

Adults and Health Committee

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| Date of Meeting: | 23 rd January 2023 |
| Report Title: | Local cost of care |
| Report of: | Helen Charlesworth-May, Executive Director of Adults, Health and Integration |
| Report Reference No: | AH/40/2022-23 |
| Ward(s) Affected: | All wards |

1. Purpose of Report

- 1.1.** In December 2021 (and updated in October 2022) 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.
- 1.2.** The purpose of this report is to set out the work that Cheshire East Council has undertaken to meet those policy requirements and request permission to publish the outcome of that work in a report on the local cost of care, in line with Department of Health and Social Care (DHSC) requirements.
- 1.3.** This is a new requirement placed upon all local authorities and the updated policy paper, published by DHSC in October 2022, set out the required content of the report to be published by local authorities.
- 1.4.** The completion and reporting of the local cost of care exercises is a pre-requisite of receiving grant funding from DHSC under the Market Sustainability and Fair Cost of Care Fund.
- 1.5.** The report contributes to the following aims and objectives in the Council's Corporate 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** Local authorities are now required to carry out an exercise to identify the local cost of care, for providers of registered residential and nursing care for people 65+ and for registered domiciliary care for people over 18, which it must consult on and publish. Local authorities were required to survey a range of care providers (representative of the local market) to determine and report the median actual operating costs, plus evidence on return on capital and return on operations.
- 2.1.** To support this policy the Government has set up a Market Sustainability and Fair Cost of Care Fund. The completion and reporting of the local cost of care exercises is a pre-requisite of receiving grant funding from DHSC under the Market Sustainability and Fair Cost of Care Fund.
- 2.2.** As a trailblazer for charging reform, Cheshire East Council was required to submit initial findings from the cost of care exercise to DHSC by 30 June 2022. DHSC has reviewed the Cheshire East submission and confirmed that it meets the requirements. The Department has recently advised that final cost of care exercises must be submitted to DHSC and published on local authority websites by 1st February 2023.
- 2.2** Alongside cost of care exercises, local authorities are required under the funding guidance, to complete, submit and publish a Market Sustainability Plan which demonstrates how they will ensure local care markets are sustainable by 31st March 2023. This will be informed by the findings of the cost of care exercise and will take account of the approved budget.
- 2.3** A draft of the Final Market Sustainability plan will be brought to Adults and Health Committee in March for approval.
- 2.4** The Council commissioned independent consultants to undertake a cost of care exercise in late 2021 and the findings were updated in June 2022 following consultation with care providers. The findings from this exercise, summarised at 6.2 of this report and attached at Appendix A (65+ Care homes) and Appendix B (18+ domiciliary care) have been used to determine the local cost of care. It should be noted that not all providers who were invited to participate in the exercise did so.
- 2.5** The exercise excludes provision of registered residential and nursing care for people aged 18-65 and unregistered services such as supported living arrangements and day care. As a result, the exercise is only a partial analysis of the local care market. It should be noted that it is not possible to isolate or segment the constituent elements of the market in this way.
- 2.6** The analysis indicates increased costs of paying the cost of care as defined by DHSC is £10.34m for residential and nursing provision and £5.2m for domiciliary care provision.

- 2.6** The Council received £979,000 in the first year of Market Sustainability Funding (2022/23). This was used to fund a 6% fee uplift for domiciliary care providers. In December 2022, Cheshire East Council received its provisional grant settlement figures which confirms an allocation of £3.4m for 2023/24 of Market Sustainability Funding subject to grant conditions being met. 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 £5.08m for 2024/25.
- 2.7** While this funding will help the Council to increase fee rates for care providers whose fee rates are at the lower end of the scale this is not sufficient to pay all providers the cost of care and a funding gap remains.

3. Recommendations

It is recommended that Adults and Health Committee:

- 3.1.** Approve the cost of care reports attached at Appendices A and B for publication on the Council's website and submission to DHSC;
- 3.2.** Note that a further report will be brought to Adults and Health Committee in March 2023 for approval of the final Market Sustainability Plan which will be informed by the cost of care findings and take account of the approved budget.
- 3.3.** Note the level of risk associated with the funding shortfall between the local Cost of Care and the confirmed and estimated level of Market Sustainability Fund allocations and the mitigating factors as set out in 8.6 of this report;
- 3.4.** Delegate authority to the Executive Director of Adults, Health and Integration to make any changes to the report resulting from DHSC feedback prior to its publication on the Council's website.

4. Reasons for Recommendations

- 4.1** The publication of the cost of care exercise is a mandatory requirement of receiving Market Sustainability Funding. If the Council decided not to publish the findings this could result in significant funding being withdrawn which would have a detrimental impact on the Council's MTFs and care markets that are already under extreme pressure due to rising costs, recruitment and retention difficulties and Covid 19 pandemic scarring.

5. Other Options Considered

- 5.1.** Doing nothing would 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 safeguarding |

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 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 Cost of Care exercise

6.2.1 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.

6.2.2 Although this was completed prior to the publication of Government guidance, the information from care providers obtained from surveys and focus groups as part of the exercise was sufficiently detailed to comply with the guidance and complete the DHSC data submission required.

6.2.3 There were some subtle differences in the definition of the cost of care (the Government uses the median cost whereas the Council's analysis used the mean). However, the analysis could be easily adapted to the guidelines and in practice made very little difference to the outcome. Following feedback obtained from care providers at a charging reform webinar held on 8th June, they were given an opportunity to update their surveys or submit a new survey if they hadn't previously responded.

6.2.4 The resulting data is set out in the cost of care reports attached as Appendix A (65+ care homes) and Appendix B (18+ domiciliary care) and summarised below for the two different care types.

6.2.5 65+ care homes

Fully completed surveys were received from 28 local care home providers and a further 11 providers partially completed a survey. This represents a completed response rate of 34% and a participation rate of 42% of those invited to complete the survey. From past experience this level of response is good and this has been verbally confirmed by the care home representative body Care England.

6.2.6 The table below shows the findings for the cost of care, the current standard contract rates and the current average rates paid for each of the four care home bed types.

| Bed type | Standard contract rate | Average rate paid (22/23) | Cost of Care |
|-------------------------------------|------------------------|---------------------------|--------------|
| +65 residential | £489.53 | £718.22 | £852.15 |
| +65 residential with enhanced needs | £579.04 | £753.37 | £891.09 |

| | | | |
|---------------------------------|---------|---------|-----------------------------------|
| +65 nursing | £533.18 | £792.61 | £825.57 (excl. Free Nursing Care) |
| +65 nursing with enhanced needs | £550.41 | £879.76 | £925.62 (excl. Free Nursing Care) |

FNC = Funded Nursing Care costed at £209.19 per week

6.2.7 Cheshire East Council now operates a Dynamic Purchasing System (DPS) which allows care providers who have successfully applied to the DPS to submit a price for delivering individual packages of care. Consequently, the average rates paid are higher than the standard contract rates and more aligned to the cost of care exercise. There are now relatively few placements paid at the Council's Standard Contract rates. In most cases these are placements that were awarded prior to the introduction of the DPS.

6.2.8 Nonetheless the cost to uplift all placements currently below the cost of care would be £10.338 million per year. This is significantly above the anticipated additional monies from the Market Sustainability Fund and any increase arising from an increase in social care council tax precept.

6.2.9 18+ domiciliary care

A total of 34 Care at Home providers fully completed the survey and a further 20 partially completed the survey representing a response rate of 33% and a participation rate of 52%.

6.2.10 Analysis using the Government guidance reveals the local cost of care to be £22.50 per hour with Councils required to report on the cost of care for 15 minute, 30 minute and 45 minute calls as below (although it is recognised that it is Cheshire East Council's policy not to commission 15 minute calls):

| | |
|-----------|--------|
| 15 Minute | £7.56 |
| 30 Minute | £12.55 |
| 45 Minute | £17.53 |
| 60 Minute | £22.50 |

6.2.11 The cost to match the cost of care rates for 18+ domiciliary care providers would be £5.2 m.

6.5.6.3 Consultation and Engagement

6.5.1 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. Telephone support was also available to care providers. Response rates for each sector are set out in section 4 of this report and are relatively good for engagement with the care sector.

6.5.2 Providers were consulted on the original findings of the cost of care exercise via a webinar held in early June 2022. As a result of the consultation a further opportunity was given for providers to participate in the exercise or update their figures. This resulted in some slight revisions to the data and the revised data was submitted to DHSC on 1 July 2022.

7. Implications

7.1. Legal

7.1.1 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.

7.1.2 The Care Act places an expectation on the Council 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.

7.2. Finance

7.2.1. It has been confirmed that the Council can expect to receive £3.4m through Market Sustainability Funding for 2023/24 and it is estimated that it could receive £5.08m for 2024/25. These figures have been included in the MTFS which is about to go out for consultation.

- 7.2.2.** Growth funding of £2 million to uplift care fees has also been agreed in 2023/24 as part of the Council's Medium Term Financial Strategy from last year's MTFs process.
- 7.2.3.** The recommendations in this report to publish the information do not commit the LA to any price increases, or to match rates to the cost of care. However, the risk to be noted is that publication of the rates may result in providers interpreting that as an opportunity to request higher rates by those who are currently receiving payments below the FCOC levels.
- 7.2.4.** The calculations in section 6 of this report are to provide an idea of the potential scale of the increase in costs should the Council decide to pay rates at a higher level equal to the FCOC output rates.
- 7.2.5.** Communications linked to the publications will need to be robust and help providers to understand the purpose and limitations of the FCOC work and outputs, as the FCOC is only one element to be used by Councils when setting fee rates.
- 7.2.6.** 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. The Council currently has a balanced four year budget position and is about to go out to consultation on the 2023/24 to 2026/27 MTFs. In the absence of additional external funding, the cost to sustain investment in the care market post 2024/25 jeopardises this balanced position.

7.3. Policy

- 7.3.1.** 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.

7.4. Equality

- 7.4.1.** An Equality Impact Assessment has not been completed for this report but will be completed for the Market Sustainability Report which will be presented to Committee in March 2023.

7.5. Human Resources

- 7.5.1.** There are no Human Resource implications for Council staff.

7.6. Risk Management

- 7.6.1.** If the Council's assumptions around funding allocations for 2024/25 are correct this leaves a £6 million gap between the estimated local cost of care and the available funding from the Market Sustainability Fund.
- 7.6.2.** There is a risk that, having participated in the cost of care exercise, care providers will expect to be paid the cost of care regardless of whether or

not this is affordable for a local authority or the authority receives the funding required from Government departments. There is also a possibility of legal challenge in this regard possibly resulting in judicial review. To mitigate against this risk, a number of caveats have been included in the reports within the introductory statement.

- 7.6.3.** 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. The Council currently has a balanced four-year budget position and, in the absence of additional external funding, the cost to sustain investment in the care market post 2024/25 jeopardises this balanced position.
- 7.6.4.** The care market is currently facing unprecedented challenges resulting from increasing costs and workforce shortages. The Council is under constant pressure from the market to increase fee rates with some providers telling commissioners that delivering care in Cheshire East is no longer sustainable. There is, therefore, a need to take urgent action to support the care market through the provision of increased funding in the short term and through service redesign in the longer term. If the Council decides not to publish the cost of care findings it will not be eligible for additional funding to support the market. Given the current and increasing pressures in the market as highlighted by the cost of care exercise this could have implications for the Council's ability to meet its statutory duties under the Care Act 2014.
- 7.6.5.** The Council can look to mitigate these risks through continuing to work with system partners to redesign services and/or identify other funding opportunities, re-prioritise funding within the Medium Term Financial Strategy and reviewing Adult Social Care services to re-prioritise funding in favour of statutory provision ensuring that the Council continues to meet its duties under the Care Act 2014.

7.7. Rural Communities

- 7.7.1.** Rural communities are disproportionately affected 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". This is reflected in the costs of individual packages of care.

7.8. Children and Young People/Cared for Children

- 7.8.1.** 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 is, therefore, no

statutory impact on Children and Young People or cared for children. However, as noted above different segments of the care market do not operate in isolation.

7.9. Public Health

- 7.9.1. The recommendations in this report could have a positive impact on public health as the Market Sustainability Funding should improve the quality and availability of care services locally.
- 7.9.2. Good quality care not only improves experiences for individuals and families but can help to maintain independence and prevent worsening of health in the future.
- 7.9.3. Those in our most deprived areas have a shorter life expectancy but also spend more years in poor health and therefore there is increased need for care in these areas. This can also be the case for many traditionally marginalised groups. Future work will need to ensure that changes to care funding do not exacerbate existing inequalities across Cheshire East and adequately support our residents with the greatest needs.

7.10. Climate Change

- 7.10.1. 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.
- 7.10.2. Contribution to social value including environmental outcomes is measured as part of the commissioning processes.

| Access to Information | |
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| Contact Officer: | Joanne Sutton, Acting Head of Commissioning Joanne.sutton@cheshireeast.gov.uk 0781 1821005 |
| Appendices: | Appendix A – 65+ Care Home cost of care report Appendix B – 18+ domiciliary care cost of care report |
| Background Papers: | Market Sustainability and fair cost of care 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 |