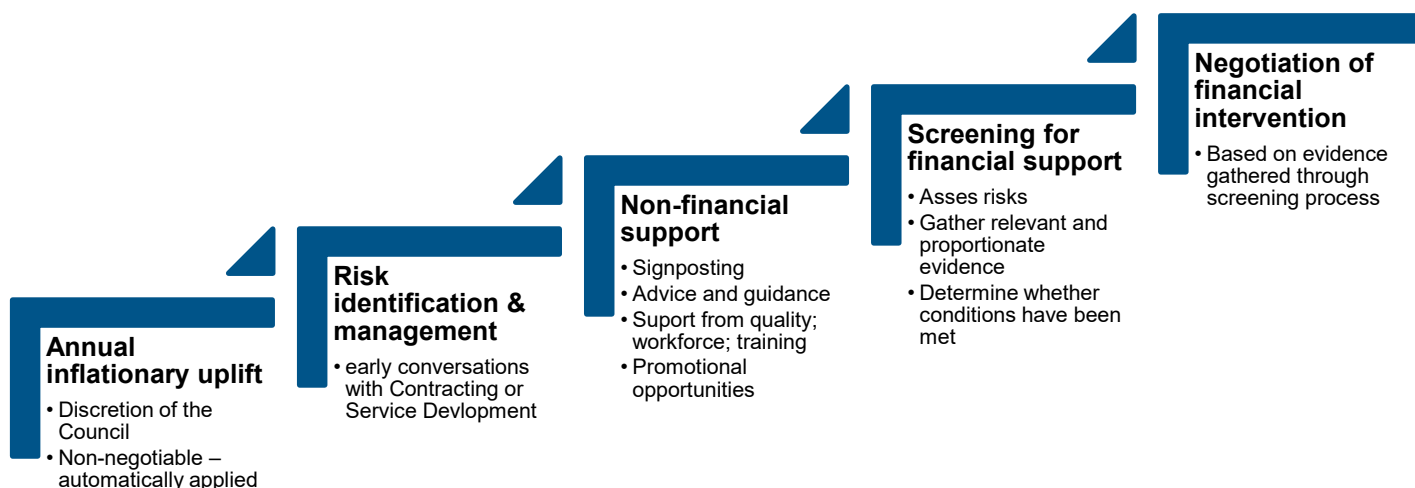
North Yorkshire Council is one of the highest paying local authorities for social care services in England. This in part is because our 2022-2027 Approved Provider Lists allow providers to submit rates that are sustainable for the duration of the contract. We also review fees annually through our annual inflationary uplift process. This takes into annual inflationary factors, including National Living Wage, energy, fuel and food costs. It also considers wider market forces. This helps ensure the fees paid by North Yorkshire Council remain sustainable for the market, the Council and for people who pay towards their care and support. The annual inflation uplift is made at the discretion of the Council.

In exceptional circumstances the Council may consider additional financial intervention above and beyond any agreed inflationary uplift. This will only be considered where a provider has identified significant concerns about the financial sustainability of:

- The organisation
- A specific service delivered by the provider
- Individual placements or packages of care

This Policy sets out the Council's risk-based approach to supporting providers where there are sustainability concerns, and the conditions that must be met for the Council to consider additional financial intervention above and beyond the annual inflation award. The Policy does not guarantee intervention, and the Council may choose to decline support at any point within the process.

Figure 1: Escalation process for managing sustainability concerns



## 2. Scope of the Policy

The Sustainability Policy applies to services that are contracted via the Council's current or previous Approved Provider Lists for:

- Residential or Nursing Care
- Home Based Support
- Community Based Support
- Supported Living

It includes services that are jointly funded with the NHS.

The Policy **does not apply to**:

- Any services that are fully NHS funded and contracted by an Integrated Care Board (ICB).
- Block contracts arranged outside the APLs
- Situations where fees may need to increase or decrease because of an individual's change in need. In this situation the provider will need to contact Adult Social Care to request a review or reassessment.

## 3. Proactive Identification of Risks and Issues

If a provider has financial concerns, and there is a risk it may impact on their ability to continue delivering services, they should contact the Council as soon as possible.

A member of the Service Development or Contracting Team will talk to the provider about:

- The nature and extent of the risks and any mitigations the provider has already considered
- The internal and external factors that have led to sustainability concerns
- The potential impact on service delivery
- The impact on individuals receiving a service from the provider
- The impact on the Council's duties under the Care Act 2014
- What outcome the provider would like to see and their ideas about potential solutions

This will help us to determine how best to work together to achieve a good outcome.

Providers have several opportunities to contact the Council, these avenues are available to all providers delivering social care services on behalf of the Council. There are regular provider surgeries, annual contract monitoring meetings and the ability to request contact through the Service Development, Contract Management and Quality & Service Continuity Teams.

## 4. Non-Financial Support

When determining the best course of action to support provider sustainability, the Council will consider a range of options. This may include, but is not limited to:

- Providing information and advice on opportunities for providers to adjust, diversify or expend their offer to meet local needs, in line with the Market Position Statement
- Support with workforce recruitment, retention and training
- Connecting providers and fostering good relationships to enable sharing of best practice and partnership working
- Support to address quality issues
- Providing opportunities for providers to actively promote their services in order to increase uptake
- Signposting to appropriate areas of the care market and other support available to providers including training and learning and recruitment resource provided by the Council.
- Agreement to reduce fees in order to increase referrals

## 5. Financial Intervention

In exceptional circumstances, where non-financial intervention has been fully explored, the Council may consider financial intervention to help providers mitigate risks to financial sustainability. This could include:

- A change in contracted base or 1 to 1 fees for individual packages/placements and fee setting
- A one-off market supplement payment, which includes any requests for grants to develop services where there are identified gaps in the care market.

Paragraphs 5.1 and 5.2 set out the conditions that must be met for the Council to consider offering financial intervention.

The Council is under no obligation to offer financial support where there is a significant risk to a provider's financial viability. The decision to intervene will be made at the discretion of the Council. This means there is no guarantee of financial support, even if the conditions listed are fully met.

The Council will only consider financial support between April and October (Inclusive) in each financial year. From November – March in each financial year the Council will only consider non-financial support unless exceptional circumstances are evidenced.

Any decision to offer financial support will be assessed for compliance with the Public Contracts Regulations 2015.

If funding is agreed, the conditions will include a requirement for the provider to comply with monitoring and review arrangements.

### 5.1 Conditions for considering financial intervention

An increase in fees above the agreed annual inflationary uplift, or one-off market supplement payments will only be considered in exceptional circumstances.

While the Council reviews your sustainability request, any notice periods served on package/s of care related to the sustainability request will not apply. The Care Provider agrees to waive such notice periods until the outcome of the sustainability request is determined.

The below table lists the conditions that must be met before the Council will consider any such request. It also provides examples of the type of evidence we may consider or request from the provider. This list overleaf is not exhaustive, and the required evidence will depend on the circumstance.

Condition	Fee increase	One-off payment	Examples of evidence
There is a high risk of the provider exiting the market/serving notice due to financial concerns.	✓	✓	Detailed pricing breakdown; financial checks; open-book accounting; published accounts; financial audit/ board minutes
It is in the person's best interest to remain with the service	✓	✓	Detailed feedback from Care and Support Teams; CHC Team; Brokerage
There is no suitable alternative available at a similar cost to meet the needs of the individual/s in receipt of care	✓	✓	Detailed feedback from Care and Support Teams; CHC Team; Brokerage
The provider has taken all reasonable steps to mitigate financial risk	✓	✓	Board minutes; feedback from lead Council officer; financial correspondence
The service continues to be aligned with the Councils commissioning intentions to meet strategic and locality needs.	✓	✓	Providers business strategy/plan; Council's Market Position Statement/current market intelligence
The service is hard to replace and an exit from the market will have a significant impact the Council's ability to discharge its duties under the Care Act 2014	✓	✓	Care and Support Teams; CHC Team; Brokerage
Current fee levels are below the market rate for comparable services	✓	✓	Benchmarking data on fees (local; county wide; regional; national); ACOC; UKHCA minimum price; host LA fees
Current fee levels are not appropriate to provide the delivery of care to the required standards	✓	✓	Detailed pricing breakdown; Staffing and vacancies; reliance on 1 to 1; on-going quality concerns etc)
The provider will not be able to maintain the National Minimum Wage where applicable within the current rates (or were doing so will adversely impact on service provision)	✓		Staff hourly rate/ price breakdown including operating costs and profit margin

The service is delivering satisfactory outcomes for people	✓	✓	Feedback from the Integrated Quality Team / CQC; Care and Support Teams; CHC Teams; Reviews/Reassessments
There are no concerns about the quality of care– or where there are concerns, the provider is actively engaging with the Council's Quality and Service Continuity Team to resolve them.	✓	✓	Feedback from the Council's Quality Team, CQC or Safeguarding
The provider has a robust plan in place to ensure the longer-term sustainability of the business.	✓	✓	Business Strategy/Plan; confirmation in writing
Making a payment is compliant with the Subsidy Control regulations.		✓	Legal advice
Making a payment is compliant with the contract T&Cs and therefore compliant with the PCRs 2015.		✓	Procurement and Legal advice

## 5.2 Subsidy Control Regulations

Any decision to provide financial support to providers will be made in line with the [Subsidy Control Act 2022](#).

These regulations are likely to apply to:

- Fee uplifts that exceed market rates
- One off market supplement payments

## 6. Decision Making

The Council has established a 'Sustainability Escalation and Review Panel' to consider requests for financial intervention. The panel includes representation from the ICB as well as various council services including Service Development; Finance; Contracting and Care and Support. All requested information and evidence must be submitted ahead of any consideration at the Sustainability Escalation and Review Panel.

The Panel meets monthly to consider all available evidence; provide advice and guidance to the lead officer and agree recommendations to Health and Adult Services Leadership Team (HASLT).

Providers will be notified of the final decision in writing. If the request is declined, the provider will be given a clear rationale for the decision.

This Policy aims to mitigate risks to long-term sustainability. Providers who raise financial concerns on more than one occasion may be declined any further support.

## 6.1 Joint Funded Packages

Where the service supports people who receive a contribution towards their care from NHS Continuing Health Care, the decision to increase fees will be made in conjunction with the relevant Integrated Care Board (ICB). The Humber and North Yorkshire Integrated Care Board (ICB) is a member of the Sustainability Escalation and Review Panel. Additional ICB's will be contacted on a case by case basis.

## 7. Timescales

When a provider contacts the Council to raise concerns about financial sustainability, the first step will be to explore alternatives to financial support. If at any point the provider determines they wish to progress with a request for financial intervention, they must notify the Council in writing.

The Council will aim to reach a decision on the most appropriate course of action within 40 working days of when the provider confirmed a request for financial intervention, in writing.

If it is determined that the subsidy control requirements apply, the timescale for reaching a decision may take up to 80 working days. These extended timescales are outside the control of the Council due to the [Subsidy Control Act 2022](#).

The provider will receive regular updates from the Lead Officer. These timescales are indicative only. If any delays are anticipated, the provider will be notified.

The timescales identified above are dependent on the provider engaging and responding to requests for information in a timely fashion. The Council cannot be held responsible for any delays that are as a direct result of a lack of engagement by the provider.

## 8. Implementing the decision

### 8.1 Changes to Fees

If changes to fees are agreed, this will take effect from the date of the next payment run.

Backdated payments will not be considered except where the delay has been caused *entirely* by the Council. In such circumstances, the Council may consider backdated payments at its sole discretion. There will be no backdate applied if the delay is due to the provider failing to engage in the process.

### 8.2 Market Supplement Payments

For market supplement payments, discussions will be required with the Council's Legal Team on the appropriate course of action to take in respect of any such payments. Any



such payments will be at the discretion of the Council whilst ensuring it meets its legal duties and responsibilities.

### **8.3 Informing the Person in Receipt of Service**

Any decision to agree an increase in fees has the potential to impact on financially assessed contributions from people who are in receipt of a service.

Where there is an impact on financial contributions, individuals (or their representatives) will be informed that this is a result of the Provider requesting an increase in fees. They will also be given the choice of moving to an alternative cheaper provider, where an alternative provider is available that can meet assessed needs.

## **9. Service Continuity**

There may be circumstances where a decision is taken to decline a request for financial intervention. If this results in the provider serving notice on existing contracts, or the provider exiting the market, the Council will work with the provider, people who use services and their families to ensure that the Council's responsibilities under the Care Act continue to be discharged.

## **10. Appeals**

No appeal process is available, the decision of the Council is final.

If a provider wishes to raise a complaint about the process or how it has been handled, they should follow the Council's published complaints procedure.

[Complaints, comments or compliments | North Yorkshire Council](#)