Dear [insert]

**Formal Request for Review of 2022/23 Care Home Fee Rates**

For the reasons set out below, this letter stands as a formal request of the Council to undertake an immediate review of the 2022/23 fee rates it is paying to care home providers in [insert detail of the local area for which the Council is responsible].

In April 2022 [amend as necessary] the Council set the rates it would pay care home providers during the financial year 2022/23. We reserve our position with regard to whether the Council acted reasonably and lawfully when doing so.

It is beyond argument that since the Council set the 2022/23 fees, there has been unprecedented inflationary pressure in the months that have since passed. Throughout this period, the Council has nevertheless continued to pay the same fee rates without undertaking any or any proper review of their sufficiency. This is despite the fact that the Council is aware that real world inflation has far outstripped any consideration or provision that the Council could or in fact did give to actual or prospective inflation at the time it set the 2022/23 fees.

In the 12 months to April 2022, CPI rose by 9%. It rose a further 9.1% in May, 9.4% in June, 10.1% in July, 9.9% in August and again, 10.1% in September 2022. The increased cost of energy is even more marked for those providers whose energy contracts fall for renewal during 2022/23. It is patently clear that no or no adequate provision was made for these extraordinary increases within the Council’s setting of the 2022/23 fees and that the assumptions underpinning those fees are and have been proved to be flawed.

As a consequence, it is beyond argument that in real terms, the Council’s 2022/23 fee rates are a significant real term reduction on the fees it paid during 2021/22, which themselves fell below providers’ actual costs of care. The 2022/23 fees are patently insufficient and unsustainable.

The Council will be aware of its obligation under section 5(1) of the Care Act 2014. This obligation places the Council under a duty to “promote the efficient and effective operation of a market in services for meeting care and support needs”. Section 5(2) provides that, in performing this duty, the Council must have regard to (amongst other things) “the importance of ensuring the sustainability of the market (in circumstances where it is operating effectively as well as in circumstances where it is not)”. This is an ongoing duty and as such, it is not sufficient for the Council (particularly in the face of extraordinary financial pressures upon the market – such as those experienced since April 2022) to merely visit the sufficiency of its fee rates once a year.

The Council is also required to act under the statutory guidance issued pursuant to the Care Act 2014. This requires that the Council assures itself, based on evidence, that its fee levels are appropriate to secure the long-term sustainability of care provision.

The Government has provided £1.36 billion in additional funding to local authorities for the three years from 1 April 2022 to 31 March 2025 to promote the sustainability of the care home market.

On 24 March 2022, the Government issued guidance to local authorities, setting out the terms of the additional funding. The Council accepted this funding and is, accordingly, bound by those terms. This guidance is entitled “Market sustainability and fair cost of care fund 2022 to 2023: guidance” (“the Market Sustainability Guidance”).

The Market Sustainability Guidance provides:

* + Firstly, the context for the additional funding, and the Market Sustainability Guidance, is the failure of a significant number of local authorities to pay sufficient care home fees, contrary to the statutory guidance and section 5 of the Care Act 2014.
  + Secondly, to remedy the position, local authorities who wish to receive the additional funding must submit a cost of care exercise to the Department of Health and Social Care by 14 October 2022. The object of the exercise is to identify the median actual operating costs in the local authority’s area. The exercise should identify actual costs as of April 2022.
  + Thirdly, the cost of care exercise should calculate care home costs per resident per week. It should take account of actual average occupancy in 2021-2022, based on occupancy data.
  + Fourthly, local authorities must also submit a provisional market sustainability plan by 14 October 2022, outlining their assessment of the sustainability of the local care market. The plan should identify by how much care home fee rates need to be increased in the period 1 April 2022 to 31 March 2025 to ensure market sustainability.
  + Fifthly, local authorities are expected to start making progress towards paying sustainable fee rates (based on the cost of care exercise) during the financial year commencing 1 April 2022.

While the information obtained by the Council during its preparation of the draft Fair Cost of Care and Market Sustainability Plan may be relevant to the question of the sufficiency of the 2022/23 rates being paid, the work the Council is required to undertake under the Market Sustainability Guidance does not excuse the Council of its duties under section 5 of the Care Act 2022 and the ‘Care and support statutory guidance’.

Accordingly, **within 14 days of the date of this letter, please confirm that the Council will undertake an immediate and urgent review of the sufficiency of its 2022/23 care home fee rates and whether an adjustment to those fees should be made on a retrospective basis since 1 April 2022 and on a prospective basis – such a review to take account of actual inflationary pressures, actual occupancy levels and the now established impacts and prolongation of the war in Ukraine and other events impacting on inflation and the costs of providing care**. **If the Council is not willing to undertake such a review, please clearly set out the reasons as to why the Council has arrived at this decision**.

Yours etc.