

Adults and Health Committee

Date of Meeting:	27 March 2023
Report Title:	Market Sustainability Plan and approach to care fees
Report of:	Helen Charlesworth-May, Executive Director of Adults, Health and Integration
Report Reference No:	AH/42/2022-23
Ward(s) Affected:	All wards

1. Purpose of Report

- 1.1. The purpose of this report is to seek approval from Adults and Health Committee for Cheshire East Council's Market Sustainability Plan for onward submission to the Department of Health and Social Care (DHSC) and publication on the Council's website.
- 1.2. The Adults and Health Committee approved the publication of the local cost of care on the Council's website on 23rd January 2023 which was a pre-requisite for securing Government funding from the Market Sustainability and Improvement fund. The Market Sustainability Plan is the second requirement to securing funding and must be submitted and published on the Council's website by 27th March 2023.
- 1.3. The development of a Market Sustainability Plan is a new requirement placed upon all local authorities and is designed to demonstrate how the Council will use funding to make tangible improvements to Adult Social Care provision.
- 1.4. The plan has been developed using a template supplied by the Department of Health and Social Care and closely follows associated guidance.
- 1.5. The report contributes to the following aims and objectives in the Council's Corporate Plan which are also referenced in the Market Sustainability Plan.
 - Vulnerable and older people live safely and maintain independence within community settings.

- To prioritise Home First for patients discharged from hospital. Where possible patients are discharged to a home of their choice.

2. Executive Summary

- 2.1.** In December 2021 (updated in October 2022 and January 2023) the Government published its policy position on market sustainability for providers of registered residential and nursing care for people 65+ and for registered domiciliary care for people over 18.
- 2.2.** Local authorities are required to develop, submit and publish Market Sustainability Plans to demonstrate how they will ensure that care markets for older people's care homes and domiciliary care are sustainable, as Adult Social Care moves towards reform.
- 2.3.** Underpinning the development of the Market Sustainability Plans are cost of care exercises which were submitted to the Department of Health and Social Care (DHSC) in June 2022 and published on the Council's website on 1st February 2023.
- 2.4.** Market Sustainability Plans must be submitted to DHSC and published on the Council's website by no later than 27th March 2023. DHSC has indicated that there is no leeway in this deadline and Members are asked to note that, should the recommendation to publish be approved, the plan will need to be published following the Committee meeting taking account of any amendments that members may wish to make.
- 2.5.** The submission and publication of cost of care exercises and Market Sustainability Plans are pre-requisites to the Council receiving an additional £2.4m Market Sustainability Funding in 2023/24. Funding from 2022/23 (£0.979m) is carried forward giving total Market Sustainability Funding for 2023/24 of £3.4m.
- 2.6** Grant conditions set out an expectation that the funding is used to make tangible improvements to adult social care, in particular, increasing social care capacity, reducing waiting times, increasing workforce capacity and retention and increasing fee rates to close the cost of care gap in an area. Local authorities are required to report on metrics against each of these target areas and to show demonstrable improvement in at least one of the target areas. It is expected that these metrics will be set out in further guidance.
- 2.7** The draft Market Sustainability Plan is attached at Appendix A. It takes into account the findings from the cost of care exercise and engagement with the care provider market and the Council's priorities as set out in the Council's Market Position Statement and other strategic policy documents.
- 2.8** The plan articulates how the Council plans to achieve its aims to prioritise a Home First approach to care provision and enable people to retain their independence, stay in their own homes and live well for longer. As such, it

proposes that all Market Sustainability Funding is invested in domiciliary care provision and a new three tier pricing model is introduced on the condition that care providers seek to grow their businesses to be able to prevent admissions to more institutionalised types of care provision and, in particular, in areas of the Borough that are not as well served as others.

3. Recommendations

It is recommended that Adults and Health Committee:

- 3.1.** Approve the Market Sustainability Plan attached at Appendix A for onward submission to the Department of Health and Social Care (DHSC) and publication on the Council's website in accordance with grant conditions;
- 3.2.** Note that the Market Sustainability Plan follows a format that has been prescribed by DHSC guidance.

4. Reasons for Recommendations

- 4.1.** It is a condition of Market Sustainability funding that the Council prepare, submit and publish on its website a Market Sustainability Plan by no later than 27th March 2023.
- 4.2.** The Department of Health and Social Care (DHSC) has advised that the deadline for publication of the Plan is 27th March 2023 and that no special dispensations will be considered to extend the deadline.
- 4.3.** Officers recommend the Market Sustainability Plan is approved for the following reasons:
 - 4.3.1** The Plan meets grant funding objectives and objectives and aligns with the Council's strategic direction of travel.
 - 4.3.2** Market Sustainability funding and additional funding to uplift care fees has been allocated in the Council's Medium Term Financial Strategy.
 - 4.3.3** The Council has a statutory duty to promote an effective and efficient care market including a duty to ensure that fees are set at a level that is sustainable and to promote an efficient and effective market.
- 4.4** The proposal to use the entirety of the Market Sustainability Funding to uplift care fees will have a positive impact on other sustainability targets including increasing workforce capacity and retention, reducing waiting times and supporting timely hospital discharge.
- 4.5** The proposal to invest the Council's allocation of the Market Sustainability and Improvement Fund in domiciliary care supports the Corporate Plan aims to support older and vulnerable people to lead independent lives within community settings and to prioritise a Home First approach for people leaving hospital.

5. Other Options Considered

- 5.1. The development, submission and publication of a Market Sustainability Plan is a mandatory condition of receiving grant funding under the Market Sustainability and Improvement fund. If the Council chose not to submit or publish a Market Sustainability Plan the Council would not be eligible to receive Market Sustainability Funding for 2023/24 and 2024/25.
- 5.2. This could have serious consequences for local care markets meaning that they would be unable to increase wages for care staff and compete for staff with other sectors. This in turn presents the risk that the Council is unable to source an appropriate level of care and support for people with an assessed need under the Care Act 2014 and that there is an adverse impact on the quality of care and support delivered.

Option	Impact	Risk
Do nothing	CEC unable to claim Market Sustainability Funding Barrier to implementation of charging reform Reputational damage with DHSC	Increased handbacks of packages of care Care market failure Increased waiting lists for care Increased quality concerns and safeguardings

6. Background

6.1. Care Act duties

6.1.1 Local authorities have a duty under section 5 of the Care Act 2014 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.

6.1.2 Section 4.31 of the Care and Support Statutory Guidance (Updated 19 January 2023) states the following:

“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.

This should support and promote the wellbeing of people who receive care and support and allow for the service provider’s ability to meet statutory obligations to pay at least the minimum wage and provide effective training and development of staff. 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. This assurance should understand that reasonable fee levels allow for a reasonable rate of return by independent providers that is sufficient to allow the overall pool of efficient providers to remain sustainable in the long term.”

6.2. Market Sustainability and Improvement Fund

6.2.1 The Government announced a new Market Sustainability Fund on 16 December 2021. Originally, the primary purpose of the fund was to support local authorities to prepare their markets for reform and to support local authorities to move towards paying providers a fair cost of care. Since plans for charging reform have been delayed the purpose of the funding has been extended to address the priority areas set out in 6.2.6.

6.2.2 In total, £162 million was allocated nationally for 2022/23, £562 million allocated for 2023/24 and it is anticipated £842 million will be allocated for 2024/25.

6.2.3 Cheshire East Council was allocated £979,000 for 2022/23 and this funding was used to increase fees for Care at Home contracts. The Department has indicated that councils will continue to receive their 2022/23 funding allocations in 2023/24 regardless of whether they submit a Market Sustainability Plan. Grant announcements have confirmed an additional £2.4m allocation for Cheshire East subject to the submission and publication of a plan taking the total Market Sustainability Funding for to £3.4m for 2023/24.

6.2.4 Final guidance has yet to be issued for the funding, however an explanatory note sets out the revised expectations of DHSC into how the funding will be deployed. The funding is provided on the condition that every local authority allocates its full funding on adult social care. In order to evidence this, DHSC will compare the increase in the 2023/24 revenue account (RA) budget for adult social care with the 2022/23 budget, having assumed (unless the authority show otherwise) that the following will be allocated to adult social care:

- An appropriate share of the local authority’s additional Social Care Grant allocation for 2023/24, in line with aggregate use of this funding in previous years;
- The local authority’s share of the new 2023/24 discharge fund;
- The resources raised in 2023/24 from the adult social care precept.

6.2.5 Local authorities are expected to use the funding to make tangible improvements to adult social care. They will have flexibility to use the funding

to drive improvements across a range of priority areas, to best address local sustainability and improvement needs. The priority areas are:

- Increasing social care capacity
- Reducing waiting times
- Increasing workforce capacity and retention
- Increasing fee rates to close the cost of care gap in an area.

6.2.6 Local authorities will be required to evidence improvement in at least one of the target areas above using DHSC performance metrics and must provide an initial and final report on spend and progress against all target area metrics: capacity, workforce, waiting times and fee rates. Performance metrics will be set out in the final guidance.

6.2.7 Local authorities must submit an update to their Market Sustainability Plans ahead of winter 2023, which will include an additional section on adult social care capacity planning.

6.2.8 Through reporting DHSC will assure itself that the funding is being used in line with the grant conditions and, as a last resort, ultimately reserves the right to withhold future funding until satisfied that all fund conditions have been met.

6.2.9 On the basis of this allocation and the total Market Sustainability Funding for 2024/25, it is estimated that the Council can expect to receive a total of £5.08m for 2024/25.

6.2.10 As a condition of receiving funding, local authorities are required to:

- Undertake and publish cost of care exercises for 65+ care homes and 18+ domiciliary care. Cost of care exercises for Cheshire East were submitted to DHSC on 1 July in accordance with DHSC timescales imposed on trailblazer authorities and published on the Council's website on 1st February 2023;
- Develop, submit to DHSC and publish a Market Sustainability Plan by 27th March 2023 and provide evidence of publication to DHSC via an email containing the URL. The plan should demonstrate how the Council will ensure local care markets for 65+ care homes and 18+ domiciliary care are sustainable as we move towards reform.
- The Market Sustainability Plan must follow the template supplied by DHSC and should:
 - Take into account the results from the cost of care exercise
 - Consider the impact of future market changes over the next three years, particularly in the context of adult social care reform

- Set out an action plan for addressing the issues identified and the priorities for market sustainability investment.
- Include a commitment for how the local authority will move towards the cost of care calculated in the exercise as part of their 2023 to 2024 budget setting process.

6.2.11 Market Sustainability is defined by the guidance as one which operates in an efficient and effective way, indicated by:

- Sufficient supply of services to ensure continuity of care with minimal disruption in the event of providers exiting from the market
- There being a range of high-quality services for people to choose from
- Sufficient investment in its workforce to enable the attraction and retention of high-quality care staff
- Evidence of innovation and service diversity in order to evolve and meet changing user needs
- Being attractive to new market entrants and able to manage and offset the impact of future market changes

6.3 Cost of Care exercise

6.3.1 The Council commissioned independent consultants to undertake a Cost of Care exercise with Care at Home, Accommodation with Care and complex care providers in November 2021 and draft reports containing recommended options were received for the three types of care in January 2022. These were updated in June 2022 following consultation with providers who were given a further opportunity to update their data or submit data if they had not already done so.

6.3.2 The results of the Cost of Care exercise were reported to Adults and Health Committee on 23rd January 2023 and are set out in the draft Market Sustainability Plan at Appendix A. The Committee approved the publication of the reports in accordance with the mandatory requirements of the Market Sustainability and Improvement fund which were published on the Council's website on 1st February 2023.

6.3.3 The Department of Health and Social Care has acknowledged publication of the reports. It is understood that DHSC has contacted a small number of local authorities where there are concerns over the content. This has not applied to Cheshire East.

6.4 Current market conditions

6.4.1 The cost of care exercise and subsequent provider engagement found that all providers are experiencing rapidly increasing cost pressures resulting from increased staffing costs due to an increase in agency use and the need

to compete with other sectors, inflation and increases in other costs such as energy and insurance premiums. This was exacerbated in April 2022 when increases to the National Living Wage and National Insurance took effect and will be further exacerbated by a 9.5% uplift to the National Living Wage in April 2023.

- 6.4.2** The recruitment and retention of good quality care staff has become increasingly difficult. The main reason given for this is competition from other sectors such as retail and hospitality which are able to offer higher salaries and better terms and conditions. For Care at Home there is the added pressure of higher fuel costs which are resulting in staff leaving for care homes where there is no burden of travel between calls or to other sectors.
- 6.4.3** All providers have experienced challenges resulting from the pandemic which have further exacerbated staffing issues including staff sickness and self-isolation, increased costs of agency staff and staff burnout resulting from outbreaks and the need to undertake additional hours to cover for staff who are sick or self-isolating. Over the last two years, care providers have been supported with increased costs by short term Government funding streams, however, these are no longer available.
- 6.4.4** As a result, sourcing an appropriate package of care in 2022 became increasingly difficult leading to increased waiting lists, service users placed in short term care while they await a package of care in their own home, increases in the number of packages of care handed back to the Council, providers exiting Cheshire East altogether and some providers unable to cover some calls at short notice due to staff sickness. The situation was exacerbated by care home closures due to outbreaks of Covid 19 and there has been an impact on the quality of care evidenced by an increased number of safeguarding and care concerns.
- 6.4.5** More recently, however, there have been indications that the care market is beginning to stabilise with fewer care packages handed back and a significant reduction in the number of people waiting for domiciliary care. It is thought that this is due to a combination of factors including a substantial fee uplift paid by the Council to domiciliary care providers in 2022/23, relaxations on the rules around international recruitment for carers, and improved processes in assessments for hospital discharge which have reduced reliance on traditional forms of care and an improvement in local recruitment more generally.

6.5 Market Sustainability Plan

- 6.5.1** In the context set out above the MSP sets out the strategic intent to continue to invest in Care at Home provision. Care at Home contracts are currently paid according to a tendered price. Current contracts were commissioned in 2018 and providers were asked to submit a tendered price between £14 to £18 per hour for at least the first three years of the contract.
- 6.5.1.2** Fees for Care at Home Prime and Framework contracts were uplifted by 14% in 2022/23. This was funded by Year 1 of Market Sustainability Funding (6%) and the Better Care Fund (8%).
- 6.5.1.3** The new maximum rate for Care at Home Prime and Framework contracts is £20.52 per hour. There is an additional premium of up to £2 per hour for care delivered in rural areas (F1 postcodes) funded by Better Care Fund. The cost of care exercise recommended an hourly rate of £22.50 per hour.
- 6.5.1.4** Given the importance of Care at Home services to the delivery of the Council's ambitions to prioritise a Home First approach and enable people to stay at home for longer, it is proposed that domiciliary care providers are encouraged to significantly grow their businesses.
- 6.5.1.5** This is so that people who may have previously been placed in a care home can remain in their own homes with the right level of care and support. While there will always be some people for whom care homes are the only option, for example, somebody in the advanced stages of dementia, a significant proportion of people may have been able to stay at home if there was sufficient capacity in the domiciliary care market to support them to remain at home. Not only is this in the best interests of the individual and their families, it offers a huge saving for the public purse at a time when finances are severely restricted and for individuals if they fund their own care.
- 6.5.1.6** Feedback from domiciliary care providers is that to do this the sector requires significant additional investment to enable providers to increase wages so that they are able to compete with other sectors and expand their operations.
- 6.5.1.7** The fee uplift awarded to Care at Home providers in 2022/23 has had a positive impact on waiting times for domiciliary care and some care providers have shown a willingness to expand their businesses through international recruitment programmes which has also had a positive impact on the Care at Home waiting list. However, the approach needed to divert care from care homes to domiciliary care requires a step change in market capacity. There are also some areas of the Borough where it remains difficult to source care and where there is a high use of care providers who are not on the Council's framework and who are often commissioned at a higher cost. This creates inequalities in access to care provision across the Borough.

6.5.1.8 To address these inequalities, the draft Market Sustainability Plan proposes introducing a three-tiered pricing model which offers a flat rate payment of either £20.52ph (the current maximum rate); £22.50ph (the local cost of care) or £24.50ph (local cost of care plus an enhancement of £2ph) based on proposed new geographical delivery areas for the new Care at Home commission. Under this approach, areas such as Knutsford and surrounding areas, Nantwich and Congleton/Holmes Chapel (where it is often difficult to commission care) would attract a higher rate while Crewe (where costs are less due to volume of hours and proximity of care calls) would receive the current maximum rate of care of £20.52 per hour.

6.5.1.9 In taking this approach, the Council will be aiming to meet all four of the funding objectives to increase social care capacity, reduce waiting times, increase workforce capacity and retention and increase rates to close (or in most cases either meet or exceed) the cost of care gap in the area.

6.5.1.10 This approach is not without risk, mainly, whether there are sufficient people who want to work in domiciliary care even at increased wages. The work can often be demanding, involve unsociable hours, be solitary and require own transport. For this reason, many carers prefer to work in care homes where they are not required to drive and have a support network of carers and managers on site. To mitigate this commissioning team will work with providers to develop their recruitment strategies including exploring opportunities for providers to transport staff from other locations to work in more rural locations.

6.6.2 Accommodation with Care Contracts

6.6.2.1 Accommodation with Care (care home) contracts are commissioned via a Dynamic Purchasing System (DPS). Care homes are required to apply to join the DPS via a robust procurement process and can then express an interest in individual care home placements as part of a call off process. The process allows care home providers to submit a price to deliver care for the expected life of the call off contract and there is no guarantee of inflationary uplifts. Having regard to these factors we do not propose any uplift in the standard contract rate for Accommodation with Care contracts.

6.6.2.2 It is, therefore, proposed that the funding is wholly invested in domiciliary care where it can have the most impact to help the Council to achieve its ambitions to support people to live independently as set out in the Corporate Plan.

7.0 Consultation and Engagement

7.1 Engagement with care providers was integral to the cost of care exercise. Providers were invited to participate via a survey which collected financial and cost information and via workshop sessions.

7.2 Providers were also engaged in the development of the Market Sustainability Plan via webinars held in February 2023 which were facilitated by external consultants.

7.3 Feedback from providers is set out in section 6.4 of this report and in the Market Sustainability Plan. Specifically, Care at Home providers highlighted the barriers to recruitment in rural areas of the Borough and to competition from other sectors. The approach as set out in the Plan will help to address these issues for this sector.

8. Implications

8.1 Legal

8.1.1 The Care Act places a duty on local authorities to facilitate and shape the whole publically-funded and self-funded care and support market. The legislation also requires authorities to provide choice that delivers outcomes and improves wellbeing. Relevant features of the Act include obligations on Councils to:

- Promote the efficient and effective operation of a market in services for meeting care and support needs;
- Ensure sustainability of the market;
- Ensure that sufficient services are available for meeting the care and support of adults in its area.
- When commissioning services councils must assure themselves and have evidence that the 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.
- Understand the business environment of providers offering services in their area and seek to work with providers facing challenges and understand their risks.”
- Not undertake any actions which may threaten the sustainability of the market as a whole, for example, by setting fees below an amount which is not sustainable for the provider in the long term.

8.1.2 The Care Act and the Statutory Guidance place an expectation on local authorities that the fees for all types of care should take account of both the actual cost of good quality care and the need to ensure a diverse provider market. It is clear that fees need to be set at such a level to allow providers to recover reasonable costs and remain competitive.

8.1.3 Adult social care charging reforms are now delayed until October 2025 which means that certain sections of the Care Act 2014 relating to cap on care costs are not yet in force. With regard to the section 18 duty to meet needs for care and support- this duty is in force except insofar as it imposes any duty on a local authority to meet an adult's needs for care and support by the provision of accommodation in a care home in a case where Condition 2 in section 18(3) is met as set out at 4.2 above.

8.1.4 The Council has a legal duty to ensure that it meets its duties under the Care Act 2014 . A failure to do so could result in the Council being judicially reviewed.

8.2 Finance

8.2.1 The Council has to publish its MSP in order to receive the associated MSF grant income, as this is one of the grant conditions.

8.2.2 The approved MTFS includes this grant income as part of the overall balanced position. To not publish or receive this grant income would therefore result in financial pressure.

8.2.3 Communications linked to the Market Sustainability Plan will need to be robust and help providers to understand the rationale for the Council's approach to fees particularly in light of the findings from the cost of care exercise.

8.2.4 There is no certainty of Market Sustainability Funding post 2024/25. If the funding is not continued this will represent a significant financial risk to the Council as care providers will expect funding levels to be maintained. In February 2023 the Council approved the Medium Term Financial Strategy which delivers a balanced budget. If Market Sustainability Funding is not available post 2024/25 this will create a significant pressure on the Council and savings will need to be found from elsewhere.

8.3 Policy

8.3.1 The recommendations in this report align with the Council's objectives to support people to remain as independent as possible for as long as possible and to prioritise a Home First approach for people who are discharged from hospital.

8.3.2 The revised pricing structure for Care at Home providers is conditional on them agreeing to significantly expand their operations in Cheshire East in order to divert care provision from bed-based services to services in the community. This will be implemented via contract modifications and will be incorporated into the specification and performance management framework of the new contract when the service is recommissioned in 2024.

8.4 Equality

- 8.4.1** An Equality Impact Assessment has been completed for this report and is attached as Appendix B.

8.5 Human Resources

- 8.5.1** There are no direct Human Resource implications for Council staff. However, the proposals contained within the Market Sustainability Plan will support the recruitment and retention of care staff with external care at home providers.

8.6 Risk Management

- 8.6.1** There is a risk that, having participated in the local cost of care exercise, care home providers will expect packages below the cost of care to be uplifted to the cost of care regardless of whether or not this is affordable from a local authority perspective or that the funding received from DHSC is not sufficient to pay the cost of care. The original intention of the funding was to support local authorities to move towards the cost of care, however, recent funding guidance suggests a broader scope of the funding as set out in 6.2.6 above. This will be reflected in communications with providers.

- 8.6.2** As set out in financial implications, there is no certainty of Market Sustainability Funding post 2024/25. If the fund is not continued this will represent a significant financial risk to the Council as care providers will expect funding levels to be maintained.

- 8.6.3** The Market Sustainability Plan proposes that the funding is allocated to fee uplifts for domiciliary care contracts which should have a positive impact on workforce, waiting times and hospital discharge. However, it leaves little room to accommodate demographic growth, ad-hoc increases to sustain key providers if needed or to cover the cost of rate creep in the care home sector. The approach proposed in the plan will take some time to come to fruition and will require a culture change in the assessment and commissioning of care home placements. In the meantime, officers will continue to challenge high bids for care home placements with a view to negotiating rates.

8.7 Rural Communities

- 8.7.1** Rural communities are disproportionately impacted by the current challenges in the care at home market due to lower numbers of residents in rural areas willing to work in care and the increased travel times between care calls which has an impact on fuel costs and, in some cases, wages as not all care providers pay for “downtime”.

8.8 Children and Young People/Cared for Children

8.8.1 Government guidance is that the Market Sustainability Plan should focus on care homes that cater for people aged 65 and over and domiciliary care providers that cater for people aged 18 and over. There are, therefore, no direct impacts on Children and Young People or cared for children.

8.9 Public Health

8.9.1 The recommendations in this report will have a positive impact on public health as the Market Sustainability Plan should improve the quality and availability of care services locally.

8.10 Climate Change

8.10.1 Efficient delivery of domiciliary care services requires the use of a vehicle for carers to travel from call to call. Some providers are trialling the use of more energy efficient transport e.g. electric bikes although these can present a challenge in the winter months.

8.10.2 Contribution to social value including environmental outcomes is measured as part of the commissioning processes.

Access to Information	
Contact Officer:	Joanne Sutton, Acting Head of Commissioning Joanne.sutton@cheshireeast.gov.uk
Appendices:	Appendix A – Cheshire East Market Sustainability Plan Appendix B – Equality Impact Assessment
Background Papers:	Market Sustainability and Improvement fund 2022 to 2023 guidance: https://www.gov.uk/government/publications/market-sustainability-and-fair-cost-of-care-fund-2022-to-2023/market-sustainability-and-fair-cost-of-care-fund-purpose-and-conditions-2022-to-2023