

13/11/2023

NN-ICB/23/499

Dear Requestor

RE: Freedom of Information Request

With reference to your request for information I can confirm in accordance with Section 1 (1) of the Freedom of Information Act 2000 that we do hold the information that you have requested. A response to each part of your request is below and attached.

In the request you asked:

NOTE: If your ICB operates different uplift or uplift processes by former CCG or at a place level, please ensure your response is broken down by individual area etc.

This FOI relates to continuing healthcare (CHC) funded by your ICB in residential nursing care homes for working age adult and for older people over the age of 65.

Q.1 Please confirm if your ICB operates on a CHC framework with a single, or range of rates, and confirm the rate/s and any criteria relevant to these rates, along with any annual uplift applied to these framework rate/s for the period 2023/24.

The ICB has a contractual relationship with homes in Nottinghamshire which includes a schedule of rates for CHC placements. Please see attached document.

The rate depends on the levels of needs identified in the Decision Support Tool when the patient was assessed as eligible for CHC. For Band A placements, there is a range of rates. If the home is within the County Council's locality, the rate is determined by the Quality Banding allocated to the home by the Council and whether or not the home has been given a Dementia Quality award.

The uplift applied against the 2022/23 rates to confirm the 2023/24 figures ranges from 7.49% to 8.42%.

Q.2 If your ICB places CHC residents outside of a CHC framework with a single, or range of rates, please confirm the rates and any criteria relevant to these rates, and confirm the uplift applied to these rates for the period 2023/24.

These are negotiated on an individual case basis in response to requests.

If the placement is made out of area, the local ICB may be contacted to determine any locally agreed rates and the fee matched. Uplifts are not automatically awarded to non-contract providers.

Q.3 Please outline the process to set CHC uplifts within your ICB, and state how care providers were engaged in this process.

The current 2023/24 care home rates for CHC placements represent the final year in a 3 year plan to establish a fair rate for care. The former CCG commissioned a third party provider to undertake this work which included consultation with the home care market.

Q.4 Please provide a copy of any letter or letters sent to care providers communicating CHC uplifts made by your ICB.

A letter was sent to all care homes with a contract to communicate the uplift. Contract communications are commercially sensitive and therefore cannot be shared.

Section 43 (2)

the ICB are unable to share this information as it is deemed commercially sensitive under Section 43 (2) of the Act.

Section 43 of the Act states that:

(1) Information is exempt information if it constitutes a trade secret.

(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).

*Section 43 is a qualified exemption and is subject to a **public interest test**. Even where you are satisfied that the information requested is a trade secret or that its release would prejudice someone's commercial interests, you can only refuse to provide the information if you believe that the public interest in withholding the information outweighs the public interest in disclosing it.*

*A **public interest test** was undertaken on the 9 November in response to your request made under the Freedom of Information Act 2000.*

The Information Commissioner's Office (ICO) sets out public interest factors in favour of and against disclosure. Some of the factors in favour were as follows:

- Ensuring that the public authority can be held accountable for its decisions, particularly as to how it spends public money.*
- Ensuring that a tender process is open and transparent.*
- Providing insight into the nature of a procurement process and winning bids, so that other companies are encouraged to take part in the process and improve future bids.*

Public interest factors against disclosure (and in favour of the maintenance of an exemption) included:

- There is an inherent public interest in the maintenance of the exemption, and of upholding private companies' expectations that commercially confidential information will be protected from disclosure when they engage in public authority tenders.*
- Avoiding the discouragement of prospective tenderers from tendering for public sector contracts, for fear of disclosure of their commercially sensitive information to competitors, and that this may adversely affect both the quality of tenders for public sector contracts, and public authorities' ability to negotiate them effectively.*
- Maintaining a competitive market and driving competition as this benefits public authorities and consumers, and which could be threatened by disclosure of companies' commercial information.*

On balance of the factors considered above, along with relevant case law, we considered that the ICB would be entitled to withhold information in relation to contract communications and that this would be not be superseded by public interest considerations.

Q.5 Please outline the process and timeline for your ICB's approach to your 2024/2025 CHC uplift.

The ICB will await the National Planning Guidance for 2024/25 plus confirmation of the FNC rate to determine the financial envelope available to uplift CHC rates. These will be communicated to contracted care homes as soon as possible, ideally prior to 1 April 2024. Requests for uplifts received by non-contract providers will be logged and acknowledged until the point when the ICB is able to confirm the uplift they can apply. Requests received prior to 30/6/24 are expected to have the agreed uplift backdated to 1/4/24.

If you are unhappy with the way in which your request has been handled, NHS Nottingham and Nottinghamshire Integrated Care Board (ICB) have an internal review procedure through which you can raise any concerns you might have. Further details of this procedure can be obtained by contacting Lucy Branson, Associate Director of Governance via lucy.branson@nhs.net or by writing to FOI Team at NHS Nottingham and Nottinghamshire ICB, Sir John Robinson House, Sir John Robinson Way, Arnold, Daybrook, Nottingham, NG5 6DA.

If you remain dissatisfied with the outcome of the internal review, you can apply to the Information Commissioner's Office (ICO), who will consider whether the organisation has complied with its obligations under the Act and can require the organisation to remedy any problems. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by NHS Nottingham and Nottinghamshire ICB. You can find out more about how to do this, and about the Act in general, on the Information Commissioner's Office website at: <https://ico.org.uk/for-the-public/>

Complaints to the Information Commissioner's Office should be sent to:

FOI/EIR Complaints Resolution, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Telephone 0303 123 1113 or report a concern via <https://ico.org.uk/concerns/>

Yours sincerely

Freedom of Information (FOI) Officer on behalf of *NHS Nottingham and Nottinghamshire Integrated Care Board*

notts.foi@nhs.net

All information we have provided is subject to the provisions of the Re-use of Public Sector Information Regulations 2015. Accordingly, if the information has been made available for re-use under the [Open Government Licence \(OGL\)](#) a request to re-use is not required, but the license conditions must be met. You must not re-use any previously unreleased information without having the consent of NHS Nottingham and Nottinghamshire Integrated Care Board. Should you wish to re-use previously unreleased information then you must make your request in writing (email will suffice) to the FOI Lead via notts.foi@nhs.net. All requests for re-use will be responded to within 20 working days of receipt.