

ADULT CARE AND WELL BEING OVERVIEW AND SCRUTINY PANEL 18 JULY 2022

ADULT SOCIAL CARE REFORMS

Summary

1. The Panel is asked to consider the update provided regarding the Government's charging reform for Adult Social Care and its potential impacts for Worcestershire.
2. The Cabinet Member with Responsibility for Adult Social Care and the Strategic Director for People have been invited to the meeting.

Background

3. On 7 September 2021, the Government set out its new plan for adult social care reform in England. This included a lifetime cap on the amount anyone in England will need to spend on their personal care, alongside a more generous means-test for local authority financial support.
3. In December 2021 a white paper, People at the Heart of Care, outlined a 10-year vision that puts personalised care and support at the heart of adult social care, ensuring that people:
 - have the choice, control and support they need to live independent lives
 - can access outstanding quality and tailored care and support
 - find adult social care fair and accessible
4. The Government recognises that it is vital that local authorities have the right architecture in place to underpin and support the implementation of this 10-year vision. Implementation of the Market Sustainability and Fair Cost of Care Fund is one of the first steps in the journey to achieve this.
5. The reforms will result in significant work for the Council to both assess the implications of the reform and to implement it.

Strategy, Action and Plan

A Fair Cost of Care

6. Key to the implementation of the Care Cap, will be establishing a fair cost of care.
7. As set out in section 5 of the Care Act 2014, local authorities have a duty to promote the efficient and effective operation of a market in services for meeting care and support needs, with a view to ensuring services are diverse, sustainable and high quality for the local population, including those who pay for their own care.

8. As such, when commissioning services, local authorities should assure themselves and have evidence that contract terms, conditions and fee levels for care and support services are appropriate to provide the delivery of the agreed care packages with agreed quality of care and are affordable. The Council does this annually as part of contractual fee review.

9. It should also allow retention of staff commensurate with delivering services to the agreed quality and encourage innovation and improvement. Local authorities should have regard to guidance on minimum fee levels necessary to provide this assurance, taking account of the local economic environment.

10. The Government recognises that many local authorities have cultivated strong relationships with providers (as is certainly the case in Worcestershire), working in partnership to deliver good quality care despite on-going financial, workforce and broader pressures, in a challenging environment exacerbated by the Covid-19 pandemic. However, the Government also considers that a significant number of local authorities are estimated to pay below the cost of providing care which risks undermining local markets, creating unfairness, affecting sustainability and, at times, leading to poorer quality outcomes for those who draw on care and support services. A fair and sustainable care market is fundamental to the Government's wide-ranging and ambitious reforms to adult social care. It is therefore critical that local authorities continue to work closely with providers so that they can prepare their markets for reform and develop a shared understanding of evidence around the local costs of care to better understand where fee rates need to increase.

11. In total, £3.6 billion will be made available nationally to deliver the charging reform programme. In 2022 to 2023, £162 million has been allocated, with Worcestershire receiving £1.6m. A further £600 million will be made available in each of 2023 to 2024 and 2024 to 2025. This funding profile allows for staged implementation that is deliverable, while also reflecting the timelines for charging reform.

12. In 2022 to 2023 funding has been distributed using the adult social care relative needs formula, as is used for the Social Care Grant and Improved Better Care Fund (iBCF). Worcestershire has used all its £1.6 million as a contribution towards the total investment of £9.6 million into the 2022/23 fee uplift for providers.

13. As a condition of receiving future funding, local authorities will need to evidence the work they are doing to prepare their markets and submit the following to the Department of Health and Social Care (DHSC) by 14 October 2022:

- cost of care exercises for 65+ care homes and 18+ domiciliary care
- a provisional market sustainability plan, using the cost of care exercise as a key input to identify risks in the local market, with particular consideration given to the further commencement of Section 18(3) of the Care Act 2014 (which is currently in force only for domiciliary care) – a final plan will be submitted in February 2023

14. In 2022 to 2023 Local Authorities are also expected to start making genuine

progress towards more sustainable fee rates, where they are not already doing so. This means increasing fee rates paid to providers (in respect of 65+ care homes and 18+ domiciliary care, including those who operate in extra care settings). in line with the fund's purpose.

15. The Government has defined "fair" as:

- The *median actual operating costs for providing care in the local area* for a series of care categories, must *include and evidence values for return on capital and return on operations, and also travel time for domiciliary care*. Together this is what is described as the 'fair cost of care' and is, on average, what Local Authorities are *required to move towards paying providers*.
- In the context of specific rates for care paid, *fair means what is sustainable for the local market*. A sustainable market is one which has a sufficient supply of services but with provider entry and exit, investment, innovation, choice for people who draw on care, and sufficient workforce supply. It also refers to a market which operates in an efficient and effective way, linked to the market shaping duty placed on Local Authorities under section 5 of the Care Act 2014. See the market sustainability plans section of the guidance.
- For providers, this means they will be able to *cover the cost of care delivery and be able to make a reasonable profit* (including re-investment in their business), surplus or meet their charitable objectives.
- For Local Authorities, it recognises the responsibility they have in stewarding public money, including securing best value for the taxpayer.

What does the exercise entail – the Council's plan to complete

16. There are 3 key conditions for the on-going receipt of funding as outlined in the table attached as Appendix 1. It is understood that all returns submitted by local authorities will be reviewed as quickly as possible over the autumn in order to use evidence returned by local government to inform design of year 2 of the fund; it is planned that further detail on year 2 of the fund will be announced as part of the Local Government Finance Settlement 2023 to 2024.

17. Tools have been/are being made available nationally to assist in this process:

- Association of Directors of Adult Social Service (ADASS) cost of care modeller for domiciliary care
- ADASS cost of care modeller for residential settings
- DHSC recommends use of ADASS modeller for national consistency
- ADASS modellers are free to use
- National webinars

18. The tool for domiciliary care is entirely manual, resulting in a highly labour intensive exercise, to be completed in an exceedingly challenging and short time frame. Whilst the tool for residential settings, released for use much later in the process has some additional automation, it's late delivery and other complications will result in a significant analysis to be required.

19. Local authorities will be required to demonstrate how they have sought to involve

all local providers and taken reasonable steps to support a full, complete, robust and representative information return for local providers. This should include non-contracted providers where appropriate. Where local provider response rates are low, Local Authorities will be required to evidence steps they have taken to encourage participation (see tables pages 5-6). Care England, the Home Care Association (HCA) and West Midlands Care Association have praised Worcestershire Commissioners for their approach, and the Care Provider Alliance is sending the Council's documentation to the LGA as an example of best practice.

20. Local Authorities are also expected to work with local and national provider associations to design a process they feel is efficient and effective for their local area. This may include working with local provider associations or third sector organisations to financially support local capacity, where appropriate in 2022 to 2023. Worcestershire Commissioners have engaged with associations widely (see para 19). Additionally, the Council has run joint local provider forums and issued joint statements to increase provider engagement.

21. The Council needs to collect consistent data from local providers on actual costs in order to make subsequent analysis feasible. Where possible, the Council will contact care providers where they identify information which seems to constitute an outlier. Local Authorities will scrutinise cost outliers, in collaboration with the provider, and consider where they should be removed.

22. Once data collection is complete, the Council will calculate the median costs of providing care in the local market for each of the cost lines in the cost of care data table and determine a transparent approach for calculating a return on capital and return on operations appropriate for a sustainable local market, based on judgement of what is needed in a sustainable market, informed by returns received and engagement with providers. The Local Authority is simultaneously expected to undertake the necessary market analysis to understand what constitutes a reasonable profit (including re-investment in the business), or surplus, to maintain a sustainable local market in their area.

23. The cost of care exercise is required to report monetary amounts per resident per week and per contact hour (for domiciliary care) for return on capital and return on operations.

24. A highly detailed plan to address the requirements has been established and a letter to all Domiciliary Care providers has been issued. Due to the delay in the residential care tool being available, commissioners have first issued and commenced work on the domiciliary care market, having made contact also with the Home Care Association in respect of the exercise.

25. Once the data is collated and the calculations complete, commissioners will prepare data tables for submission, completing the cost of care data return with median costs resulting from the exercise, for each of:

- standard residential care
- standard nursing care
- residential care for enhanced needs
- nursing care for enhanced needs

26. For 18+ domiciliary care, the cost of care data return breakdown for overall cost

per contact hour, plus any chosen specific service types such as night visits.

27. During the financial assessment phase, commissioners will prepare market sustainability plan in draft form, which will be finalised when local government budgets for 2023 to 2024 have been confirmed.

28. Underpinning this is a broad definition of market sustainability as set out in the Care Act 2014, which places a duty on Local Authorities to assure themselves and have evidence that fee levels are appropriate to provide the agreed quality of care, and also enable providers to effectively support people who draw on care and invest in staff development, innovation and improvement.

29. Once the analysis is completed and the DHSC documents prepared, these will be discussed at the People Directorate Leadership Team (PDLT), and then Senior Leadership Team (SLT), Corporate Business Board (CBB) and Cabinet for approval at meetings scheduled between 30 August and 22 September prior to submission no later than 14 October, 2022.

The Care Cap

30. From October 2023, the Government will introduce a new £86,000 cap on the amount anyone in England will need to spend on their personal care over their lifetime.

31. The established fair cost of care is a vital part of our calculating residents progress towards achieving the care cap in due course.

32. The change aims to ensure that only the amount that people within the means test progress towards the cap contribute towards their care will count towards the cap and people do not reach the cap at an artificially faster rate than what they contribute.

33. In working towards these aims, the Government will unfreeze the Minimum Income Guarantee (MIG) for those receiving care in their own homes and Personal Expenses Allowance (PEA) for care home residents, so that from April 2022 they will both rise in line with inflation.

34. The cap will not cover the daily living costs (DLCs) for people in care homes, and people will remain responsible for their daily living costs throughout their care journey, including after they reach the cap. For simplicity, these costs will be set at a national, notional amount, the equivalent of £200 per week in 2021 to 2022 prices. DLCs are a notional amount to reflect that a proportion of residential care fees are not directly linked to personal care, like rent, food and utility bills and would have had to be paid wherever someone lives.

35. The term 'personal care costs' refers only to the components of any care package considered to be related to personal care, not hotel and accommodation costs, based on what the cost of that package is or, in the case of self-funders, would be to the local authority if it were to meet the person's eligible care and support needs.

36. To help more people with the costs of their care and support, alongside the cap

the reforms are also increasing the point at which a person is eligible for local authority means-tested support. From October 2023 the Upper Capital Limit (UCL) will rise to £100,000 from the current £23,250 and the Lower Capital Limit (LCL) will increase to £20,000 from £14,250. The UCL of £100,000 will apply universally, irrespective of an individual's care setting or circumstances.

37. From October 2023, anyone assessed by a local authority as having eligible care and support needs, either new entrants or existing social care users, will begin to progress towards the cap.

38. Costs accrued before October 2023 will not count towards the cap. To enable this, the local authority in whose area the person is ordinarily resident will start a care account, which is personalised to the individual and will monitor their progress towards the cap. Before the cap comes into effect, local authorities need to work to identify people who currently meet their eligible needs themselves, to ensure that they can begin progressing towards the cap from the point it comes into effect.

39. For each person with eligible needs, the local authority must provide either a personal budget, where the local authority is going to meet the person's needs, or an independent personal budget (IPB), where the individual arranges their own care. The personal budget will set out the cost to the local authority of the care they have arranged, whereas the IPB sets out what it would have cost the local authority to meet the person's needs. In determining a person's IPB, local authorities should apply the same principles that underpin the calculation of personal budgets under the current system.

40. The person's personal budget or IPB will be used to calculate the amount that will count towards the cap. For individuals who receive financial support for their care costs from their local authority, it is the amount that the individual contributes towards these costs that will count towards the cap, subject to Parliamentary approval.

41. Everyone will have a care account which will be maintained by the local authority and will keep track of their progress towards the cap. Local authorities will provide regular care account statements and engage early with the person once they are close to approaching the cap to discuss how their needs will be met. Further detail on care account statements will be set out in the Council's consultation.

42. Certain costs will not count towards the cap. Under the capped system, everyone will remain responsible for their daily living costs (DLCs), such as rent, food and utility bills, and this will apply equally to those in a care home as to those in their own home. This approach is intended to ensure a level playing field between those who receive care in a care home and those receiving care in their own home. As recommended by the Commission on Funding of Care and Support, where someone's needs are being met in a care home, these costs, to be referred to as DLCs, which are assumed to be the proportion of residential care fees not to be directly linked to personal care, will not count towards the cap on care cost. People will remain responsible for their DLCs throughout their care journey, including after they reach the cap.

43. The concept of DLCs is not meant to be a precise science. Local authorities and

providers are not required to calculate actual daily living costs for each person in a care home progressing towards the cap. Instead, daily living cost will be set as a national, notional amount of £200 per week (in 2021 to 2022 prices), which will apply to anyone who receives care in a care home. Local authority financial support will remain available to people who cannot meet – in full or in part – their DLCs.

44. Those receiving care themselves, or a third party such as a relative, may choose to make additional payments for a preferred choice of accommodation or care arrangement, for example, secure a premium room or furnishings. The Government therefore intends to change the regulations to enable everyone receiving local authority financial support to fund such top-ups for their own care. These top-up payments, on top of the cost specified in someone's personal budget or independent personal budget, will not count towards the cap and will still be payable by the person once the cap has been reached.

45. When a person reaches the cap, the local authority becomes responsible for meeting the person's eligible care and support needs and for paying the cost of the care needed to meet those needs.

46. To ensure a smooth transition to local authority support, local authorities will have to notify the person in advance of reaching the cap, provide information for when they reach the cap, and work with the person to agree in advance how they would like their needs to be met when the cap is reached. For example, a person who has been meeting their care and support needs themselves may choose to receive a direct payment from the local authority in order to continue arranging their own care and support. They may alternatively opt for the local authority to assume responsibility for arranging their care and support. Further detail will be published as part of the consultation early next year.

47. Once the cap has been reached, the person will continue to remain responsible for meeting or contributing to their daily living costs and any top-up payments they have chosen to make. It will be the responsibility of the local authority to inform the person that they have reached the cap.

48. The level of the cap, the upper and lower capital limits and the level of DLCs will be reviewed and updated annually.

What does the exercise entail – the Council's plan to complete

49. At the time of compiling this information report, the Operational Adult Social Care team is working to establish the work programme and project group through initial scoping and planning sessions (within the limitations of the information available), which will include learning from other authorities' approach.

50. The Leads and basic work packages are in place and are meeting with Liquid Logic and will obtain clarity on timelines and approach in order to develop the customer database and review.

51. The Council's approach to the assessment for Self-Funders has yet to be

finalised, along with the Communications Strategy and Plan and the detailed plans for implementation. There are a number of models that can be considered to meet assessment demands, such as self-assessment and trusted assessment via providers, and, given national shortage of qualified social workers and resource implications the pros and cons of each alternative need to be considered.

Risk Management: Potential Impact on Worcestershire County Council

52. Until the exercise is completed, the impact on the funding of adult social care in the targeted settings can neither be understood nor reasonably estimated. Furthermore, the allocation from the national fund that may be used to begin moving towards the Fair Cost of Care will not be announced until budgets are set in the New Year. This will impact the Council's approach to fee reviews for the coming year.

53. The County Councils Network (CCN) released a new independent report (in March 2022) by healthcare market specialists Laing Buisson, which analyses two key aspects of the Government's adult social care reforms: proposals to allow private payers to ask councils to arrange care on their behalf at lower local authority rates and the intention to introduce a new 'Fair Cost of Care', which aims to increase care fees paid by councils to make the care market more sustainable.

54. The study, built on detailed financial modelling, analysis of the government proposals and wide ranging engagement with the care sector, concludes that that the Government's funding allocations to support the introduction of a fair cost for care and new self-funder duties under Section 18(3) of the Care Act 'seriously underestimates' the amount of new funding required and could cause a 'severe sustainability risk' to care homes across the country, estimating that an extra £854m a year is needed to make the proposals workable by avoiding large-scale care home closures and to ensure ongoing investment into the social care sector.

55. In responding to the findings, CCN has partnered with England's largest representative body for independent providers of adult social care, Care England, warning that unless further funding is provided care homes could face widespread closures and a shortage of beds when reforms are introduced from next year, although it must be also acknowledged that a significant number of residential homes are currently operating at lower than optimal occupancy rates and so some level of market consolidation may be inevitable.

56. As a result of private fee payers accessing council care contracts post reform and current Fair Cost of Care rates being potentially too low based on government funding, care providers across England could face lost revenue amounting to £560m a year. This represents a loss of 3.8% on their overall revenue per annum.

57. The report concludes losses on this scale could cause a severe sustainability risk to care markets, with widespread provider failure, across the country.

58. It is estimated that the largest losses would be for providers in the South East, East, and the South West, as these are the areas with the largest amount of private fee payers eligible to ask councils to arrange their care.

59. Currently, people who pay for their own care tend to pay up to 40% more on

average than those eligible for state support, for whom their local authority arranges care.

60. The Government says it wants to end this 'persistent unfairness' by allowing private payers to ask their local authority to arrange their care. Providers will lose fee revenue from customers who approach their local authority instead, which will be made possible by the Government activating part 18(3) of the Care Act 2014. At the same time, a new Fair Cost of Care is to be introduced to make local authority fee rates more sustainable and reduce the revenue losses experienced by providers from greater fee equalisation.

61. CCN has called on the Government to bring forward funding for local government in the Health and Social Care Levy, to pay for the additional £854m a year required. Currently, councils will have to wait until 2025 to access full funding from the levy.

62. The Lang Buisson report concludes that "The social care reform policy objectives are widely accepted, but the central government money earmarked to enable councils to pay a fair cost for care is clearly inadequate, with the risk of severe unintended consequences including the destabilisation of the care market in some areas".

63. Overall, analysis suggests approximately 200,000 more assessments per annum will need to be conducted, compared to a government estimate of 150,000. This includes 105,000 Care Act Assessments and 93,000 financial assessments. As a result, an additional 4,300 social work staff will be needed to carry out the additional Care Act assessments, reviews, and case management (a 39% increase in posts currently filled). An additional 700 financial assessors will also be needed to carry out the additional Financial Assessments (a 25% increase in posts currently filled) if no changes to existing ways of working are made.

64. The submissions to DHSE for both the fair cost of care exercise and the market sustainability plan will be reviewed by SLT, CBB and Cabinet prior to submission. The timescales for this have been factored into the workplan but inevitably add some pressure to timescales given that not all tools are yet available and work cannot therefore commence.

Financial implications

65. The estimation of the impact of Build Back Better reform is difficult to assess at this stage, however emerging analysis from the likes of LaingBuisson suggest that the result of s18(3) transparency and access to local authority rates of care could cost between £29m and £60m. This is down to the uncertainty of how many self-funders there actually are, whether those self-funders will seek to register for assessment, and whether the care they are receiving is assessed as needed. In addition there is uncertainty over the timescale for individuals reaching the cap and for how long they will access funded care following that.

66. Government funding for Worcestershire County Council is typically 1% of any national grant, so in the case of £600m that would be £6m. It is noted that the Government's intention is that this will only fund price and not demand pressures as it is expected that local authority's council tax will cover demand.

67. Assuming the Council gets £6m additional to address price pressures arising from the Act, then data from the likes of LaingBuisson suggest there is a significant shortfall of the impact, in particular the impact of s18(3). County Council Network (CCN) and Association of Directors of Adult Social Services (ADASS) are lobbying along with others such as LGA for more work to be undertaken by DHSC. At this stage it is expected that there will be further discussions throughout 2022 and announcements later in 2022, including the funding allocations.

68. It should be noted that the annual review of fees, which includes the cohort of residential settings as well as domiciliary care services will run concurrently with this exercise. This may potentially impact funding requirements identified via the Council's Corporate Strategy Planning (as yet unknown), compounded by a lack of clarification on allocated funds for achieving the fair cost of care until late 2022/early 2023. At this stage given the wide range and significance of the potential gap from the reforms, the Council is planning to separate out the impact of demand, inflation and care reform in its assessment of the overall Council gap. This will continue to be revisited and reported to the relevant Council Management Boards throughout the Summer and Autumn 2022 and thus remains a high and significant risk for the Council's financial standing.

69. The Directorate remains very concerned that the reform, however well intentioned, could potentially have a significant impact for the council and the ability to provide adequate care services for our most vulnerable.

Purpose of the Meeting

70. The Panel is asked to consider the update provided regarding the Government's charging reform for Adult Social Care and its potential impacts for Worcestershire and:

- comment on the approach taken by the Council to meeting the requirements of the reform proposals;
- consider the impact of the reforms within Worcestershire; and
- determine whether any further information or scrutiny is required

Supporting Information

Appendix 1 – Conditions for Ongoing Receipt of Funding

Contact Points

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Background Papers

In the opinion of the proper officer (in this case the Assistant Director Legal and Governance) the following are the background papers relating to the subject matter of this report:

Government guidance documents:

- [Market Sustainability and Fair Cost of Care Fund 2022 to 2023: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/market-sustainability-and-fair-cost-of-care-fund-2022-to-2023)
- [Home Care Cost of Care Toolkit and Guidance for completion](#)