

<b>9 March 2023</b>		<b>ITEM: 12</b>
<b>Health and Wellbeing Overview and Scrutiny Committee</b>		
<b>Market Sustainability Plan</b>		
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> Key	
<b>Report of:</b> Catherine Wilson – Strategic Lead Commissioning and Procurement		
<b>Accountable Assistant Director:</b> Ceri Armstrong – Acting Assistant Director of Adult Social Care and Community Development		
<b>Accountable Director:</b> Les Billingham – Acting Director of Adult Social Care		
<b>This report is</b> public with the exception of appendix 1		

## **Executive Summary**

This report seeks agreement for the attached Market Sustainability Plan (MSP) to be submitted to Cabinet and subsequently the Department of Health and Social Care. It must also be published on Thurrock Council’s website.

The MSP forms part of our preparation for the wider Adult Social Care Funding Reforms commonly referred to as the Care Cap (which was due to be introduced in October 2023 and has now been delayed until 2025).

Section 5 of the Care Act 2014 sets out duties on local authorities to facilitate a diverse, sustainable and high quality market for their whole local population, including those who pay for their own care and to promote efficient and effective operation of the adult care and support market as a whole.

In December 2021 the government introduced the requirement for an MSP to be developed with a final submission in 2023. The MSP should detail how we will meet the duties contained in section 5 of the Care Act specified above. The document details the risks we face in our older people residential care and domiciliary care (18+) markets and how we plan to mitigate those risk and move to ‘fair price’ of care conducive with a sustainable market.

### **1. Recommendation(s)**

- 1.1 To agree the attached Market Sustainability Plan prior to Cabinet and subsequent submission to the Department of Health and Social Care (DHSC).**

## **2. Introduction and Background**

- 2.1 In preparation for the Adult Social Care Charging Reform (the main component of which is often referred to as the 'Care Cap' but also included arranging residential care for people's whose capital exceeded limits) the local authority was required to carry out a number of activities. These reforms were due to be introduced in October 2023 but have now been delayed until at least 2025.
- 2.2 In December 2021, the Government published a white paper, 'People at the Heart of Care' that outlined a 10-year vision for adult social care. As part of these reforms the Market Sustainability and Fair Cost of Care Fund was announced.
- 2.3 The purpose of the fund is to support local authorities to prepare their markets for the reforms outlined in 2.1 and to support Local Authorities to move towards paying providers a 'fair cost' for care.
- 2.4 As a condition of receiving funding, Local Authorities needed to evidence the work they were doing to prepare their markets for these reforms and submit the following documents to DHSC by 14 October 2022:
- Outcome of Cost of Care exercise for 65+ care homes and 18+ domiciliary care;
  - A spend report detailing how funding allocated for 2022 to 2023 was being spent in line with the funds purpose; and
  - A provisional Market Sustainability Plan, using the cost of care exercise as a key input to identify risks in the local market. A final MSP was to then be submitted in 2023 after local government budgets were finalised. The final MSP should detail how the local authority will move towards the cost of care calculated as part of the exercise described in the first bullet point.
- 2.5 Although the reforms have been delayed until 2025, it is still a requirement to submit the final MSP to government. At the time of preparing this report the submission date has not been formally confirmed but is believed to be 31 March 2023. We were advised that we would receive feedback on the draft to help shape our final submission – no feedback has been received from government.
- 2.6 The format of the MSP is prescriptive and must be completed using the template provided. Due to concerns raised by LAs with the governments proposed process to determine a 'fair cost of care', the Local Government Association (LGA) sought Kings Counsel (KC) advice on behalf of Councils in England. It is this advice that has helped shaped the final submission. Both the template and the KC advice is referenced in section 8 – Background Reading and should be read in conjunction with the MSP.

- 2.7 The proposed MSP is attached as appendix 1. It is exempt from public view as we have been instructed by government that all confidential information should be extracted and for it to be published on a gov.uk website as and when directed.
- 2.8 As can be seen from the document, by having such a low self-funder market and by also allowing people with capital in excess of the existing cap to access our contracts (this is not usual practice in other local authorities that have a larger self-funding population) we are not exposed to the same risks as many other local authorities.
- 2.9 We do have many positives within our market, least not our above average quality in residential homes for older people. However, we face different challenges to providing a sustainable market within Thurrock to other local authorities that must also be considered.
- 2.10 Our key risk is the recruitment and retention of the workforce in such a competitive environment. As such, we have been involved in the development of a regional adult social care workforce strategy and are trying to shape alternative models of care to allow people the opportunity to have blended roles in which they can progress. Some of these new models have a proven impact on the recruitment and retention of staff.
- 2.11 Although there are issues with the governments proposed approach to defining a 'fair cost of care', we have welcomed the opportunity to engage with providers and have an open conversation about the challenges they currently face. We hope for this to continue as we develop our own more meaningful fee setting process.
- 2.12 Within the residential care market we had a good level of engagement with providers, resulting in 82% of homes submitting data. However, although the Cost of Care exercise created an 'average', Thurrock Council pays a variety of rates depending on need e.g. high needs dementia rate for those presenting with challenging behaviour who require additional staff/staff with additional expertise. As such, comparisons can be complex as the difference between the mean average and the current rates vary depending on need.
- 2.13 The Council was disappointed to not replicate the high rate of return for residential care with only 25% of domiciliary care providers choosing to submit. Due to such a low response rate and as the organisations who responded were not representative of the market, the Local Authority are unable to rely on the data submission. It will instead be used as a basis for more in-depth conversations with providers.
- 2.14 As such, we are committed to developing a more sophisticated approach to fee setting in partnership with providers so that we can truly move to a 'fair cost' but one that is based on need, local circumstance and changing models of care rather than the blunt tool provided for this exercise.

- 2.15 The completion and submission of the MSP not only allows for a focussed review on segments of our care market but is currently a requirement of accessing Fair Cost of Care Funding from government. This funding is discussed in section 3.

### **3. Issues, Options and Analysis of Options**

- 3.1 The external adults' placements budget for the current year is £32.658m. The forecast outturn for the year is £35.323m.
- 3.2 As part of the local government finance settlement for 2022/23, Thurrock Council were awarded £0.442m of Market Sustainability and Fair cost of care funding. 25% of this grant funding was ring-fenced to fund the undertaking of the project, and the remaining for part of the uplift that was given to providers weekly rates.
- 3.3 The provisional finance settlement for 2023/24 has seen the grant allocation increase to £1.532m, an increase of £1.090m. This is also now referred to as the Adult Social Care Market Sustainability and Improvement Fund.
- 3.4 As detailed in section 2 of the MSP, within the parameters of the £1.090m funding, the Council will work with providers to improve the long term sustainability of their services/sector. We will utilise the funding to address the risks to the sustainability of the market detailed in the MSP and find solutions that make a difference to the sector.

### **4. Reasons for Recommendation**

- 4.1 It is a requirement that we submit a final Market Sustainability Plan to central Government in 2023.

### **5. Consultation (including Overview and Scrutiny, if applicable)**

- 5.1 Health and Wellbeing Overview and Scrutiny – January 2023
- 5.2 Two provider engagement events – 05 September 2022 and 04 October 2022.
- 5.3 Further provider engagement event in February 2023.

### **6. Impact on corporate policies, priorities, performance and community impact**

- 6.1 Although a sustainable market for adult social care can be seen as positively impacting on all corporate policies, it is the 'People' priority and the desire to provide high quality public services that is the most pertinent.

## 7. Implications

### 7.1 Financial

Implications verified by: **Mike Jones**  
**Strategic Lead – Corporate Finance**

As detailed within the report, In December 2021, the Government published a white paper, 'People at the Heart of Care' that outlined a 10-year vision for adult social care. As part of these reforms the Market Sustainability and Fair Cost of Care Fund was announced.

Specific grant funding of £0.441m was received in 2022/23, with the allocation increasing to £1.532m in 2023/24. This funding will be used to implement the required changes and increase in the funding which external care providers receive. This will be contained with the grant allocation, and therefore will not have a direct impact on the Councils overall general fund

Funding for future years will be assessed once announcement is made and the funding is confirmed.

### 7.2 Legal

Implications verified by: **Sarah Dawkins**  
**Barrister (Consultant) on behalf of Thurrock's  
Chief Legal Officer**

On behalf of the Chief Legal Officer. I confirm that I have read this paper and attachments referred to therein. 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. Section 4.31 of the Care and Support Statutory Guidance confirms the obligations expected as follows:

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.”

The government is implementing wide-ranging and ambitious reform of adult social care. In December 2021 the Government published a white paper, *People at the Heart of Care*, that outlined a 10-year vision that puts personalised care and support at the heart of adult social care, ensuring that people (a) have the choice, control and support they need to live independent lives (b) can access outstanding quality and tailored care and support and (c) find adult social care fair and accessible

Implementation of the Market Sustainability and Fair Cost of Care Fund is one of the first steps in the journey to achieve this. The fund was announced on 16 December 2021. The primary purpose of the fund is to support local authorities to prepare their markets for reform, including the further commencement of Section 18(3) of the Care Act 2014 in October 2023, and to support local authorities to move towards paying providers a fair cost of care.

Accordingly, there appears to be no adverse legal implications arising from the recommendations set out within this paper, and they are consistent with the expected obligations upon the Council.

### 7.3 **Diversity and Equality**

Implications verified by: **Roxanne Scanlon**  
**Community Engagement and Project**  
**Monitoring Officer**

Due to the nature of the services under discussion in the MSP (older people residential care and domiciliary care for people aged 18+) older people will be disproportionately impacted by any activity in this area.

However, the MSP seeks to identify both the key risks to the long term sustainability of these markets and how as a council (working in partnership with providers) we will mitigate these risks. As such, the development of the MSP should have a positive impact on older people (and all service users) in that it should secure sufficient services to meet needs both now and in the future.

### 7.4 **Other implications** (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder, and Impact on Looked After Children

None

**8. Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- [Market Sustainability and Fair Cost of Care Fund: purpose and conditions 2022/23](#)



Fair Cost of Care  
guidance JAKC Revise

- [Annex C – Market Sustainability Plan template](#)
- [Eastern Region Adult Social Care Workforce Development Plan](#)
- [Provisional local government finance settlement 2023 to 2024: consultation](#)

**9. Appendices to the report**

- Market Sustainability Plan (Final Draft) 2023

**Report Author:**

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