

# Report to Cabinet

**16 November 2022**

<b>Subject:</b>	Action Taken on Matters of Urgency - New Burdens: Market Sustainability and Cost of Care
<b>Cabinet Member:</b>	Leader of the Council Councillor Carmichael
<b>Director:</b>	Rashpal Bishop Director of Adult Social Care
<b>Key Decision:</b>	Yes
<b>Contact Officer:</b>	Chris Guest Service Manager – Commissioning <a href="mailto:chris_anne_guest@sandwell.gov.uk">chris_anne_guest@sandwell.gov.uk</a>  Daljit Bhangal Operations Manager - Commissioning <a href="mailto:daljit_bhangal@sandwell.gov.uk">daljit_bhangal@sandwell.gov.uk</a>

## 1 Recommendation

1.1 That the following details of the urgent action taken by the Leader of the Council be noted:-

- (1) to approve the submission to the Department of Health and Social Care documents relating to the outcome of the Cost of Care exercise for 18+ Domiciliary Care and 65+ Residential and Nursing sectors consisting of:

- Cost of Care Table,



- Spend Report,
  - Cost of Care Report and
  - Market Sustainability Plan (provisional and final)
- (2) To authorise the Director of Adult Social Care authority to make necessary changes to the Cost of Care documents before final submission, in consultation with the Cabinet Member for Adult Social Care and Health, given the strict deadlines set by the Government.
  - (3) To approve publication on the Council's website of the process undertaken by the Council in relation to the Cost of Care exercise and the resultant Market Sustainability Plan in line with the requirements laid down by the Department of Health and Social Care (DHSC).
  - (4) To note the potential impact and pressure on the Council's budget should the Government not make sufficient additional funding available to the Council to meet the financial burdens associated with sustainable rates as a result of the Cost of Care exercise for the 18+ Domiciliary Care and 65+ Residential and Nursing care homes sectors.
  - (5) To endorse the position that the Council takes into account the outcome of the Cost of Care exercise and available Government funding together with sound judgement, evidence and a negotiation process when setting a Fair Cost of Care and assessing market sustainability and the delivery of legislative duties under Section 5 of the Care Act.
  - (6) To endorse the position that further progress towards reaching the median cost over three years will not begin until government funding is confirmed and will be phased in line with the additional government funding received.
  - (7) To approve the remaining 2022/23 allocation of the Cost of Care Grant be used to further uplift the Domiciliary Care, Extra Care, Promoting Independence and Rapid Response/ Wrap Around services hourly rate from £16.00 per hour to £16.92 per hour in recognition of significant market pressures being faced, and for this



to be backdated to 1 September 2022 and to be in place until 31 March 2023.

- (8) That the Director of Adult Social Care be delegated to determine how any surplus Cost of Care grant mentioned in 1.7 is spent in consultation with the Cabinet Member for Adult Social Care and Health.
- (9) Note the general inequity in treatment and likely risk of destabilisation within markets deemed out of scope by the Cost of Care exercise.
- (10) To approve the completion of further market analysis for out of scope markets (Supported Living, Complex Residential and Nursing Care and Day Care, and) to mitigate risk noted in recommendation 1.9.
- (11) To note the inequity in the hourly rate for Direct Payments falling a year behind the Council's Domiciliary Care rate and to agree to a further paper being brought to Cabinet to address this.

## 2 Reasons for Recommendation

- 2.1 Each local authority has been asked to complete a Cost of Care exercise for 65+ residential and nursing homes and for Domiciliary Care (otherwise known as Home Care) for people 18+ by 14 October 2022 to better understand the sustainability of fee rates. In addition, the Government requires Councils to complete a provisional Market Sustainability Plan (MSP) to establish how they will close the gap, if one exists, between current fee rates and the findings of the Cost of Care exercise.
- 2.2 The report and its recommendations include an uplift to the Domiciliary Care hourly rate and other services (Promoting Independence, Rapid Response/Wrap Around and commissioned Extra Care) that mirror this rate as the Council is required to pass on funding provided by the Government related to the Cost of Care within this financial year.



- 2.3 The report also highlights current inequalities and potential destabilisation in other markets out of scope as a result of an increase in rates resulting from the Cost of Care exercise for in scope services.
- 2.4 Under Part 4 of the Council's Constitution, the Scrutiny Procedure Rules provide that matters may not be called in for scrutiny when they are considered urgent. A matter is considered urgent where a delay would prejudice the Council's or the public interest.
- 2.5 The Rules also stipulate that decisions taken in this manner must be reported to the next available meeting of the Cabinet and Council, together with the reasons for the urgency.
- 2.6 This report indicates an action taken as a matter of urgency by the Leader of the Council since the last meeting.
- 2.7 The actions taken were in accordance with the scope of authority of the Leader of the Council.

### 3. **Alternative Options considered and discounted**

- 3.1 The Council does not have to submit the outcome of the provisional Market Sustainability Plan or Cost of Care exercise to the DHSC, however to not do so would mean that it will have to pay back the grant of £1.25 million that it has received, of which £456,315 has already been spent.
- 3.2 However, given the exercises have been completed, if the Council were not to do so, providers who have engaged are likely to challenge the Council on the position it has taken and there may be a backlash and adverse publicity.
- 3.3 The Council is not mandated to implement the outcome of the Cost of Care. Indeed, the duty under Section 5 of the Care Act is to ensure they have a "sufficient" market to buy services from, and it is not the duty of any local authority to pay any specific "rate" for care. Therefore, it will be important through existing contract and commissioning arrangements that the Council continue to monitor the market.



### 3 How does this deliver objectives of the Corporate Plan?



#### **People live well and age well.**

Care and support services enable people to live independent lives in their own homes or close to home and also facilitate access to community resources.



#### **Strong resilient communities**

Asset and strength-based approaches support strong communities and contribute to reduced formal care costs.



#### **A strong and inclusive economy**

Given the nature of care and support services and their delivery to vulnerable people who reside in Sandwell, providers are very likely to employ people from the local area, supporting the local economy.

### 6 Implications

**Resources:** The median rate derived from the Cost of Care exercise for Domiciliary Care is £20.49, assuming current commissioned hours, if implemented, it would be a cost pressure of an additional £5,416,830 per annum not including any inflationary uplifts in future years.

The median rate following the conclusion of the Cost of Care exercise for residential and nursing care is reported to increase rates for the following categories by an additional:

**Residential:** £402.67

**Residential Dementia:** £339.29

**Nursing:** £397.54

**Nursing Dementia:** £347.96



If the above increases to the median rate are implemented, this would be an estimated cost pressure of an additional £12,697,748 per annum, which is before any inflationary uplifts in future years.

The combined total of alignment to the median rates for both in scope markets would be an estimated cost pressure of £18,114,578 million per annum.

Whilst a long-term intention, in line with this cost of exercise may be to work towards the estimated medians, where there is confidence that this is reflective of market costs, in the context of specific rates for care paid, DHSC guidance states that “*fair means what is sustainable for the local market*”. The Council should continue to monitor the pressure in the market (both staffing and business operating costs) through the fee exercise, and as was the case for this financial year’s above average fee uplifts, make adjustment (% fee uplifts) to reflect changes to operating costs. No single exercise at any point in time becomes the “end” point for this assessment of market sustainability. Achieving this median is not an indicator of a sustainable market; the ability to purchase the volume of care required in a timely way is a primary indicator of how the market is performing. It is important to note that the ability to move towards this rate will be dependent upon future allocation of the Fair Cost of Care fund by the DHSC.

It should be noted that the Council’s draft budget for 2023/24 and Medium Term Financial Plan assume that the full financial impact of the Fair Cost of Care Reform is funded by additional government grant.

## **Legal and Governance:**

The Council is statutorily required under the Care Act 2014 to carry out an assessment of anyone who appears to require care and support. The Local Authority role is seen





as critical, and under section 5 of the Care Act 2014, the duty to shape and maintain an efficient and effective market of services for meeting care and support needs in the local area is firmly placed with them.

This duty applies in relation to services that the Local Authority commissions directly, but also to other non-commissioned services in its area (including those used by self-funders), universal services and services provided by partners (such as health or charitable services) that together create the marketplace.

The main consideration in relation to affordability of the outcomes of the Cost of Care exercise is covered by the Local Government Finance Act 1992 which requires the Council, in normal times, to set a balanced budget for each financial year following a procedure laid out in legislation. The provisions prevent a local authority from borrowing money to cover its annual revenue expenditure. Local authorities must also maintain a system of internal audit, as required by the Accounts and Audit Regulations 2015 (SI 2015/234). These require that elected members maintain a sound system of internal control including arrangements for the management of risk, an effective internal audit, and that local authorities prepare annual accounts.

Legal advice has been commissioned by the Local Government Association on obligations because of the Cost of Care and the advice received is appended to this report. The risks identified have been included in some detail in the Risk Assessment accompanying this report. Risks relate to:

**Risk:**

- Due to increased business operating costs and well-documented challenges with recruitment and



retention providers could become less resilient if fees are not sustainable moving forwards

- Impact on quality of service provision and consequent detrimental impact on service users; particularly impacting continuity of care
- Implementation of uplifts to rates, depending on the level they are increased by to make them sustainable, without Government funding on a recurring basis presents an untenable risk to the Council of being able to deliver a balanced budget
- Not implementing uplifts to rates is likely to elicit backlash from the market and adverse publicity for the Council
- If the resilience of the market the Council purchases from is undermined by unsustainable rates, there is likely to be an increase in delayed discharges because of insufficiency of provision, putting a strain on the wider health and social care system
- Inequity in response to market sustainability, with out of scope services treated differently because of a lack of funding, creating unviability in those markets. We cannot consider care homes and domiciliary care independent of the wider market. Activity (such as increasing the unit price) in one part of the social care economy is likely to have adverse impacts on sufficiency in other areas, especially as providers are recruiting from the same pool of workers locally
- Impact on the rate of Direct Payments and the risk of challenge if the anomaly between the Direct Payment rate and standard Domiciliary Care rate is not addressed





- Changes within the current Government because of a new Prime Minister taking over on 6 September 2022 may mean that previous commitments on funding to be provided to Councils may not be honoured, jeopardising the affordability and implementation of outcomes identified by the cost of Care exercise.
- The accuracy of information supplied by providers not being fully reliable

These risks have been assessed and mitigations have been put in place, as far as they can be, to minimise impact.

Approval of the recommendations being sought will contribute to the mitigation of the directorate risk 025- resilience in the care market- which is currently assessed as red, however without Government funding this would present a wider financial risk to the Council.

#### **Equality:**

An Equality Impact Assessment has been undertaken, which identifies that should fees not be uplifted to reflect sustainable rates, there are implications to the market, including potential provider failure, and therefore there will be an impact across all service users regardless of their protected characteristics.

No service users with particular protected characteristics will be differentially impacted however.

#### **Health and Wellbeing:**

The implementation of revised fee levels will assist the market to continue to deliver good quality services to the residents of Sandwell, however there is an inequity in how markets are being treated as the mandated Cost of Care exercise does not extend to all service user groups.

#### **Social Value**

Providers are supported and encouraged to recruit locally and engage with Colleges/Universities, and to procure local goods and services to support local communities.



# Climate Change

## Report Summary

There is clear recognition that care markets in Sandwell and beyond are experiencing significant pressure but movement towards the payment of a Fair Cost of Care can only be identified by understanding what the Government will be funding. The new burdens on the Council through the completion of the Cost of Care exercise need to be recognised and taken into account when considering appropriate future fee levels for care providers.

There is confidence that the completed Cost of Care exercise for Home Care better reflects real costs, however there are significant concerns regarding the data collection for care homes which does appear to be inflated. Further work to clarify costs will be completed prior to submission of the final Market Sustainability Plan to the DHSC in February 2023.

The impact of the Cost of Care exercise for the in-scope markets will present a significant budget pressure for the Council over the next two years. When the exercises for those markets currently out of scope are also completed, this will further increase the financial burden but will need to be addressed to assure a sustainable and equitable market position which enables the Council to meet its statutory duties under the Care Act.

## 7. Appendices

### Appendix 1 – Provisional Market Sustainability Plan



### Appendix 2 – Sandwell Home Care Cost of Care Report



### Appendix 3 – Sandwell Care Homes Cost of Care Report





SMBC Care Homes  
Cost of Care Report

## Appendix 4 – Legal Advice Commissioned by the Local Government Association



Fair Cost of Care  
guidance JAKC Revis

### 8. Background Papers

Nil

