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# CARE COST BENCHMARKS TOOLKIT

13<sup>TH</sup> December 2023

LaingBuisson  
INTELLIGENCE + INSIGHT

Care  
*Cost  
Benchmarks*

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## CARE FEE BENCHMARKING

*“A Proper Price for Care”*

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Prior to 1993 public funding for care was paid by Central Government Grant (Social Security Benefits) (SSB).

To address spiralling costs SSB was initially capped and then abolished by reform in 1993.

SSB was just a grant, Users could pay more and Providers could charge more.



From 1993 placements supported by public funding were contracted through Local Authority Social Service Departments (LASSDs).

LASSDs fixed prices but were forbidden to raise local taxes to meet the cost.

Users were not allowed to pay “top ups”.

Anyone other than a user could top up (by paying to LASSD) subject to “means test” on ability to pay.



From 1993 to 2014 it was accepted that LASSDs could set price for care irrespective to the “Fixed price” being sufficient to meet the actual costs of care. Providers and Users were expected to just accept.

However, it must be rational and reasonable that the price paid should be capable of purchasing needed care at that price in the market.

Local authorities adopted a take it or leave it approach.

It proved impossible/ very difficult to establish by empirical evidence what was a non-viable price.

Providers were reluctant to disclose sufficient detail.



HMG ability to research and set a fair price for care failed through lack of comprehensive engagement by the sector as a whole.

The sector needs and has been supported by LaingBuisson in producing Benchmarking Norms for the price of care to meet eligible need.

In reality LASSDs cannot afford to pay a proper price for care. Non-affordability is no excuse for failing to meet a legal obligation.



# Care Act 2014

1. LASSDs must assess eligibility of a user for care.
2. LASSDs must assess means to pay for care and decide how much (if any) a service user must contribute to cost.
3. The gateway to support is eligibility.
4. Once eligible LASSD must support at times when user means are below the financial threshold but cease responsibility when means exceed that threshold e.g. 12 weeks disregard, “Spouse House”, inheritance and Lottery.



Eligibility remains once assessed (unless downgraded) but entitlement arises and lapses with means.

It is for LASSDs to establish means but users must disclose means as required.





S18 of Care Act 2014 requires LASSDs to meet assessed eligible need subject to means threshold.

This is enforceable by law.

We say that LASSD agreement is not required.

It seems obvious that the payment made must be sufficient to buy needed care in the local market - otherwise the LASSD is not meeting its obligation.



# Who Can Sue?

- Care Users ✓
- Care Provider ✓  
*(if established care relationship)*
- Lasting Power of Attorney/ Court of Protection ✓
- Care/ Trade Association **X**  
*(Judicial Review on Care Rates is unlikely to succeed and is very risky/ expensive)*



The requirement to succeed is to prove that the eligible care can only be met at a clearly ascertained price.



# Strategy

Move as swiftly as possible to legally enforceable litigation.

Do not waste time in negotiations which are clearly going nowhere.

Remember LASSDs will wish to set new year budget and rates by early March at the latest.



# Tactics

1. Early on established a reasoned and detailed case for an identified increase.
2. Add value argument on legal justification and use the LB Fair Price Benchmark.  
*(Reach this stage by mid December at latest)*
3. Take advice on Framework Agreements.  
Take advice in availability of range of local fees.  
Take advice on Competition Cartel avoidance.
4. Issue Pre-legal Action formal letter with 28 day compliance deadline. Try to issue by 21<sup>st</sup> December 2023 latest.
5. Commence proceedings on or about 21<sup>st</sup> January 2024.



# Other Issues

1. Evidence of inflation through reputable indices (*RPI, CPI e.g.*)

2. Material external factors

Statutory requirements and in particular National Minimum Wage. (*Why should that not be absorbed by all LASSDs*)

3. Evidenced increase in dependency.  
(*Particularly 1:1 staffing requirements*)

This can be triggered at any time.

Increase in Need if evidenced = Increase in Fee.



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