

# Health & Care Focus

DRIVING LIFELONG PROSPERITY

Autumn 2017

## HOME CARE RATES UPDATE: ARE FEE INCREASES AHEAD OF WAGE INFLATION?



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### INSIDE

- Home Care in the UK – any progress in the last 12 months?
- Independent Fostering Agencies – Research indicates low growth in fees
- Preparing for business sale: company secretarial audit
- GDPR, are you prepared for the changes?
- Sleep-in rates in supported living and specialist residential care homes
- How can we help you?

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DRIVING LIFELONG PROSPERITY

# Home Care in the UK – any progress in the last 12 months?

Hazlewoods Health and Care team have again requested various data on the home care market from local authorities in England with social services responsibilities.

Within this article we have concentrated on domiciliary care for the over 65s.

## NEWS FROM PROVIDERS

There are some growth stories, for example:

- Ark Home Healthcare acquired 11 branches operated by Housing and Care 21;
- Apposite Capital acquired MITIE healthcare division;
- Celesio acquired BUPA Home Healthcare division;
- Apex acquired Prime Care from Circle Housing and Support;
- Sodexho acquired Prestige Nursing;
- Key Capital Partners invested in Routes Healthcare;
- BGF invested in The Good Care Group.

We understand that some of these acquisitions crystallised losses for their previous owners and this is not uncommon in the market.

There were also a number of transactions in specialist, complex, learning disability/mental health ‘supported living’ sectors in the last few months.

In addition to the above, we are aware of a number of transactions at relatively low values where providers have simply “handed” large blocks of hours to another provider. This has ranged from larger providers who do not believe that a region offers a growth opportunity, to smaller providers who do not wish to operate any longer but want to ensure continuity of care to their clients and employment for their staff.

Other operators have ‘headwind’ employment issues, be it the NLW, questions over payments for ‘sleep-ins’ and, more recently, accrued holiday for voluntary overtime.

There is, however, still a requirement for good businesses and we know that a number of providers are acquiring good quality going concerns and seeking to grow their market share.

## SUPPORT FROM LOCAL AUTHORITIES?

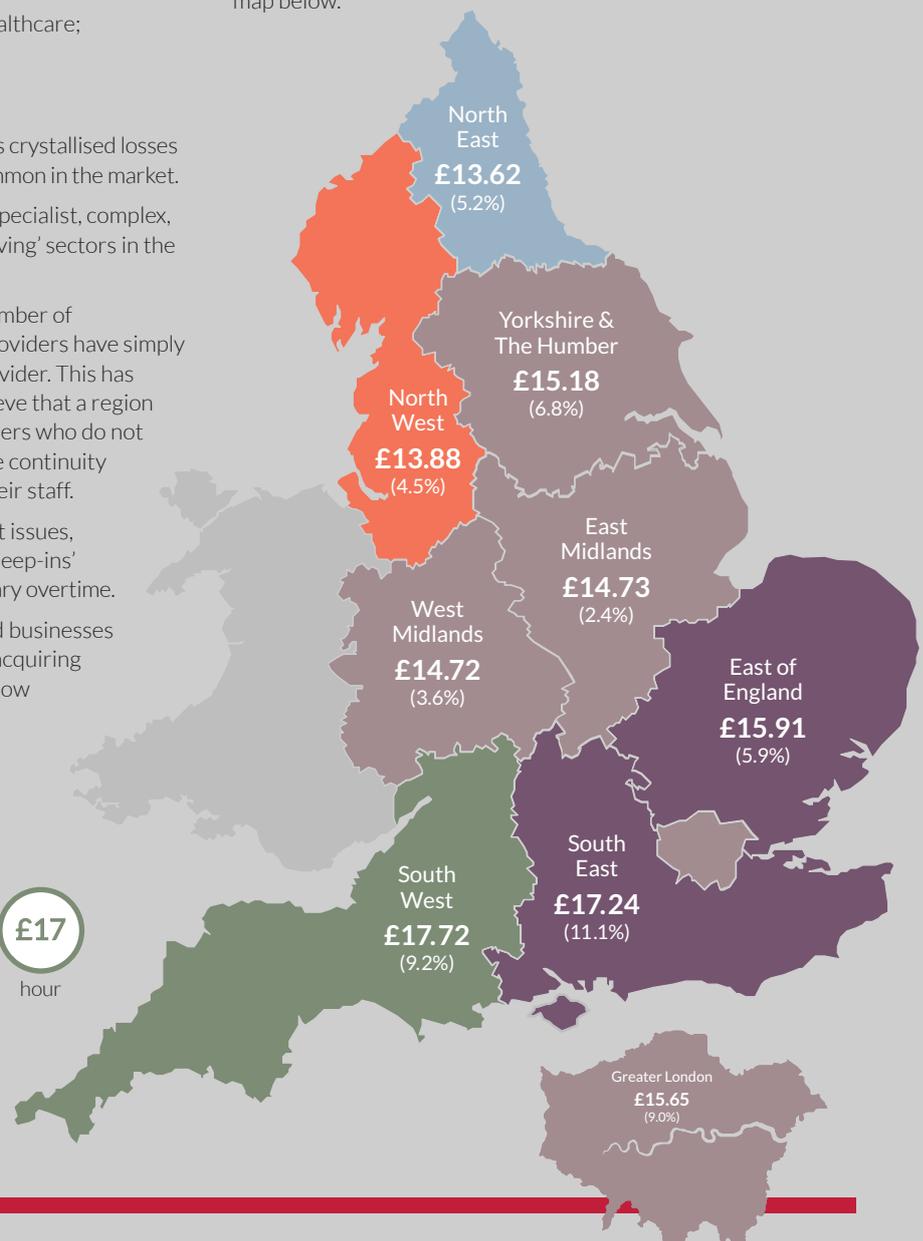
In the current environment, home care operators are dealing with wage increase pressures and the difficulties of recruiting and retaining good quality staff. In addition, the uncertainties of Brexit and increased scrutiny from central and local Government is challenging (even with the almost unilaterally imposed council tax precept).

Are the local authorities supporting independent home care providers by increasing fees to maintain margins and provide the services needed?

To try to answer that question, we have shown the average hourly rate and regional fee increases across England on the map below.



(x% – increase/(decrease) in average weekly fee rate 2016/2017 to 2017/2018 for respondent authorities, weighted by the number of hours provided).



Whilst the increases are welcome, and have of course been offset by the council tax precept, the 2017/2018 fee increases only tell part of the story.

Below is a table of the average fee rates by region for each of the last three years, in addition to the average compound growth rate across those periods.

Region	Fee increase 2015/16 (%)	Fee increase 2016/17 (%)	Fee increase 2017/18 (%)	Average annual increase (%)
North East	0.4%	8.6%	5.2%	4.7%
Yorkshire & The Humber	0.5%	6.7%	6.8%	4.6%
North West	1.9%	8.1%	4.5%	4.8%
East Midlands	2.2%	7.9%	2.4%	4.1%
West Midlands	0.4%	4.8%	3.6%	2.9%
East of England	3.2%	6.8%	5.9%	5.3%
South West	-0.4%	4.6%	9.2%	4.4%
South East	0.0%	2.8%	11.1%	4.5%
Greater London	-0.9%	7.1%	9.0%	5.0%

The table above shows average fee increases of 2.9% to 5.3% versus an increase in NLW costs (inclusive of on-costs) of around 5%.

Care only cost per hour	2014/15	2015/16	2016/17	2017/18
NLW*1	£6.50	£6.70	£7.20	£7.50
Holiday pay (%)	12.07%	12.07%	12.07%	12.07%
Training, sick, other (%)*2	2%	2%	2%	2%
Employers NI (%)*3	13.8%	13.8%	13.8%	13.8%
Pension (%)*4	1%	1%	1%	1%
Total minimum hourly care cost (£)	£8.39	£8.64	£9.29	£9.68
Annual increase (%)	NA	3%	7%	4%
3 year average increase (%)	NA	NA	NA	5%

\*1 - Assuming rates applicable for whole year.

\*2 - Based on an assumption of 2% to cover all such costs per annum.

\*3 - Assuming a rate of 13.8% for all employees.

\*4 - Assuming a 1% rate for all years.

There are a number of assumptions (not including profit or return on capital employed), but the table gives a broad comparator.

In certain regions fee rate uplifts are only just keeping ahead of any increase in direct costs and, in some regions, particularly the Midlands, the increases have been less than the rises in staff cost.

In addition, non-care staff and overhead costs are subject to inflationary pressures, which again impact upon overall profits.

The continued pressure on margins and costs comes at a time where operators would to reinvest more profits back into recruitment, training, staff development and staff retention. This would be beneficial to the market and, of course, to our elderly population who require these services.

#### HOW CAN WE HELP?

The data we have collated may help you in understanding the local authorities you provide services to and perhaps benchmark your business against others in your area, or even in discussion with the local authorities.

Please do not hesitate to contact a member of the Health and Care team to find out how the data we hold can be used to the benefit of your business.

# INDEPENDENT FOSTERING AGENCIES – RESEARCH INDICATES LOW GROWTH IN FEES. CAN WE HELP YOU DEVELOP YOUR BUSINESS?

Our annual Freedom of Information (FOI) survey encompasses queries aimed at understanding the status of Looked After Children (LAC) placed within the remit of Independent Fostering Agencies (IFAs).

The queries raised requested details covering:

- Rates paid to IFAs;
- Rates paid to local authority carers;
- Increase in weekly placement rates compared to the previous year;
- Details of rates paid under each tier operated by the local authority; and
- The total number of LAC supported by local authorities in a foster care placement and the percentage of those LAC supported by IFAs.

## PAYMENTS TO LOCAL AUTHORITY CARERS

147 local authorities approached.

130 local authority responses (100 responses in 2016).

Average local authority carer rates increased slightly (1.8%) from £278 in 2016 to £283 per week in 2017.

The range of fees payable varied significantly in line with specialist placements or certain local authorities' basic/enhanced carer rates.

## NUMBER OF LAC

147 local authorities approached.

130 local authority responses (100 responses in 2016).

When comparing the 92 local authorities that provided responses in both 2016 and 2017, actual numbers of LAC in fostering were 34,463 in 2016 and 33,688 in 2017 – a 2% fall in total numbers.

The number of children placed with IFAs remained at 30% across those same 92 authorities.

We have summarised key data below:

Increase in weekly placement fees.

147 local authorities approached.

113 local authorities responses (96 responses in 2016).

93 local authorities stated zero fee increases for IFA placements.

The range of increases was 0% to 7%, albeit the average increase was just above zero. This was not a surprise, given the number of local authorities operating within frameworks with fixed fee rates for the term of the contract.

## SUMMARY

Despite there being in excess of 47,000 looked after children in foster placements, and a significant reliance on IFAs rather than in-house carers, fee levels remain in a low growth environment for another year.

However, with an increase in local authority carer payments, IFAs will and do need to continue to provide an uplift to their carer rates. This will have a negative effect on margins and profits, particularly in an environment where it appears to be more difficult to recruit and retain high quality carer households.

## AVAILABLE DATA

We have collated a significant amount of data in respect of local authority rates, allowances and proportion of looked after children. If you believe this data may be useful for your business, please do not hesitate to contact a member of the health and care team to discuss how we are able to assist. We would be delighted to meet with you to discuss matters.



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# PREPARING FOR BUSINESS SALE: COMPANY SECRETARIAL AUDIT

## GETTING YOUR HOUSE IN ORDER

If you are thinking of selling your business, it would be wise to review your company secretarial position in advance, to ensure the sale process runs smoothly.

A prospective buyer will carry out detailed due diligence of your business, including your statutory books and Companies House filings. Company registers must be correct at all times and support any activity that might entail a search at Companies House.

### Discovering non-compliance during a sale can:

- cause delays;
- increase professional costs;
- result in the statutory records needing to be rewritten; and
- affect the value of the business.

## WHAT SHOULD YOU DO?

Compliance and the documentation of good compliance have never been as important as they are now. Legislation has been introduced to promote good compliance, such as the Small Business, Enterprise and Employment Act 2015, which introduced the new Persons with Significant Control Register.

You should review statutory registers to ensure that the position in the statutory books reflects the position at Companies House, tracking the share position from the subscriber shares through to the current position. Often the subscriber shares have not been dealt with appropriately or joint holders' shareholdings have been split incorrectly. Checks should also be carried out to ensure that all company addresses have been properly recorded and are up-to-date, that the Memorandum and Articles of Association are accurate and that all minutes and resolutions are accurate and held.

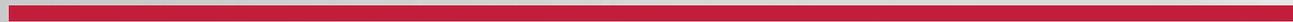
The benefit of such a review is that it can identify issues before they cause problems. Recent reviews have identified issues with subscriber shares, correct documentation not being prepared and/or being filed at Companies House and the shareholdings not being correct. Ensuring that those selling the company are the registered shareholders and preventing delays and changes is quite important.

We have a team who can identify the issues and offer a solution to correct things.

## WHEN SHOULD A REVIEW BE PERFORMED?

As early as possible. This will enable any changes to be made and embedded before the buyer starts due diligence. We would be delighted to talk to you about the scope and extent of a review, the benefits of doing it and the cost involved.

For more information please contact **Colette Reeves** at [colette.reeves@hazlewoods.co.uk](mailto:colette.reeves@hazlewoods.co.uk) or **01242 237661**.



# GDPR, are you prepared for the changes?

On 14 September 2017, the Government published its Data Protection Bill. This bill will take account of the **EU's General Data Protection Regulation (GDPR), which comes into effect on 25 May 2018** and reaffirms that GDPR will apply post-Brexit. GDPR has been widely touted as the biggest overhaul of data protection legislation for 20 years.

## DOES IT APPLY TO ME?

Whether you are a sole proprietor, company or partnership; data controller or data processor; a business or an employer; dealing with third party suppliers and contractors, if you handle personal data, you should already be thinking about and preparing for GDPR. Understandably, the prospect of fines up to €20 million or 4% of global turnover, for the most serious data breaches, sounds very daunting.

## WHAT DO I NEED TO DO?

You can find out how GDPR will affect your business from the Information Commissioner's Office (ICO) website, which provides:

- an overview of GDPR with a helpful 12-step checklist and other guidance;
- details of webinars and workshops (often free to attend); and
- the ICO newsletter and blog which provide regular updates.

It is not a matter of one size fits all. Checking regularly against the definitions and exemptions in the legislation, and keeping up-to-date with the latest guidance may mean you can confirm or discount some actions immediately.

You will need to be able to demonstrate that you are meeting the GDPR principles, which can be summarised as:

Processing of personal data must be lawful, fair and transparent.

Personal data must be:	Collected for specified, explicit and legitimate purposes;
	Adequate, relevant and limited to the purposes it is being used for;
	Accurate and kept up-to-date;
	Kept for no longer than necessary;
	Kept safe and secure.

Data controllers shall be responsible for, and be able to demonstrate, compliance with these principles.

Having raised awareness of GDPR with key decision makers, you will need to consider and document, for example:

- what kinds of personal data you collect and use;
- how and when you obtain and use this data;
- where the data is held (whether in paper or electronic form);
- who has access to the data and who you share it with outside your organisation; and
- how long you should keep the data for.

You may already have some of this information as part of your compliance with existing data protection legislation.

Carrying out this assessment will also help you judge whether you can:

- demonstrate the relevant lawful basis for processing personal data;
- meet the rights of individuals under GDPR;
- check whether you have GDPR-compliant consent where you need it;
- put the right procedures in place around data breach identification, reporting and investigation;
- confirm that the contracts you have with others (not just IT providers) take GDPR compliance into account. (GDPR requires that personal data is kept secure to protect it from 'unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures').

One approach is to consider what you would need to provide the ICO if they visited your business. See Appendix 1 in the ICO's 'Guide to Data Protection Audits'.

## WHAT OTHER REGULATION SHOULD I BEAR IN MIND?

You will need to refer to the Data Protection Bill as well. The Government has described this bill as 'a complete data protection system, so as well as governing general data covered by GDPR, it covers all other general data, law enforcement data and national security data. Furthermore, the Bill exercises a number of agreed modifications to the GDPR to make it work for the benefit of the UK in areas such as academic research, financial services and child protection.'

If you send direct marketing, consider the 'Privacy & Electronic Communications Regulations' (PECR), which sits alongside the DPA and is under review. The UK Government has signed up to the new e-Privacy Regulation too.

For further information and helpful guidance, please visit the ICO website [www.ico.org.uk](http://www.ico.org.uk).



# SLEEP-IN RATES IN SUPPORTED LIVING AND SPECIALIST RESIDENTIAL CARE HOMES

On 1 November 2017 the Government issued its promised update regarding its policy on enforcement of the National Minimum Wage around the area of 'sleep-in' shifts that affects some operators within the care sector.

The issue of backdated payments for employees of care providers carrying out sleep-in care shifts arose following employment tribunals, most recently in May, which ruled that workers were entitled to the national minimum wage for sleep-in hours, rather than a fixed rate.

Following the tribunal, the government announced it would temporarily waive historic fines for providers found not to have paid staff the minimum wages for sleep-in shifts up to 26 July 2017.

It also suspended HMRC from enforcing back pay until it worked out what impact it could have on the stability of social care and this suspension was extended to the end of October.

From 1 November 2017, the government announced that social care employers presenting risks of National Minimum Wage underpayment for sleep-in shifts will be offered (subject to HMRC discretion and meeting a minimum criteria) the opportunity to opt in to the Social Care Compliance Scheme (SCCS). The SCCS which can be opted into voluntarily, will require operators to conduct a thorough self review in order to identify and repay any wage arrears to workers.

In return, providers will normally be offered a period of twelve months in which to carry out this review, and then up to three months to pay all arrears. Providing all arrears are paid within the required timescale, employers will not be subject to financial penalties and will not be eligible for naming. The deadline for repaying arrears to workers will not be later than 31 March 2019, regardless of when the employer enters the SCCS.

Employers who decide not to opt-in will not be offered any further concessions and will be subject to the full HMRC investigative process, including financial penalties, which can be severe including public naming and possible prosecution. It should be noted that financial penalties would only relate to sleeping time arrears after 26 July 2017.

The announcement did not confirm the period over which the self-review is expected to be carried out – although six years has been suggested, this has not been confirmed.

The announcement was light on detail in relation to the funding of wage arrears. It states that discussions with the European Commission have been opened and there is a recognition of the pressures that liabilities are placing on providers. That being said, this latest announcement is unlikely to ease the anxiety that some operators are facing around this area.

Over the last year we have worked with our clients alongside specialist employment lawyers to establish NLW requirements, and potential exposure to underpayments of wages and tax (Pay As You Earn and National Insurance), as well as any penalties which may be levied.

The operational practices can generally be grouped into the following categories:

- Cease providing sleep-ins, moving to waking nights only (even if the employees perform other duties such as cleaning/administrative tasks).
- Do nothing – as wage rates are high enough to remove any NLW underpayment risk.
- Do nothing – as the local authority funding is not high enough to cover the cost of NLW for sleep-ins.
- Pay NLW rate for sleep-in hours.
- Pay 'top-ups' to ensure the hours worked, including sleep-ins, reach NLW.

Clearly the 'do nothing' approach due to low sleep-in rates is a high-risk approach, and most operators we work with do now understand, if not agree with, the practices required to comply with the generally accepted 'best practice'.

In addition, as some form of additional payment for employees undertaking sleep-ins has become more widely accepted, we have found that operators who previously have resisted the move to 'top-ups' or other pay increases have in fact adopted the practice in order to compete locally for staff.

## WHAT ABOUT THE COMMISSIONERS...?

As part of our annual Freedom of Information request, we asked local authorities

'Details of the minimum, maximum and average amount agreed per night for sleep-in shifts delivered to adults under the age of 65, with specialist care needs.'

The results of this request to commissioning authorities were extremely varied.

Key highlights from the 87 responses include:

- Numerous authorities still paying providers less than £40 per night;
- Median sleep-in rate of £65.44;
- Increasing number of authorities stating they do not commission any sleep-in services;
- Some sleep-in payments paid at £7.50 per hour (what about on-costs!);
- 13 authorities paying average sleep-in rates excess of £90; and
- Neighbouring local authorities paying different rates.

In our view, the disparity in the responses from commissioners represent the uncertainties around sleep-in wage requirements. This makes it extremely difficult for operators to plan their recruitment and retention strategies, particularly for operators which provide services for more than one local authority.

We urge operators to think carefully about whether to instigate a self-review and opt into the SCCS. There are still many questions to be answered, and we strongly suggest that you take some specialist legal advice around this area before making any decisions.

## HOW CAN WE HELP YOU?

We act for a significant number of operators within the health and care sector and have a wealth of experience in the provision of compliance services, business advice and support.

We have developed enviable knowledge and understanding of healthcare over the past 25 years, which has enabled us to stay at the cutting edge of developments in the sector, both through transactional work and our client relationships.

We work with well over 200 businesses on an ongoing basis in a variety of sub sectors including:

- Nursing and residential homes for the elderly
- Specialist needs education colleges
- Eating disorders, drug and alcohol units
- Children's homes
- Independent hospitals
- Learning disabilities
- Supported living
- Mental health
- Domiciliary care

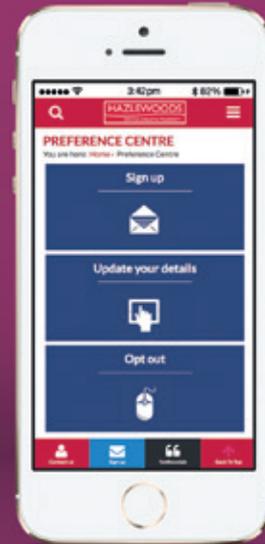
### HOW DO WE COMMUNICATE?

We regularly communicate with our clients and contacts to share information and stay up to date through:

- Meetings
- Conversations and discussions
- Broadcast e-mails advising on topical issues
- Newsletters on sectoral issues
- Networking events

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