

Cabinet

4 October 2022

Adult Social Care Market Sustainability Plan 2022-2025

For Decision

Portfolio Holder: Cllr P Wharf, Adult Social Care and Health

Local Councillor(s):

Executive Director: V Broadhurst, Executive Director of People - Adults

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Report Status: Public

Recommendation:

- (1) To note the issues highlighted in the sustainability of local social care services, and the interventions proposed;
- (2) To approve the attached Market Sustainability Plan for submission to the Department for Health & Social Care;
- (3) As part of the plan, to approve the approach to the future uplifting of usual rates paid for key categories of adult social care services, always subject to available budget;
- (4) To note the proposal to submit the final plan for second review by the People & Health Overview Committee ahead of submission in February; and, on that basis
- (5) To delegate to the Executive Director of People (Adults & Housing), in consultation with the Cabinet Member for Adult Social Care & Health and the Executive Director of Corporate Development, to approve for submission the final version of the plan in February 2023,

subject to any amendments not being of significant additional financial impact to the Council.

Reason for Recommendation:

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.

The Government's reform of adult social care, as set out in the White Paper, People at the Heart of Care, includes a new approach to the sustainability of local care markets. This is absolutely central to the overall reform programme for adult social care. It requires the Council to submit a Market Sustainability Plan, which details how it will work with the local providers to set a 'fair' price for care and maintain that level of fees into the future. The plan covers older people's residential care, and all-age domiciliary care. In return, the Government has committed an amount of funding (yet to be allocated) to support local authorities to increase the fees paid for care.

Having commissioned specialist consultancy support, commissioners have developed the plan attached based on their findings on Fair Cost of Care, for submission by the deadline of 14 October 2022. There is further opportunity to revise the plan, to include a firmer commitment on financials (including, critically, Dorset's allocation of the national funding for market sustainability), for resubmission by the final deadline in February 2023. The plan sets out the challenges in the local care market in Dorset, proposes an approach to incrementally raising rates to the level of the 'fair cost of care' by the end of the Plan period and sets out a wider action plan for improving the stability and sustainability of the care market.

1. Introduction: the Government's reform programme for Adult Social Care

- 1.1. In December 2021, the Government published a White Paper, People at the Heart of Care, that outlined a 10-year vision to put personalised care and support at the heart of adult social care. This built upon previous policy and legislation, including the Care Act 2014. In particular, the White Paper and its subsequent regulations takes the existing duty on local authorities to promote market sustainability contained in Section 5 of the Care Act and builds a stronger framework for ensuring that local authority purchasing practices are supportive of an effective, sustainable and sufficient local market in social care.
- 1.2. The broad ambitions of the reform programme can be summarised as:
- Innovations and investment in models of care, support for the care workforce and for carers.
 - A new assurance and inspection framework for the Adult Social Care delivered by Local Authorities and Integrated Care Systems
 - “The funding reforms” relating to the care of an individual, and the proposed cap on the overall cost of care.
- 1.3. A presentation on the Council's wider approach to implementing the reform agenda was given to the Overview Committee at its meeting on 28 June: (<https://moderngov.dorsetcouncil.gov.uk/ieListDocuments.aspx?CId=652&MId=5303&Ver=4>, item 10 refers).
- 1.4. There are 3 fundamental factors that the government wants to achieve with this part of the reforms:
- That the practice of local authorities and self-funders paying different prices for the same care (effectively cross-subsidy) ends;
 - That self-funders (those without local authority contributions to their care costs) can access care at the prices local authorities pay; and
 - That local authorities pay providers a ‘fair’ rate for care - i.e. what care costs.

Market Sustainability and Fair Cost of Care Fund

- 1.5. A national fund of £1.36bn has been allocated to support changes to the fee levels paid by local authorities, and the associated reform of commissioning systems that will be required. This is provisionally allocated at £162m for 2022/23, and £600m for each of 2023/24 and 2024/25. The Council is required to do three things to access the fund:
- Undertake ‘cost of care’ exercises for 65+ care homes and 18+ domiciliary care;
 - Develop a market sustainability plan, using the cost of care exercises as a key input to identify risks in the local market, with a final plan to be submitted in February 2023; and
 - Submit a spend report detailing how funding allocated for 2022 to 2023 is being spent in line with the fund's purpose.
- 1.6. This report presents the draft Market Sustainability Plan, in the form in which the Department for Health & Social Care has requested it. Subject to Cabinet approval, this allows the first submission of a draft plan to be made to the Department for Health & Social Care by the required deadline of 14th October.

- 1.7. A second submission is then required in February 2023, which will incorporate full financial implications based on the local government finance settlement and the allocation of the Market Sustainability & Fair Cost of Care Fund for 2023/24 and 2024/25.
- 1.8. Although our draft plan sets out commitments on how quickly the Council intends move to paying the full assessed 'Fair Cost of Care', it is heavily dependent on the grant allocation to ensure that this is affordable.

About 'Fair Cost'

- 1.9. It is important to note that defining a 'Fair Cost of Care' is not intended to be a replacement for the fee setting element of local authority commissioning processes or individual contract negotiation. It is critical that the new intelligence about fees and underlying costs inform such processes, but it is not intended to arrive a single "price to be paid in all cases" for care. The Department has explicitly noted in its guidance that:

Fee rates will also continue to be based on sound judgement, evidence, and through a negotiation process, as is the case currently. As such there will be variation in the rates providers are paid to reflect the quality and level of service. Ultimately paying a fair cost of care does not mean that all providers are paid the same rate, but rather the fair cost of care is the median value which fee rates will be "moving towards".

- 1.10. The Fair Cost of Care guidance therefore states that "as many local authorities move towards paying the fair cost of care, it is expected that actual fee rates paid may differ due to such factors as rurality, personalisation of care, quality of provision and wider market circumstances".

2. Overview of the Market Sustainability Plan

- 2.1. The plan is required to address the issues in the markets for home care (all ages, 18+) and residential/nursing care for older people (65+). The plan is attached at Appendix 1, on the required government template. Appendix 2 contains a brief summary of the key points in the plan.
- 2.2. In essence, across both homecare (18+) and residential/nursing care (65+) the themes that the plans seek to address include:
 - Developing stronger provider relationships and partnerships;
 - Stabilising the workforce in social care;
 - Implementing the Fair Cost of Care;
 - Developing new forms of provision, including for reablement or higher-acuity residential services;
 - Developing new forms of contracting;
 - Supporting more choice, control and independence through information and advice and other personalised support options;
 - Using technology.

Dorset Council approach to establishing the fair cost of care

- 2.3. In Autumn of 2021 Commissioners instigated cost of care exercises for the provision of care in Dorset in the following areas:
- Home Care;
 - Supported Living; and
 - Care Homes for older people.
- 2.4. This work began ahead of the Government announcement of Market Sustainability and Fair Cost of Care Fund, which only requires these exercises to be undertaken for homecare and care homes. The exercises were primarily to determine the sustainable rates for care in Dorset, but also included:
- How Dorset Council benchmarked against other local authorities;
 - Establishing a robust evidence base on provider operational costs; and
 - Providing a toolset for officers in Commissioning and Finance to manage future years' uplifts, and to improve the transparency with which the market was engaged in that dialogue.
- 2.5. Two consultancies were appointed following a tender process, and including advice from South West Association of Directors of Adult Social Services and the Local Government Association:
- ARCC Ltd were appointed to conduct the supported living and home care reviews, being partners of the LGA in developing a cost of care toolset for home care; and
 - Valuing Care Ltd were appointed to undertake the work on care homes, with experience of working with the Department for Health & Social Care on this policy issue, as well as conducting this work for several other SW and other regional local authorities.
- 2.6. Each exercise was launched with a market specific virtual event, jointly hosted by the consultancy and commissioners, to explain the approach and emphasise the importance of provider participation. Home Care and Supported Living hosted 'closed' workshop sessions with providers in order to facilitate further engagement. In addition, the outcomes of the modelling work was shared with providers for feedback prior to the consultants finalising their final report.
- 2.7. In summary, for the homecare exercise 9 older people's home care businesses responded, although only 3 completed cost information. There was a widespread ask for us to use benchmarking data with other authorities instead, which was done with 11 neighbours and 'most similar' comparators has also been completed. The homecare insight was also supported by the work undertaken on supported living (although that is not required by the Government exercise), where 9 organisations provided information, there were 4 deep-dives and 3 pre-engagement 1:1s.
- 2.8. In relation to the home care market, commissioners acted on previous feedback regarding the causes of workforce shortages, and requested that ARCC Ltd include modelling an option that allowed staff to be paid at £10.50 per hour – based on feedback that this was a rate believed competitive with local retail and hospitality.
- 2.9. For residential care, 24 older people's care homes completed the survey (16 residential, 8 nursing; 24% of all homes). The consultants were satisfied this provides a good level of confidence in the results.

- 2.10. Engagement of providers in the analysis was not as high as we would have liked, especially in respect of homecare. In recognition of the poor initial response, multiple follow-ups were undertaken and deadlines extended. It should be noted that a key measure for the 'validity' of the exercises, as outlined in the Government guidance, is evidence that providers were given sufficient opportunity to participate. Whilst our exercises certainly passed that test, there is also recognition that a stronger engagement base could have been achieved; for this reason we have proposed to repeat the exercise during the next year.
- 2.11. Throughout these processes, the emphasis has been on opening up a transparent dialogue with the provider market on their costs and the Council's approach to meeting them under the new Government policy on 'fair cost'. This includes discussions on the results of the exercises included in the appendices to this report. This transparency forms the basis for future dialogue on costs and contracting for care, including using the insights generated by these exercises to have improved discussions on contract values.

Moving to the fair cost of care

- 2.12. Critical to ensuring a sustainable market is also to ensure that the prices being paid for care allow the operators of those businesses to reward staff appropriately, and to make a reasonable return on the business operations after costs are taken into account. The purpose of the cost of care exercises was to establish how far short current Council commissioning practices were from this ambition.
- 2.13. It should be noted that it is structural feature at a national level of the operation of the care market, particularly the older people care market, that local authorities' bulk buying power commands lower rates than the individual self-funder. The higher rates paid by self-funders have for many years been required to balance the difference and allow providers to make a return. It is this cross-subsidy that the Government now wishes to remove, and the reason for providing funding for local government to pay the 'fair cost' of care that it commissions, so that it is no longer necessary for self-funders to pay a higher rate.
- 2.14. Additionally, the activation of the rights of self-funders under Section 18(3) of the Care Act to ask the Council to arrange their residential care for them means that self-funders would have access to the Council's rates, which again signals the importance of a robust assessment of the fair cost as it further removes the opportunity for providers to cross-subsidise between self-funders and the Council. This does not mean that self-funders no longer pay for their care themselves. However, they potentially pay at a rate the local authority would pay rather than a higher "self-funder rate". There are a range of implications for this move, in terms of how people are assessed, how they access care in the market at rates that are appropriate for the needs being met, as well as for the Council's contracting approaches. This is directly relevant to implementing the fair cost of care, and are matters that will be addressed through the wider reform programme for Adult Social Care.
- 2.15. Dorset have prioritised homecare in the move towards paying 'fair cost', recognising the importance of homecare for supporting people to live independently and well in the community, and avoid premature admission to residential care. The financial challenge for moving to 'fair cost' for residential and nursing care is greater, and will need to be staged over the years of the plan. The current proposals are to be paying 'Fair Cost' by the final year of the plan, but recent Government guidance has clarified that the expectation is that some areas may not achieve it in full and may only make

some progress towards it. This is a significant additional financial challenge for the Council and will have to be evaluated in the light of the Government grant allocation.

- 2.16. The plan proposes a staged approach to closing the gap between the 'fair cost' and the current base rates charged for residential care, although noting that average rates paid are more in line with assessed fair cost.
- 2.17. The plan also proposes an ideal state on the future application of inflation. Each year would build in that year's predicted inflation (by OECD) for September. At the end of the year, the price would be adjusted for the actual inflation in the September just passed, and then add the predicted inflation for the year ahead. Whilst this suggests a policy expectation, it will always require balancing against the funds available to the Council and cannot, as a matter of policy, override the Council's statutory duty to set a balanced budget.
- 2.18. In response to concern expressed by councils about the affordability of full implementation within two years, the Department of Health & Social Care has in the past weeks clarified its policy position. Recognising the differing positions of local authorities on this issue, and that therefore there are different journeys to be taken, the Department has indicated that they expect that "*some local authorities will reach the fair cost of care for their local area in this Spending Review period, whereas others are on a longer journey and will not. Our policy expectation is therefore that you make as much progress as possible.*" This expectation should be borne in mind alongside the projected costs involved.
- 2.19. In particular, this policy is being initiated during a time of inflationary volatility that is without precedent in the preceding 40 years. Government proposals to address the cost of fuel for both individuals and businesses has the potential to significantly alter predicted inflation over the course of this year. Together with our proposal to conduct a further cost of care exercise, and engage with providers on their actual cost pressures more consistently, the plan does not at this point confirm that this approach to inflation is possible, until a more stable long-term outlook is in place for both inflation and the funding available for market sustainability.
- 2.20. All of the information on which the Fair Cost assessments have been based have been shared with the market, and opportunities provided for discussion and debate. This discussion remains ongoing and is core to the Council's ambition, expressed through the plan, to continue to develop a relationship with the provider market on which both sectors can together address challenges in local social care provision.

3. Review of the proposed plan by the Overview Committee, 8 September

- 3.1. Overview Committee received a presentation on 8 September, giving an overview of the approach to the Fair Cost of Care and the development of the Sustainability Plan. In discussion, their feedback included:
 - The importance of the right information and advice to self-funders, noting that more will come to us and have the opportunity of being signposted or better advised;
 - Issues around provision of the right kinds of housing (with and without support options included) to manage demand for care, including work with registered social landlords to improve provision, and also ensuring the availability of technology to support people to remain in their own homes – and this also included the importance of housing for key workers in the care sector;

- The importance of addressing the issues identified in the types and levels of care, and the workforce, so that the vacancy rates can be reduced through ensuring that they are the right type of care to meet the need we are identifying;
 - Noted the extreme importance of this being carefully assessed in terms of financial impact, and the required funding being available from central Government to support it to go ahead.
- 3.2. These points are reflected in the proposals before Cabinet, including the concerns expressed about the potential scale of financial impact of full implementation of the policy.

4. Next steps

- 4.1. Following Cabinet approval, the plan will be submitted to the Department for Health & Social Care for their review. At the same time, we will publish the attached Fair Cost of Care reports, which is a requirement of the DHSC grant process. We are also required to submit a summary table that reports on the implications of fair cost, relative to our current commissioning practice.
- 4.2. The Department will review the plans, and will use the plan and the financial information that we submitted to determine Dorset's share of the national Market Sustainability & Fair Cost of Care Grant. It should be borne in mind at this point that various national sector representative bodies, including the Local Government Association, the County Councils' Network and the Association of Directors of Adult Social Services, have all highlighted that the grant amount at a national level falls short of that required to successfully implement the policy.
- 4.3. The grant determination will be announced by the Department alongside the Local Government Finance Settlement in December 2022. There is then a relatively short window in which to refine the plan, and resubmit it in February 2023 (specific date yet to be confirmed) as a fully costed plan to move to paying the Fair Cost of Care over the coming years.
- 4.4. The timescales for assimilating the feedback from the Department, and the implications of the grant announcement in December, mean that it would be challenging to return to Cabinet, via Overview, for sign off of the final plan. On the basis that Cabinet is comfortable with the contents of the draft plan, and subject to changes not being deemed to be very substantial, this paper is proposing that Cabinet delegate final sign-off to the Executive Director for People (Adults & Health), in consultation with the Executive Director for Corporate Development and the Portfolio Holder for Adult Social Care & Health, and on the basis that a further discussion of the revised draft be scheduled for a meeting of the People & Health Overview Committee.

5. Conclusion

- 5.1. The Market Sustainability Plan, and the processes set out by the Government, are an important step towards moving the care market to a more sustainable position and to lower the price differential between that paid by private fee payers and that paid by local authorities for social care services. It has significant financial implications for local government. It will not address all the issues related to the provision of social care services, either locally or nationally. However, it is important that this plan receives due scrutiny and has a robust financial analysis included.

6. Financial Implications

- 6.1. The total cost to move to paying providers Fair Cost of Care (FCoC) is £5.9m. We have made steps in year to bridge the gap by meeting the Home Care requirements and paying 50% towards Care Home FCoC totalling £4.2m based on September 2021 rates excluding any inflation. This has been supported through Market Sustainability Fund (£1.152m) and non-recurrent local funding (£3m). Therefore, to move to FCoC an additional investment of £1.7m on top of the £4.2m is required annually. As per the above inflation would need to be considered on top of this potentially creating a further investment requirement year on year.
- 6.2. This investment requirement would need to be balanced against the funds available to the Council and cannot, as a matter of policy, override the Council's statutory duty to set a balanced budget.

7. Well-being and Health Implications

- 7.1. The provision of sustainable, stable social care services are of critical importance for the wellbeing of those who rely on them. Further, the Integrated Care System is absolutely dependent on access to social care and on its sustainable provision in order to support the effective operation of the out-of-hospital flow systems. It is in recognition of this that the NHS has contributed £3m in 2022/23 towards improving market sustainability, and this one-off allocation has allowed for the acceleration of the move towards 'fair cost of care' in homecare in particular.

8. Climate implications

- 8.1. Part of the sustainability plan relies on the improved 'zoning' of homecare contracting, as set out in the Council's emerging commissioning strategies, and this should improve the transport planning of care workers and reduce the mileages covered across agencies' overall care package portfolios. Other Implications

9. Property and Assets

- 9.1. There are no direct property or asset implications for the Council.

10. Voluntary organisations

- 10.1. There is a significant overlap between providers of social care services and the voluntary, community and social enterprise sector. The measures in this report seek to improve the sustainability across the whole market, and will provide benefit to the VCSE organisations that provide relevant regulated social care services. Additionally, the sustainability plans build on the intentions set out in our emerging commissioning strategies, to build greater interface and partnership between formal social care and informal community-based support, chiefly provided by VCSE organisations.

11. Safeguarding Adults

- 11.1. Sustainable services are likely to be safer services. The measures in this report are the first steps to addressing many of the challenges that have the potential to compromise the delivery of safe services. They will change the relationship between

the Council and the provider markets, which is a key plank of the emerging commissioning strategies, and on which an improved dialogue about safeguarding practice and safety of services can be built.

12. Risk Assessment

- 12.1. The most significant risks relate to the financial impact of the commitments in this report, and the impact of not receiving sufficient market sustainability and fair cost of care grant to cover them. However, in that case the straightforward mitigation would be not to proceed with the proposals. However, that carries further risks around further damage to the relationship with the market, and further deterioration in the delivery of care and support.

13. Equalities Impact Assessment

- 13.1. Proposals to improve workforce conditions in the care sector through the fair cost of care will improve living conditions disproportionately for women, some older members of the workforce, and to a small extent those from minority ethnic populations. They will also address the socioeconomic challenges of some of the lower paid in the Dorset workforce.
- 13.2. Proposals that seek to stabilise the market in the provision of social care services will improve the lives of those that depend on them, including disproportionately older people, those with disability and mental health conditions, and carers.
- 13.3. Addressing the additional challenges of delivering care in rural communities through the rates paid for that care will positively address rural disadvantage in care delivery.
- 13.4. There are neutral or unclear impacts based on sexual orientation, gender identity/reassignment, maternity or pregnancy, religion and belief, and those from armed forces communities. That being said, there is confidence that there are no unexpected significant negative impacts for any of these groups.

14. Appendices

- 1. Market Sustainability Plan for Dorset – submission draft for approval
 - 2. Summary of Fair Cost of Care Analysis for Homecare 18+ (ARCC Ltd.)
 - 3. Summary of Fair Cost of Care Analysis for Residential and Nursing Care (Valuing Care Ltd)
- 14.1. The summary documents on the fair cost of care were as produced by the consultancies to facilitate discussions with the market on the implications.

15. Background Papers

- 15.1. National Government guidance on the Market Sustainability & Fair Cost of Care process: <https://www.gov.uk/government/publications/market-sustainability-and-fair-cost-of-care-fund-2022-to-2023-guidance/market-sustainability-and-fair-cost-of-care-fund-2022-to-2023-guidance>