Item 3

North Somerset Council

Report to the Adult Services and Housing Policy & Scrutiny Panel

Date of Meeting: 7th July 2022

Subject of Report: Adult Social Care Reforms

Town or Parish: All

Officer/Member Presenting: Hayley Verrico, Director of Adults Services

Key Decision: No

Reason: The reforms are statutory and therefore the council cannot make a decision as to whether they are implemented. Members of ASH need to decide how they wish to be engaged and updated on the implementation of the reforms.

Recommendations

It is recommended that ASH members note the content of the report and accompanying presentation and agree how they want to scrutinise progress in respect of the adult social care reforms and their implementation.

1. Summary of Report

1.1 This report highlights the key aspect of the reforms alongside with timescales for implementation. The accompanying presentation highlights the risks to the council and actions being taken to address the risks and ensure full implementation within the timescales set by the Department for Health and Social Care.

2. Policy

2.1 On 7th 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. At the same time and included in the reforms was the government's intention for adult social care to undergo Care Quality Commission (CQC) assurance, most commonly known as inspection. The cap on care costs is to be introduced in October 2023 and CQC inspection across England begins in April 2023.

3. Details

3.1 From October 2023, the government will introduce a new £86,000 cap on the amount anyone in England will need to spend on their personal care over their lifetime.

In addition, the upper capital limit (UCL), the point at which people become eligible to receive some financial support from their local authority, will rise to £100,000 from the current £23,250. As a result, people with less than £100,000 of chargeable assets will never contribute more than 20% of these assets per year. The UCL of £100,000 will apply universally, irrespective of the circumstances or setting in which an individual receives care, making it a much more generous offer than a previous proposal in 2015. 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.

It is important that the new reforms are clear and reduce complexity. Therefore, government will introduce an amendment to the Care Act 2014 to the way that people within the means test progress towards the cap. This amendment, subject to Parliamentary approval, will ensure 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. The much more generous means test is the main means of helping people with lower levels of assets.

To allow people receiving means-tested support to keep more of their own income, the government will unfreeze the Minimum Income Guarantee (MIG) for those receiving care in their own homes and Personal Expenses Allowance (PEA) for care home residents, so that from April 2022 they will both rise in line with inflation.

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 amount, the equivalent of £200 per week in 2021 to 2022 prices. DLCs are a notional amount 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. This is in line with the Commission on Funding of Care and Support's 2011 recommendation. The £200 level is about £60 less in 2021 to 2022 prices than a proposal set out in 2015, ensuring people get to keep more of their income and assets.

What the cap is

The cap on personal care costs will place a limit on the costs that people will need to spend to meet their eligible care and support needs.

The term ‘personal care costs’ refers only to the components of any care package considered to be related to personal care, not hotel and accommodation costs (see the ‘Daily living costs’ section below). This will be based on what the cost of that package is or, in the case of self-funders, would be to the local authority if it were to meet the person’s eligible care and support needs (see the ‘How people progress towards the cap’ section below).

From October 2023 the cap will be set at £86,000. This means the maximum amount anyone will have to pay for personal care to meet their eligible care and support needs from October 2023 onwards will be £86,000. The cap will be implemented for adults of all ages, without exemption.

The extended means test

The means test for financial support will continue to work in the same way as it does currently: it determines what someone can afford to contribute towards the costs of their care based on the amount of assets and income a person has. The table below illustrates how a local authority applies the charging rules to determine a person’s contribution.

However, 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. From October 2023 the UCL will rise to £100,000 from the current £23,250 and the LCL will increase to £20,000 from £14,250.
The UCL of £100,000 will apply universally, irrespective of an individual’s care setting or circumstances.

Fair Cost of Care

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 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.

Many local authorities have cultivated strong relationships with providers, working in partnership to deliver good quality care despite ongoing financial, workforce and broader pressures, in a challenging environment exacerbated by the Covid-19 pandemic. However, a significant number of local authorities are estimated to pay below the cost of providing care. These risks undermining local markets, creating unfairness, affecting sustainability and, at times, leading to poorer quality outcomes for those who draw on care and support services. A fair and sustainable care market is fundamental to the government's wide-ranging and ambitious reforms to adult social care. It is therefore critical that local authorities continue to work closely with providers so that they can prepare their markets for reform and develop a shared understanding of evidence around the local costs of care to better understand where fee rates need to increase.

Market Sustainability and Fair Cost of Care Fund

The government is implementing wide-ranging and ambitious reform of adult social care. In December 2021 we 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:

- have the choice, control and support they need to live independent lives
- can access outstanding quality and tailored care and support
- find adult social care fair and accessible

It is vital that we have the right architecture in place to underpin and support the implementation of this 10-year vision. 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.

In total the fund amounts to £1.36 billion (of the £3.6 billion to deliver the charging reform programme). In 2022 to 2023, £162 million will be allocated. A further £600 million will be made available in each of 2023 to 2024 and 2024 to 2025. This funding profile allows for staged implementation that is deliverable, while also reflecting the timelines for charging reform.

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

As a condition of receiving future funding, local authorities will need to evidence the work they are doing to prepare their markets and submit the following to DHSC by 14 October 2022:

- cost of care exercises for 65+ care homes and 18+ domiciliary care
- a provisional market sustainability plan, using the cost of care exercise as a key input to identify risks in the local market, with particular consideration given to the further commencement of Section 18(3) of the Care Act 2014 (which is currently in force only for domiciliary care) – a final plan will be submitted in February 2023
- a spend report detailing how funding allocated for 2022 to 2023 is being spent in line with the fund's purpose

In 2022 to 2023 local authorities are also expected to start making genuine progress towards more sustainable fee rates, where they are not already doing so. This means increasing fee rates paid to providers (in respect of 65+ care homes and 18+ domiciliary care, including those who operate in extra care settings). The Local Government Finance Settlement 2022 to 2023 included additional funding for local authorities to cover the demographic graphic and unit cost pressures facing social care. The fund is additional to those pressures and will help local authorities to increase fees further.

As part of the gradual implementation, the government will review the fund distribution and conditions ahead of allocating money for 2023 to 2024 to ensure they remain appropriate to meet the objective of making local markets more sustainable.

The government will also work closely with local government and care providers to monitor changes in the market as this fund is implemented, providing as much support and oversight to local authorities as is appropriate for central government, while respecting their statutory duty under section 5 of the Care Act 2014 to facilitate the efficient and effective operation of local care markets.

Care Quality Commission Inspection

As part of reforms, the government plans to reintroduce inspections of local authority's adult social care functions by the Care Quality Commission, with councils being potentially subject to government intervention for failings, the government propose to introduce a duty through the planned Health and Care Bill, in which the CQC would be responsible for assessing local authorities' delivery of their adult social care duties.

CQC annual assessments of local authorities were scrapped by the government in 2010, at the same time as the CQC stopped carrying out inspections of local authorities, which then focused on adult safeguarding. Since then, councils have worked together to support their own performance through “sector-led improvement”, typically on a regional basis and involving sharing information and data, and teams of council practitioners and managers conducting peer reviews of other authorities.

Running alongside the CQC assessment proposal are plans to introduce a new power for the health and social care secretary to intervene where it’s considered that a local authority is failing to meet its duties.
“Any intervention by the Secretary of State would be proportionate to the issues identified and taken as a final step in exceptional circumstances when help and support options have been exhausted,” the White Paper said.
It plans to “secure these provisions in primary legislation at a high-level”, prior to working with government partners and the sector on detailed system design and practice, to provide consistent oversight and reduce the variation in the quality of care.

The system would put adults’ services on a similar basis to children’s services, in which local authorities are subject to regular inspection by Ofsted and government intervention if they are deemed ‘inadequate’.

4. Consultation

4.1 Not applicable however the council will need to ensure that the reforms are well communicated to the public including how the cap on care costs will affect them.

5. Financial Implications

5.1 The government have suggested that the reforms will be cost neutral however ADASS and the LGA have undertaken their own research as have the County Councils Network (CCN) and Newton which provides the first independent analysis of the reforms, which include a more generous means-test, a cap on care costs of £86,000, a move towards a ‘fair’ cost of care, and the ability for people who arrange and fund their own care to ask their local authority to do it on their behalf. 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.

6. Legal Powers and Implications

6.1 National assistance Act 1948
NHS & Community Care Act 1990
Care Act 2014
Care & Support Bill
Local Authority Social Services Act 1970 (section 7A)

Social Care Act 2012

7. Climate Change and Environmental Implications

7.1 There are no climate change or environmental implications relevant to this report.

8. Risk Management

8.1 The government reserve the right to withhold reform funding if timescales for reforms are not met. Additional time limited posts have been recruited to, to support the council in meeting the timescale for reform.

Wider financial concerns are highlighted in section 5. of this report.

9. Equality Implications

9.1 The evaluation and analysis of complaints is an important means of monitoring and improving service standards including service access for groups within local communities.

10. Corporate Implications

8.1 Legislation and Department of Health guidance requires the council to meet the timescale for reform and reforms will affect many areas of the council including finance and business intelligence. The reforms also present financial challenges to the council's budget if the funding from central government is insufficient to meet the commitments within the reforms.

11. Options Considered

11.1 None – the reforms are statutory and therefore must be implemented within the timescales dictated by government.

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Appendices:
Care Reform PowerPoint presentation Appendix 1 attached

Background Papers:
None

ASH Care Reform
Implementation.pptx

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