

## Adult Social Care Reforms

A report from the Interim Director of Integrated Adult Social Care

### Recommendations:

- That the Health and Adult Care Scrutiny Committee establishes an Adult Social Care Reforms Standing Overview Group as a mechanism for Members to provide challenge, assurance and hold the Council to account for its approach to the local implementation of the reforms.

### 1. Background

- 1.1 In January this year the Heath and Adult Care Scrutiny Committee received a paper introducing Government proposals for the reform of adult social care. Since then, the consultation has closed, and the Government's response is pending as is the publication of the final guidance and previously unseen regulations (the secondary legislation).
- 1.2 In May the reforms conversation continued with the Health and Adult Care Scrutiny Committee through a masterclass where further details of the proposed new rules were provided alongside the key risks and concerns across the three pillars of the reforms: Charging, Fair Cost of Care, and Regulation.
- 1.3 The government has published a number of documents setting out its overall vision for Health and Care, its plans for the reform of Adult Social Care, including an impact assessment and draft operational guidance to support implementation. A new public website has been developed to raise awareness of the reforms.
  - [Build Back Better: Our Plan for Health and Social Care - GOV.UK \(www.gov.uk\)](#)
  - [Homepage - Social Care Reform: Social Care Reform \(dhsc.gov.uk\)](#)
  - [People at the Heart of Care: adult social care reform - GOV.UK \(www.gov.uk\)](#)
  - [Implementing the cap on care costs: draft operational guidance \(publishing.service.gov.uk\)](#)
  - [Market sustainability and fair cost of care fund 2022 to 2023: guidance - GOV.UK \(www.gov.uk\)](#)
  - [Impact Assessment template \(publishing.service.gov.uk\)](#)
- 1.4 Of the three pillars of reform, our local assessment is that we are well placed to respond to Regulation and the developing approach and guidance from Government, although that is a significant piece of work.

- 1.5 We are using national tools in producing the Fair Cost of Care exercise and the related Market Sufficiency Plan. These activities are also significant but similar to business as usual activities.
- 1.6 It is the Charging element of the reforms that is of most concern as it will require significant change to our work, growth in our workforce and draw many more people into our processes.
- 1.7 Our biggest cost areas are the numbers of people we serve, the cost of care, and our workforce. All three of these are expected to increase significantly as a result of the proposed reforms. Through the Reforms Impact Assessment, the government has said:

*'Implementation of this reform will require structural and system changes within local authorities, including new business processes and operating models. LAs will also need to make amendments to their IT systems to ensure that systems are capable of capturing and calculating costed eligible care needs which will count towards the cap.'*

*'Additional social workers and back-office staff will also be required to meet an increased number of assessments'*

- 1.8 The County Council's Network has [expressed widely held concerns](#) about the reforms. The report estimates that the costs of reforms in the nine years from when they are introduced to 2032 could be a minimum of £10bn higher than currently estimated and could create a further workforce crisis in social care, with over 5,000 extra staff projected to be required to carry out extra care and financial assessments for those seeking to benefit from the reforms.

*'An extra £854m a year is needed to make the proposals workable by avoiding large-scale care home closures and to ensure ongoing investment into the social care sector. Presently, the government has only allocated £378m per year'*

*'Widespread care home closures could leave councils struggling to find beds for those who require care and trigger a deterioration in the quality of care between local authority and private placements.'*

## **2. Our national and regional engagement**

- 2.1 As the adult social care sector starts to understand the reforms, the implications, and the response required, we are connecting and engaging with leading national and regional organisations. We are active within the Association of Directors of Adult Social Services (ADASS) nationally and also with South West ADASS.
- 2.2 We are working with the Local Government Association, drawing on its expertise and resources particularly around the Fair Cost of Care exercise. We have senior managers linked into and participating in key national networks and officers across

the council are regularly attending learning events including hearing early feedback from the Trailblazer sites.

### 3. Existing cross council working

- 3.1 The proposed reforms are familiar territory to services across the council. With the introduction of the Care Act 2014, Integrated Adult Social Care, Finance, Charging for Care, Legal, Procurement, ICT and others worked closely to understand and prepare for similar proposals then that were ultimately rejected.
- 3.2 The same process is underway now with these services and teams involved in the new Reform Programme; present and contributing within the project teams.
- 3.3 As we move from understanding the proposals to designing delivery, significant activity across the council is required and local planning and modelling are taking shape to ensure readiness.
- 3.4 Governance and programme structures are in place as set out below in diagram 1, including the connection to the Health and Adult Care Scrutiny Committee through a proposed Standing Overview Group.
- 3.5 The three pillars of the reforms have interdependencies, and our programme structure ensures the connections are made. There are also cross-cutting themes and connections with many areas of our transformation programme which are being joined up.

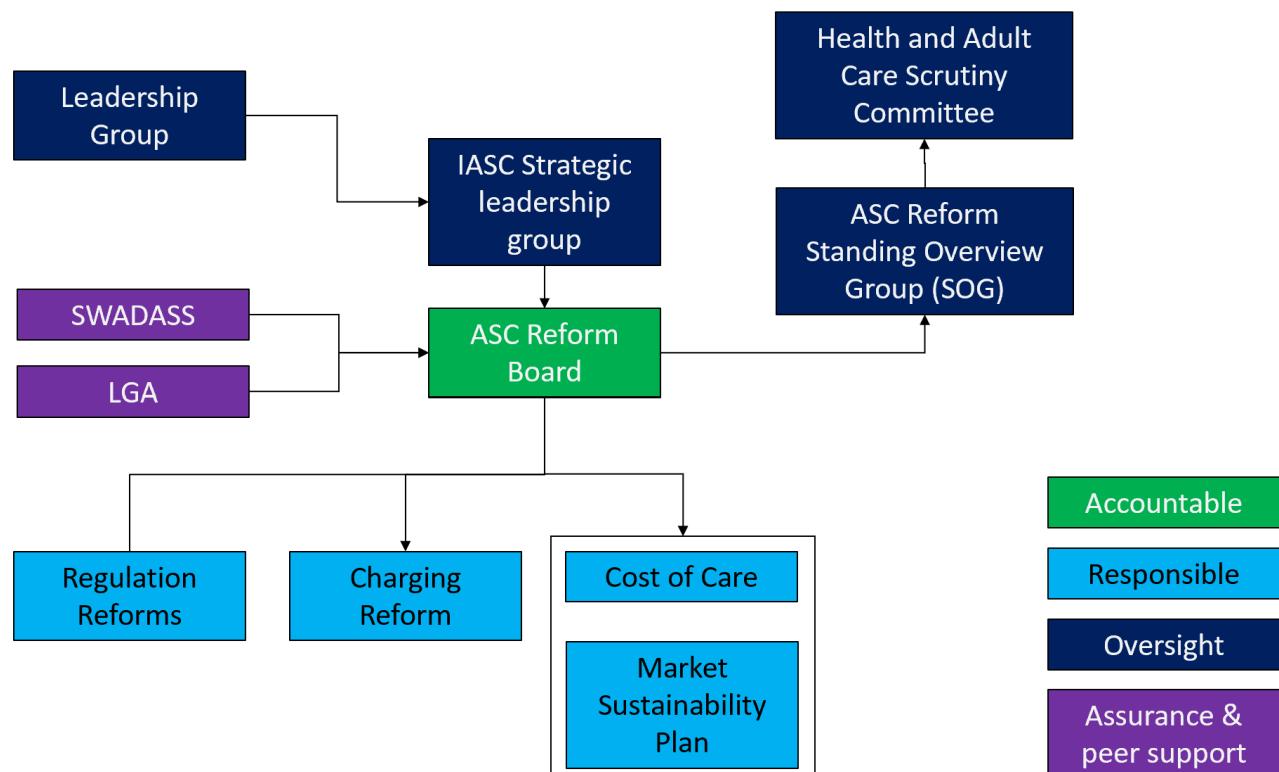


Diagram 1: ASC Reforms programme structure

#### **4. Key dates and timeline for the reforms**

Sept 2022	<ul style="list-style-type: none"><li>• Local authorities to have completed the Fair Cost of Care Exercise, and submitted a provisional Market Sustainability Plan</li></ul>
April 2023	<ul style="list-style-type: none"><li>• Local authorities commence early Care Act assessments ahead of the Care Cap going live in October 2023.</li><li>• Regulation of Adult Social Care Duties begins</li></ul>
October 2023	<ul style="list-style-type: none"><li>• Care Cap goes live set at £86,000</li><li>• Upper Capital Limit of £100,000 and Lower Capital Limit of £20,000.</li><li>• Fair Cost of Care - Implementation of Section 18(3) of the Care Act 2014, the duty to arrange.</li></ul>

#### **5. Charging: The new rules**

- 5.1 The new rules summarised in box 1 below will come into effect from the 1 October 2023.
- 5.2 Between April 2023 and October 2023, we will need to deliver a Care Act Assessment to any self funder who approaches us to register for a Care Account and undertake care planning if they want us to arrange their care from October 2023. We must be proactive in identifying self funders.

- a) **New self-funders rights:** People who are required to pay for their own social care because of their wealth will be able to request local authorities arrange their care at local authority rates
- b) **The care cap:** No one needs to pay more than £86,000 for their care costs. Metering towards the cap is charted through Care Accounts
- c) **The extended means test:** A more generous means-tested support. Anyone with less than £100,000 in chargeable assets will be eligible for local authority funding

**Box 1: The new charging rules**

#### **6. Overarching implication of the Charging Reforms**

- 6.1 The following high-level risks have been set out in the governments impact assessment:
- 6.1.1 **Significant financial risk** – there remains an amount of uncertainty around the cost of charging reform and the associated impact across Local Authorities and providers.
- 6.1.2 **Workforce** – the policy implies additional demand for Local Authority assessments and commissioned care. This will have implications for a range

of workforce groups in LAs this may include social workers, financial assessment officers, business support staff and commissioners, amongst others.

6.1.3 **Market stability** – there is a risk that delivery of reforms impacts on market sustainability. Switching on Section 18(3), giving the right for individuals to request that their LA meet their eligible care needs, will impact upon the provider market; potentially shifting the pattern of demand in some local authorities.

6.1.4 **Technology** – we need to ensure LAs have the required technical solution in place, specifically the new metering capability.

6.1.5 In a County Council Network survey of local authorities Leaders, Lead Members, Chief Executives, and Directors of Adult Social Services. The following was heard:

- 97% very concerned about a lack of appropriate funding
- 88% very concerned about recruiting additional staff for care assessments
- 80% very concerned about the demand from self funders for arranging care
- 77% very concerned about having enough time to properly implement the reforms
- 59% very concerned about the IT and technology requirements

## 7. Self-funder rights: Implications

7.1 In the [Reforms Impact Assessment](#) the government predicts that 80% of self funders will come forward to take up the charging reforms, and of those, 84% will be eligible.

7.2 In 2019-20 the [Office for National Statistics](#) estimated that in Devon care homes 41.8% of people are self funders. There is no equivalent estimate of self funders in the community. We are less sighted on this group, but we expect more will come forward to take up the reforms.

7.3 The Capacity Tracker, a set of adult social care provider data submitted to government, developed during the pandemic, states that there is a total of 6600 people in care homes across Devon.

7.4 Given the projections within the Impact Assessment we can expect 2207 people in care homes to come forward and 1854 of those people will be eligible to take up the reforms.

7.5 This will mean 2207 additional people will require a Care Act Assessment. 1854 of those will require the creation of a Care Account.

- 7.6 In Devon there are currently over 1000 people already waiting for a Care Act Assessment. This is an operational function already under extreme pressure. This is a national challenge.
- 7.7 These additional Care Act Assessments will start to take place between April 2023 and October 2023 in order that self funders can start to meter towards the Care Cap on the 1 October 2023.
- 7.8 To deliver an additional 2207 Care Act Assessments in 6 months will require significant additional capacity and people.
- 7.9 There is also the option to think differently about how we, or others, deliver Care Act Assessments with self-assessment models and trusted assessor models much talked about options.
- 7.10 Any assessment model employed we will need to deliver high quality assessments and focus on strengths and promoting independence.
- 7.11 The impact assessment states the estimated cost of a Care Act Assessment is £616. Therefore, the assumption is an additional cost of £1.34M.
- 7.12 There is also the impact of on-going activity in the form of Care Act Reviews. Self funders spending their own money arranging their own care will want to make sure any change in their own spend responding to a change in need is reflected in their progress towards the Care Cap.
- 7.13 There may be different review models we may want to consider and we must ensure that the sentiment set out in paragraph 7.9 equally applies to reviews
- 7.14 The impact assessment states self funders who have registered for a Care Account will have 1.2 Care Reviews a year with each review costing £308. Therefore, the assumption is an additional annual cost from October 2023 of £0.57M to deliver 1854 Care Act Reviews.
- 7.15 To deliver an additional 2207 Care Act Reviews will require significant additional capacity and people.
- 7.16 In Devon only 42% of those due a Care Act Review in the last 12 months have received one. Over 5000 people are due a review. This is an operational function already under extreme pressure. This is a national challenge.
- 7.17 There is also the added challenge if self-funders register for a care account and then go on to request that we arrange their care. Should they do that they will be drawn deeper into our care management processes and that will result in further addition activity.

7.18 The Government has previously announced a [£500M workforce fund](#), that could equate to £7.45 for Devon if allocated directly to local authorities and allocated by the Adult Social Care Relative Needs Formular.

7.19 The purpose of the fund is ‘to improve recruitment, retention, progression, and staff wellbeing’ of the ASC workforce.

## **8. The Care Cap: Implications**

8.1 Local financial modelling is underway to determine the impact of people reaching the care cap and transferring to local authority funding. The government has modelled the following nationally:

- 8.1.1 Many self funders will start hitting the cap in 2026-27 with a steady state reached approximately 4 years after implementation. State spend on older adults is projected to be an additional £2.15Bn by 27-28.
- 8.1.2 Nationally, by 2031-32 around 115,000 additional people would be receiving state support with their care costs, 74,000 of whom would have reached the cap.
- 8.1.3 Projections state an average increase in the total care population of 2% per year from 2031-32 to 2038-39.

8.2 Local authority costs will rise significantly from 2026-27 when self funders start to transition to local authority funding. It is then that we will start to see the impact of the Fair Cost of Care exercise.

8.3 Progress is underway to commission an online solution to monitor and chart progress towards the care cap for people contributing to their care costs.

## **9. The extended means test: Implications**

9.1 While many people receiving home care are less likely to see any benefit from the lifetime cap due to home care fees generally being substantially lower, they can benefit substantially from the more generous means test.

9.2 This will include people already receiving local authority funding who will need to be financially re-assessed against the new rules, the result of which is likely to be more people receiving full local authority funding and many people making a reduced financial contribution towards their care.

9.3 In the short term this will create capacity challenges as people already in the system will need to be financially re-assessed against the new thresholds, and in the longer term as people entering the system who might have waved a financial

assessment because they fully expect to be over the current lower threshold, will likely want a financial assessment at the new threshold.

## 10. Fair Cost of Care: The new rules

**Establishing a Fair Cost of Care:** Local authorities must undertake a centrally prescribed exercise to establish a fair cost of care, as a minimum for older people in care homes and over 18s receiving home care.

**Local authorities must produce a Market Sustainability Plan:** 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.

### Box 2: The new rules of Fair Cost of Care

- 10.1 This is the most pressing element of the reforms, with local authorities needing to submit the government prescribed [Fair Cost of Care exercise](#) by October 2022.
- 10.2 Using national tools local authorities much work with care providers to determine the actual costs of delivering care in care home for people over the age of 65 and in the community for people over 18.
- 10.3 The result will not be a single Fair Cost of Care across or within different care setting. It is expected that actual fee rates paid may differ due to such factors as rurality, personalisation of care, quality of provision and wider market circumstances.
- 10.4 The market sustainability plan must:
  - 10.4.1 Include An assessment of the sustainability of the local care market in relation to 65+ care home services and for 18+ domiciliary care services
  - 10.4.2 Consider the impact of future market changes over the next three years, particularly in the context of adult social care reform.
  - 10.4.3 Include an outline action plan for addressing the issues identified and the priorities for market sustainability investment.
  - 10.4.4 Include a commitment for how we will move towards the fair cost of care
- 10.5 Central funding has been provided to support local authorities transition to and fund fee increases due to the Fair Cost of Care. Funding is conditional on producing the Fair Cost of Care exercise and the Market Sustainability Plan. Provisionally, for 2022/23, Devon has been allocated £2.41M, 75% of which must go towards the cost of care increases if currently below the fair cost of care.

## **11. Fair Cost of Care: The implications**

- 11.1 The biggest implication stems from a risk that central funding will not be sufficient. There are widespread concerns including those set out in 1.8. This is a concern in the short term in moving to a fair cost of care, and also the longer term including if future funding may need to be raised locally.
- 11.2 Concerns are also held that insufficient funding will destabilise the care market, lead to further challenges and systemwide impact including on hospital discharge, this may lead to some local authorities thinking again about an increased provider role.

## **12. Regulation: The new rules**

- 12.1 From April 2023 the government will introduce the Care Quality Commission (CQC) regulation of adult social care duties. These duties include:
  - 12.1.1 Market shaping
  - 12.1.2 Provision of social care
  - 12.1.3 Provision of preventative services and information and advice
  - 12.1.4 Promotion of integration
  - 12.1.5 Safeguarding
- 12.2 The approach will be an Ofsted style inspection that will consider people's experience, feedback from staff, leaders and partners, social care practice observations and looking at processes, how our strategy links to people's outcomes and how our data describes impact.
- 12.3 The CQC will look to capture good practice and encourage improvement but will intervene where necessary. Although the regulation framework will commence in April 2023, the programme, pattern, timeframe and on-going cycle are all currently unknown.

## **13. Regulation: implication**

- 13.1 The implications are three-fold. In the first instance there is the risk of intervention as the result of an unfavourable inspection. This could mean that alternative commissioners are brought in to run adult social care services.
- 13.2 Secondly, an unfavourable inspection will result in increased focussed scrutiny, drawing significantly on political and officer leadership and capacity.
- 13.3 And thirdly, the potential reputational damage from an unfavourable inspection and the impact that would have on existing recruitment and retention challenges.

## **14. On-going overview of the reforms by the Health and Adult Care Scrutiny Committee**

- 14.1 Oversight of the local implementation of the reforms is welcomed and we encourage and value the contribution of the Health and Adult Care Scrutiny Committee.
- 14.2 It is important that Members can challenge and raise their concerns and concerns expressed by their constituents. Members also have a key role in helping to shape constituents understanding of the reforms.
- 14.3 To enable this, we recommend that a subgroup of the Health and Adult Care Scrutiny Committee is established, acting as a longer-term Standing Overview Group across the implementation period of the ASC reforms.
- 14.4 The membership of the ASC Reforms Standing Overview Group (ASCR SOG) would be drawn from the committee, and Members may wish to consider attendance from the wider DCC Membership.
- 14.5 The recommended approach is to hold an initial session in July, inviting all DCC Members to attend in order to support their knowledge of the reforms, the session would also provide DCC Members with the opportunity to seek membership of the ASCR SOG.
- 14.6 The frequency that the ASCR SOG meet is to be determined, quarterly as a minimum to co-inside with progress within the individual projects with the DCC ASC reform programme.
- 14.7 The ASCR SOG group will maintain an overview and understanding of the implications of the reforms, the local approach and progress in delivering reform and ensure broader ownership of the risks and responses across DCC.
- 14.8 There will be opportunities for Members to engage with national government and national adult social care organisations on the reforms.
- 14.9 We recommend that Members of the ASCR SOG take opportunities when they arise and bring back any ideas, approaches and challenges, holding us to account and providing the essential assurance that is required. We will flag any opportunity that we think will support the ASCR SOG.
- 14.10 The ASCR SOG will report its work into the H&AC Scrutiny Committee to provide that wider assurance and opportunity for challenge and scrutiny. This will also help to establish a direct route for Members into the formal governance of the local reform programme.

Tim Golby  
Director of Integrated Adult Social Care (Interim)  
Devon County Council

**Electoral Divisions:** All

Cabinet Member for Integrated Adult Social Care and Health Services: Councillor James McInnes

Director of Integrated Adult Social Care (Interim): Tim Golby

**LOCAL GOVERNMENT ACT 1972: LIST OF BACKGROUND PAPERS**

Contact for Enquiries:      James Martin  
Tel No: 01392 382300      Room: G42

<b><u>BACKGROUND PAPER</u></b>	<b><u>DATE</u></b>	<b><u>FILE REFERENCE</u></b>
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Nil