

HEALTH AND ADULT SOCIAL CARE OVERVIEW AND SCRUTINY COMMITTEE

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ADULT SOCIAL CARE REFORM

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Summary

On 7 September 2021, government set out its new plan for adult social care reform in England. This included a lifetime cap on the amount anyone in England will need to spend on their personal care, alongside a more generous means-test for local authority financial support.

This report is for information and includes the key charging reforms proposed and will inform on the development of the analysis and supporting sector engagement. The report highlights the operational and financial impact of the proposals and layout the practical steps the Council will take to manage implementation of the proposals.

1. Budget and policy framework
 - 1.1 Section 14 of the Care Act 2014 provides Local Authorities with the power to charge adults in receipt of care and support services, where the local authority is permitted to charge for the service being provided.
 - 1.2 Section 14 of The Care Act 2014 provides local authorities with the power to charge for services meeting Carers' needs, by providing services directly to the carer.
 - 1.3 Section 17 of The Care Act 2014 permits local authorities to undertake an assessment of financial resources. The financial assessment will determine the level of a service user's financial resource, and the amount (if any) which the service user may be likely to be able to pay towards the cost of meeting their needs through care and support services.
 - 1.4 Medway Council's 'Charging and Financial Assessment for Adult Social Care and Support Services' policy has been designed to comply with The Care Act 2014. Its aim is to produce a consistent and fair framework for charging and financial assessment for all service users that receive care and support

services, following an assessment of their individual needs, and their individual financial circumstances.

2. Background

2.1 On 7 September 2021, government set out its new plan for adult social care reform in England. This included a lifetime cap on the amount anyone in England will need to spend on their personal care, alongside a more generous means-test for local authority financial support.

2.2 The reforms will extend the right for self-funding individuals to have their eligible care needs met by their local authority, so that they can access care at, generally lower, local authority rates. This is aimed at improving fairness and accessibility, as well as supporting the operation of the cap, which is based on how much local authorities pay for care.

2.3 The government has introduced an amendment to the Care Act 2014 in the way that people within the means test progress towards the cap. This amendment ensures that only the amount that the individual contributes towards these costs will count towards the cap on care costs, and people do not reach the cap at an artificially faster rate than what they contribute.

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

2.5 The introduction of the reforms requires a change in system and workforce capacity requirements to meet additional demand for assessments and commissioning. The key changes are:

- Care cap
- Financial Assessment (Means Testing)
- Fair Cost of Care
- Section 18(3) of the Care Act

2.6 Care Cap

2.6.1 The Charging Reforms encompass the introduction of a care cap on the amount people in England pay for their personal care over their lifetime and a more generous means-test.

2.6.2 From October 2023 the cap will be set at £86,000. Thereafter, an annual review will assess and determine whether this amount should be adjusted to take account of inflation. Anyone assessed by a local authority as having eligible care and support needs, whether a new entrant or an existing social care user, can begin to progress towards the cap from October 2023 onwards.

- 2.6.3 The cap is the maximum amount anyone who starts receiving care after this date will have to pay to meet their eligible care and support needs. This is based on what the local authority charges the person to meet their eligible care and support needs, or in the case of self-funders who arrange their care themselves, what the cost would be to the local authority of meeting those needs.
- 2.6.4 Anyone assessed by a local authority as having eligible care and support needs as defined as such under the Act, whether a new entrant or an existing social care user, can begin to progress towards the cap from October 2023 onwards. Costs incurred before October 2023 do not count towards the cap in Medway.
- 2.6.5 A person can only accrue costs towards the cap if they have been assessed as having eligible needs and only the cost of meeting eligible care needs according to the Care Act accrues towards the cap.
- 2.6.6 Once a person has been assessed as having eligible care and support needs, the local authority must create a care account, with a statement of that account at least every 12 months to keep them informed of their progress towards the cap.
- 2.6.7 A person could, if they choose to, specifically ask to not progress towards the cap, in which case a care account would not be required. In this scenario, the local authority should explain to the individual the implications of opting out of progressing towards the cap.

2.7 Financial Assessment (Means Testing)

- 2.7.1 A financial assessment, also known as a means test, is where Adult Social Care ask about income, savings, and property to calculate how much you need to contribute towards the cost of your care and support.
- 2.7.2 The financial assessment will continue to work in the same way as it does currently. However, from October 2023, to help more people with the costs of their care and support, alongside the cap the reforms are also increasing the point at which a person is eligible for local authority means-tested support.
- 2.7.3 The reforms introduce changes to the upper capital limit (UCL), the point at which people become eligible to receive some financial support from their local authority; it will rise to £100,000 from the current £23,250. The UCL of £100,000 will apply universally, irrespective of the circumstances or setting in which an individual receives care.
- 2.7.4 The lower capital limit (LCL), the threshold below which people will not have to pay anything for their care from their assets will increase to £20,000 from £14,250.

2.7.5 Appendix 1 provides some case studies to demonstrate the changes by introducing the care cap and changes in the ULC.

2.8 Fair Cost of Care Exercise

2.8.1 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

2.8.2 The government requires local authorities to start building strong foundations and prepare markets for wider charging reform and thereby increase market sustainability.

2.8.3 As a condition of receiving future funding, local authorities will need to evidence the work they are doing to prepare their markets. The Council is required to complete the Fair Cost of Care (FCoC) exercise to arrive at a shared understanding with providers of the local cost of providing care.

2.8.4 The funding must be used to improve sustainability of the 65+ care home and 18+ homecare markets (including Homecare providers who operate in extra care settings), and not just cover existing pressures.

2.8.5 The Fair Cost of Care exercise is being undertaken in Medway utilising the Toolkits produced by central government to collate and analyse cost data.

- 14 out of 28 Homecare providers responded (50% return rate)
- 11 out of 31 Care Homes in scope providers responded (35% return rate)

2.8.6 This information will support the development of a Market Sustainability Plan.

2.9 Market Sustainability

2.9.1 Alongside Cost of Care exercises, local authorities are required to develop and submit a provisional market sustainability plan, which will be followed by a final market sustainability plan when local government budgets for 2023 to 2024 have been confirmed.

2.9.2 The purpose of the market sustainability plan is for local authorities to assess and demonstrate how they will ensure local care markets are sustainable, as they move towards implementing reform.

2.9.3 The plan will assess the impact current fee rates are having on the market and the potential future risks (particularly in the context of adult social care reform).

2.9.4 A sustainable care market is defined 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

2.9.5 The provisional market sustainability plan is required to be submitted by 14 October 2022, outlining Medway Council's assessment of the sustainability of our local care market in relation to 65+ care home services and for 18+ domiciliary care services, which:

- takes into account the results from the cost of care exercises
- considers the impact of future market changes over the next three years, particularly in the context of adult social care reform
- sets out an outline action plan for addressing the issues identified and the priorities for market sustainability investment

2.9.6 A final market sustainability plan is required to be submitted in February 2023.

2.9.7 As part of our budget build for 2023/24 we are required to demonstrate how we will move towards the calculated fair cost of care.

2.9.8 Local authorities are required to publish their final market sustainability plans (with commercially sensitive information redacted) once they are finalised and following notification from DHSC that the review process is complete.

2.9.9 The document is required to be published on the local authority GOV.UK webpage, in a way that is clearly labelled, searchable and in an easy to find location.

2.10 Section 18(3) of the Care Act

2.10.1 The Council must make self-funders who want to progress towards the cap aware that they can ask the local authority to meet their needs at any time. The Council will have a duty to meet the self-funder's needs if the following conditions are met:

- the person asks them to
- the local authority finds (through an assessment) that the person has eligible care and support needs (defined as such under the Act)

2.10.2 In these circumstances, we will be required to explain to the person, what it would mean for them to have the local authority meet their needs, i.e., that

following an assessment it might be determined that their needs are better met in a different care setting.

- 2.10.3 We will be required to meet the needs of self-funder in the same way as it would any other individual whose needs it is meeting, for example by commissioning the person's care or acting as a broker between the self-funder and the provider to negotiate a contract at a local authority rate. However, under a brokering arrangement, the local authority remains under a duty to meet the person's needs, which is retained even if the person defaults on payment.
- 2.10.4 Any care provided beyond what a local authority assesses as being required to meet an individual's eligible needs does not count towards the cap.
- 2.10.5 The government has delayed its initial plans of giving all self-funders the right to take advantage of councils' contracted rates with care homes, following concerns authorities would lack the workforce to implement the change. Instead, it will be applied first to new entrants to care homes, with those already in residential care becoming eligible from April 2025 at the latest.

2.11 Resource Requirements

- 2.11.1 A central component required to implement reforms is an increase in social care workforce and operational efficiency to conduct additional demands for care and financial assessments.
- 2.11.2 In the context of councils nationally already facing significant backlogs of assessments, reviews, and care packages along with social worker vacancies and turnover, there is a significant risk that despite additional funding the service will not be able to deliver on reforms.
- 2.11.3 The predicted additional operational workforce below will be required for the Southeast Region to manage additional demand for assessments (source CCN Newton Report)
- Number of Social Work staff - 1186
 - Number of Financial Assessors - 250

3. Risk management

Risk	Description	Action to avoid or mitigate risk
<p>Capacity to deliver increased workload due to implementation of reforms</p>	<p>Risk to Care Act duties</p> <p>Implementation of reforms will necessitate a significant increase in Care act and financial assessments irrespective of rise in social worker vacancies and turnover</p>	<p>Local recruitment campaign: rapid recruitment to mitigate demands</p> <p>Revised guidance suggests ability to widen the number of staff able to carry out assessments</p> <p>Utilisation of an online tool for Care Act assessments</p> <p>Utilisation of an online tool for financial assessment</p>
<p>Funding to pay fair rate inadequate</p>	<p>Self-funder fee gap: DHSC not offering further measures or additional funding than that already pledged, creating a significant financial risk to the council.</p> <p>From provider perspective a possibility of provider failure and market exits, while destabilising the overall care market within local area</p>	<p>The use of first- and third-party top-ups could reduce the financial impact for both the local authority and providers</p>
<p>Care Cap - monitoring</p>	<p>Calculation of metering towards cap at the right rate; incorrectly obtained, results inaccurate rate</p>	<p>Implement system upgrades to account for the cap and metering</p>

4. Financial Implications

- 4.1 Alongside the Spending Review 2021 the government launched its reforms for health and social care and the local government allocations for the first three years of the Department for Health and Social Care's Market Sustainability and Fair Cost of Care Fund.
- 4.2 In 2022/23 Medway received £674,000 from a national allocation of £162million.
- 4.3 Up to twenty five percent of the funding in 2022/23 may be spent on implementation activities associated with preparing markets for reform.

- 4.4 The remaining seventy-five per cent of the funding, or where a recipient authority incurs implementation costs amounting to less than twenty-five per cent of their allocation, must be used to increase rates if its rates are below the fair cost of care (in respect of residential and nursing care for those aged 65 and over, and domiciliary care for those aged 18 and over, including those who operate in extra care settings)
- 4.5 Based on the national allocations for 2023/24 (£1.4billion) and 2024/25 (£2billion) we expect to receive in the region of £5.8million and £8.2million respectively. However, we are still awaiting confirmation of the proposed approach to distribution for this funding.
- 4.6 In addition to the Market Sustainability and Fair Cost of Care Fund we have also received an initial allocation of £97,600 from the AC Charging Reform: Implementation Support Funding Grant, intended to support local authorities to begin planning and preparations for charging reform.
- 4.7 There are significant concerns nationally and locally, that the funding will not be adequate to enable us to meet the cost of implementing the various aspects of Social Care reform.
- 4.8 Work is ongoing to understand the impact of the financial impact of the reforms and further updates will be provided as part of the budget build process for 2023/24.

5. Legal Implications

- 5.1 Failure to implement the social care charging reforms could expose the Council to potential proceedings for breach of its statutory duty under the Care Act 2014 and to potential claims for damages by or on behalf of individuals for breach of Articles 2 and 8 of the European Convention on Human Rights.

6. Recommendation

- 6.1 The Committee is asked to note the contents of this report.

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Appendices

Appendix 1 – Case Studies

Background papers

[The future of Adult Social Care – Preparing for Reform](#)