

Forward Plan Reference Number: FP/438/06/22

Report title: Cost of Care Funding Support	
Report to: Councillor John Spence – Cabinet Member for Adult Social Care and Health	
Report author: Nick Presmeg, Executive Director of Adult Social Care	
Date: 9 September 2022	For: Decision
Enquiries to: Steve Ede, Head of Procurement (steve.ede@essex.gov.uk), Peter Fairley, Director of Strategy Policy & Integration (peter.fairley@essex.gov.uk)	
County Divisions affected: All Essex	

1. Everyone's Essex

- 1.1. Everyone's Essex sets out the strategic aim of health, wellbeing, and independence for all ages. Within that aim is our commitment to help vulnerable people to live independently by receiving the appropriate services or support to maintain or improve their quality of life, and to ensure adults are free from abuse and neglect.
- 1.2. The implementation of the Health and Care Act 2022 sets out national changes to our statutory obligations, which impact our future delivery model within adult social care. It is anticipated that, from October 2023, a national care cap will be introduced on lifetime costs that individuals receiving care and support will be expected to pay.
- 1.3. The Health and Care Act 2022 also sets out an expectation that local authorities will be required to source care on behalf of individuals who are self-funding on our existing contracted rates. Not only does this have the potential to have a significant financial impact on the Council, but there is also a risk that it could destabilise our social care providers who deliver care across our residential and domiciliary markets.
- 1.4. Central Government has issued additional funding to local authorities as part of the implementation of the Care Act to deliver on the Fair Cost of Care exercise; this additional funding is to support the Council to deliver a Fair Cost of Care rate for Domiciliary Care for all adults and Residential Care for adults over 65, alongside a Market Sustainability Plan. The outcome of this work will provide an indication of the necessary funding required for Essex County Council to meet its statutory requirements. In the meantime, the funding allocated can be used to support our social care market, where existing contracted rates are below our existing Cost of Care rates.
- 1.5. The proposals in this paper do not create any additional climate impacts, which is consistent with our net zero climate commitments set out in Everyone's Essex.

2. Recommendations

- 2.1. Agree to use the £4m Fair Cost of Care Grant held in the Adult Social Care Revenue Budget as follows:
- i. **£85,000** to fund the work already done by the independent consultant to support the care market to provide us with information so that we can deliver the Fair Cost of Care rates for our older people residential and domiciliary care markets, to support the draft Market Sustainability Plan submission to Government in October 2022.
 - ii. **£30,000** to fund secure internal and external capacity to deliver on the necessary technical developments and financial changes within our social care case management and financial systems.
 - iii. The remaining **£3.88m** will be used to provide a temporary uplift to bring rates paid currently to domiciliary providers closer to the current calculated cost of care for domiciliary care in Essex through:
 - a) Increasing the hourly rate for all existing personal care packages with providers who are part of the Live at Home 2021 Framework by £1.12 per hour, with effect from 30 October 2022.
 - b) Increasing the hourly rate for all other existing domiciliary personal care packages within the administrative area of the Council to £20.60 per hour where their current rate is below this, with effect from 30 October 2022.
 - c) Making the remaining balance of **£2.16m** available to providers who are part of the Live at Home Framework 2021 by way of a grant calculated as £1.12 multiplied by the number of personal care hours they have provided in the period between 3 April 2022 and 29 October 2022, subject to each provider entering into a grant agreement as set out in this report.
- 2.2. Agree to enter into the necessary deeds of variation to formalise the changes to the rates payable to domiciliary care providers.
- 2.3. Agree that the Executive Director of Adult Social Care is authorised to approve the terms of the deeds of variation.
- 2.4. Agree that the recommended uplifts within our domiciliary market are temporary until 31 March 2023; however, we will consider making the recommended uplifts permanent if government funding in 2023/24 is sufficient to sustain this decision. This is in accordance with the Government's grant conditions.

3. Background and Proposal

Government Funding for Health and Care Act 2022

- 3.1. The Government has allocated a fund of £162 million for 2022/23 to support the implementation of the Fair Cost of Care nationally, with Essex County Council receiving £4 million of this funding. Guidance has recently been issued by the Government which sets out that local authorities are expected to use at least 75% of this allocated funding in 2022-23 to increase fee rates paid to providers in scope, where the Council considers it necessary. Up to 25% of the allocated funding in 2022-23 can be used to fund implementation activities associated with meeting the funding purpose. The Secretary of State for Levelling Up, Housing and Communities makes clear in the Grant Determination that local authorities must use the Grant to increase fees that are below the Fair Cost of Care.
- 3.2. The Council has received the Grant for the financial year 2022-23. The decision to accept the funding was made by the Executive Director, Corporate Services, who is our section 151 officer.
- 3.3. The implementation of the Health and Care Act 2022 is expected to have a significant impact on adult social care, our social care market, and our Essex residents. The Health and Care Act implements changes to the charging regime for individuals receiving care and support by introducing a 'care cap' on lifetime costs for all individuals, irrespective of how this care is funded.
- 3.4. The implementation of the care cap will have a significant impact on the adult social care market, partly due to the way in which many local authorities have commissioned care. At present, local authorities undertake competitive procurement exercises, with providers competing for work delivering care for adults receiving services commissioned by the Council. Whilst those commissioning their own care are free to negotiate their own rates, they have much less bargaining power than local authorities, and care providers charge so called 'self-funders' significantly more.
- 3.5. National statistics show that individuals who fund and commission their own care pay on average 41% more than people who receive local authority commissioned services.
- 3.6. In the East of England, it is estimated that 45% of adults receiving care are self-funded. Recent figures show that 25% of adults who are initially commissioning their own care will ultimately deplete their own funds and then ask the local authority to commission their care.
- 3.7. This means that where a setting or care agency provides care to self-funders and to local authority commissioned care, self-funders are likely to be indirectly subsidising local authority funded care, although the extent to which this happens is the choice of the provider.

- 3.8. In future, residents who are currently commissioning their own care will be able to require Essex County Council to commission their care, potentially leading to fewer self-funders and meaning that providers will seek to charge the local authority a higher rate. The cost of care exercise is designed to transition the market to this position, by ensuring that providers can survive exclusively on local authority rates. That is not to say that they cannot survive now.

Essex Cost of Care

- 3.9. Each year, as part of the contracted framework refresh(es), our core residential and domiciliary frameworks are reviewed and financially assessed and updated with known inflationary, legislative and market pressures. This insight has allowed Adult Social Care to update the pricing matrices within each framework alongside the budget setting process, enabling the amount we pay to be increased broadly in line with increases in costs. Providers are also free to submit a new price point on the charging matrix, meaning that providers who are not at the top of the matrix can increase the charges by more if they so wish.
- 3.10. The current average rate for personal care paid for ECC commissioned domiciliary care for 2022-23 is £21.25 per hour. As will be seen, this is less than the indicative 'fair cost of care'.

Fair Cost of Care

- 3.11. Section 5 of the Care Act 2014 gives local authorities 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.
- 3.12. Government has asked local authorities to complete a 'cost of care' exercise to understand the costs that operators say they incur in providing care within Essex. From this information and other information known to the Council, the mathematical median is calculated. That sum is known as the 'Fair' Cost of Care rate for Essex. The idea of this is that it will give providers a sum which will lead to a more sustainable market.
- 3.13. Essex County Council is conducting the Fair Cost of Care exercise, using the national Cost of Care trackers provided by the Local Government Association (LGA), in tandem with the Regional Group of the Association of Directors of Adult Social Services and other local authorities. The Council has commissioned a commercial consultant called LaingBuisson to support the engagement and collation of returns by providers, with the Council having oversight of the work. The purpose of engaging LaingBuisson is to ensure that providers have an independent and professional consultant to support the delivery of this outcome.
- 3.14. This national exercise is to support discussions with Government on the financial and market sustainability implications of implementing the reforms in October 2023. The Council is due to report the findings back to central Government in mid-October.

- 3.15. Essex County Council has received £4m funding from central Government in 2022-23 to contribute towards moving provider payments towards a 'Fair Cost of Care'. It should be noted that any increase in the cost paid will result in a temporary increase in the amount we pay for care.
- 3.16. Based on our current payments and on early information from the national Fair Cost of Care exercise, to move the whole market would cost significantly in excess of £4 million. Sharing £4 million across the whole market would have a limited impact on individual providers and therefore it is proposed to target £3.9 million on domiciliary care. This area has been chosen because it is the area of the care market where we have highest demand and where we have a significant number of unsourced packages, both in the community and affecting discharge from reablement services. The lack of capacity in domiciliary care is driven by recruitment and retention issues primarily linked to pay in comparison with industries such as retail and hospitality. It is also consistent with our strategic aim to enable more people to be supported in their own home.

Domiciliary Care for all Adults (excluding Supported Living)

- 3.17. The Council currently spends £126 million per year on domiciliary care. Essex has around 300 domiciliary care providers, 117 of whom are on our Live at Home Framework. Typically, there are around 6,300 adults receiving long-term services at a given time, with an average hourly rate of £21.15.
- 3.18. Essex has seen an increase in demand for domiciliary services and a decrease in market capacity. Over the last 18 months, the number of packages of care which the Council needs to provide, but for which no provider can be found, has significantly increased, which places pressure on the Council to ensure we meet our statutory obligations.
- 3.19. As of 12 August 2022, the sourcing team had 118 unsourced packages of care, equating to 1,109 hours of care per week in our domiciliary market. This does not include the additional demand on our domiciliary market from our reablement services, which provide short-term care from hospital or for individuals trying to source their own care without assistance from the Council into domiciliary care.
- 3.20. Recent engagement with Essex domiciliary providers has identified their expressed concern in recruiting and retaining carers. Providers are particularly concerned about the recent increase in the cost of living and fuel inflation, as Essex is geographically diverse and has many areas that are extremely rural.

Essex Market Sustainability

- 3.21. The Office for National Statistics has recorded unemployment at an all-time low of 3.8% in the first quarter of 2022. For the first time since records began, the national position is that there are fewer people unemployed than job vacancies.
- 3.22. As of April 2022, Government has set the Minimum Wage for adults over 23 at £9.50, for those aged 21 and 22 at £9.18 and for those between 18 and 20 at £6.83 per hour. Our existing Cost of Care exercise indicates that social care providers pay at or slightly above minimum wage rates to their workforce and therefore are in direct competition with other sectors, such as retail outlets who pay similar or higher rates.
- 3.23. The additional money proposed for domiciliary providers as set out in this report will enable care providers to pay carers an hourly rate higher than competitors, including retail, in recognition of the pressures they face within their caring role. To be a carer within the domiciliary sector, several skills are required:
- The ability to travel from home to home and therefore access to a car is essential.
 - A carer needs to be empathetic and have the skills to treat people with respect and dignity.
 - Excellent communication skills to deal with the adult, their families and other healthcare professionals.
 - An ability to work under pressure while always remaining professional.
- 3.24. Essex currently has over 2,900 care sector vacancies across the County. It is estimated that Essex will require an additional 11,000 jobs in the social care sector to meet expected demand by 2040. This is a 27% increase on the existing workforce. Essex providers are suggesting that they need to pay their carer workforce a minimum of between £12.00 and £14.00 per hour if they wish to recruit and retain carers in the market.

Market Shaping

- 3.25. The Council's key strategy in adult social care is to keep people at home in their community. Prior to the COVID 19 Pandemic, there was a slow decrease in residential placements and an increase in domiciliary care; however, the pandemic has significantly sped up our strategic goals to keep people at home and in the community.
- 3.26. Over the last two years, Essex has seen an increase in the amount of domiciliary care commissioned. We know demand is greater than supply within our domiciliary market and the supply is not enough to keep pace with the number of people we are expecting to support in their own homes.
- 3.27. The evidence indicates that our domiciliary care providers require immediate additional financial support to meet existing market pressures across Essex. Therefore, it is recommended that we invest the £3.9 million to fund our domiciliary market.

- 3.28. To support our market-shaping intentions for our domiciliary care market, the Grant will be primarily used to uplift our Live at Home 2021 Framework providers' personal care packages. It has been acknowledged that to ensure the sustainability of our domiciliary service, any other personal care packages under the new minimum rate of £20.60 will be uplifted to maintain the stability of our domiciliary service across Essex.

Implementation

- 3.29. To support the implementation of the Grant to providers who are part of the Live at Home Framework 2021, the Council will update Schedule 13 of the Live at Home 2021 terms and conditions to reflect the temporary hourly rate uplift to personal care packages with effect from 30 October 2022, and grant the additional lump sum payment equivalent to the sum of £1.12 per hour of personal care delivered between 3 April 2022 and 29 October 2022. The grant must be used to maintain or increase their workforce, either through recruitment, retention or upskilling of carers to improve the quality of services provided, and to support the Council to deliver on new or existing domiciliary services and ensure market sustainability.
- 3.30. This temporary uplift is in accordance with the Grant conditions of moving towards our Fair Cost of Care and is in addition to any other funding received from Central Government to fund other pressures.
- 3.31. Providers will not be able to use the temporary hourly uplift or the Grant lump sum where they have already claimed for costs incurred from the existing Workforce and Testing Subsidy Scheme.
- 3.32. A notification letter will be sent to all domiciliary care providers who deliver personal care to adults and are not part of the Live at Home Framework 2021, with packages of care within the Council's administrative area under the new minimum rate of £20.60, and to advise them of the increase effective from 30 October 2022.
- 3.33. The council will coordinate the technical uplift changes to ensure our systems reflect the agreed changes and commission LaingBuisson to engage with our providers to complete the Cost of Care Tool Kits and ensured they are verified.

4. Links to our Strategic Ambitions

- 4.1. This report links to the following aims in the Essex Vision:
- Enjoy life into old age
 - Develop our County sustainably
 - Share prosperity with everyone
- 4.2. The implementation of our initiatives supports the Council's objectives to reduce our carbon emissions across Essex while improving the quality of services received by adults. The expectation is that the provision of additional training will allow adults to remain at home and within their community, whilst enabling

our most vulnerable adults to remain at home. The use of our existing services will reduce the need for additional carers or skills to provide support to the same adult and, by encouraging employment in this sector, we are supporting our Social Value agenda to recruit locally and reduce carbon emissions caused by our workforce travelling further afield.

- 4.3. This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':
- A strong, inclusive, and sustainable economy
 - Health wellbeing and independence for all ages

5. Options

5.1. Option 1. Do nothing (not recommended)

This option is not recommended, as it would leave most of the £4 million Grant to specifically support the Essex market unspent and it would have to be returned. The Council is already working hard to provide additional funding to our existing market; therefore, this would be counterproductive and not in line with its market shaping duty under s5 of the Care Act 2014.

5.2. Option 2. Share funding equally among all Essex contracted providers in residential and domiciliary care (not recommended)

Sharing the available £3.9 million around all ECC-commissioned placements/packages would have limited impact for care providers compared with the size of the market and would not focus on our contracted strategic providers with good or outstanding quality, and ensure we have the appropriate supply across Essex.

5.3. Option 3. Deliver proposals (recommended). Distribute funding to targeted Live at Framework 2021 providers

Use the £3.9 million Grant to support our Live at Home 2021 Framework providers by increasing personal care framework rates by £1.12 per hour and increasing all other personal care packages up to at least the new minimum rate of £20.60, which will overall reduce the difference between the estimated median Cost of Care in Essex and Essex County Council contracted rates, with a backdated grant payable to Live at Home Framework 2022 providers for the period 3 April to 29 October 2022.

This would support our emerging current market shaping strategy and commissioning intentions and provide additional financial support to our contracted providers to retain carers while we complete the Fair Cost of Care exercise. The minimum rate contracted using spot purchase contracts would be uplifted to £20.60 per hour.

This will see 15% of Live at Home 2021 Framework personal care packages increased to a rate higher than the current draft median cost of care figure

(which by the nature of median calculations will result in some packages being higher than the median cost of care). However, the packages which are to be paid above the median rate are those in areas where there are challenges such as shortages of care or where rurality means delivering care is expensive, and therefore the cost of care in those areas will be higher.

The framework rate ranges are currently established in part to accommodate the range of costs of care across the County. The proposed approach to uplift all Live at Home 2021 Framework personal care rates supports those on lower rates within the framework with a greater proportion of uplift, while still maintaining the range of costs across the County.

6. Issues for Consideration

6.1. Financial implications

- 6.1.1. The Grant funding for 2022/23 provided by the Department of Health & Social Care is £4 million under section 31 of the Local Government Act 2003. This funding has conditions allowing Essex County Council to utilise up to 25% for carrying out the Fair Cost of Care exercise using internal and external resources. The remaining 75% of the funding, or where a recipient authority incurs implementation costs amounting to less than 25% of their allocation, must be used to increase rates, if its rates are below the fair cost of care (Department of Health & Social Care, 2022). A full breakdown of how this Grant is planned to be spent within Essex County Council is set out below in Table 1, with a proposed £115,000 (2.9%) allocated to support undertaking the exercise, and the remaining £3.9m to be distributed to the care market.
- 6.1.2. The proposed payments in relation to domiciliary care are expected to utilise the £3.9m in full. Calculations have assumed that volumes will remain at current levels and that the ratio between framework and spot-purchased hours does not change throughout the financial year. There is a risk that these assumptions do not hold and that the value of the proposal changes throughout the financial year. Domiciliary care volumes and prices are monitored through the monthly outturn process, which will assist with timely intervention should further action be required in order to meet the Grant conditions.
- 6.1.3. The proposal to temporarily uplift the personal care rate within the Live at Home 2021 Framework by £1.12 per hour will also have a full year impact of £3.9m. This uplift is in accordance with the Grant conditions of moving towards our Fair Cost of Care and is in addition to any other funding received from Central Government to fund other pressures. There is a risk that the grant allocations in future years will not be sufficient to cover the ongoing impact of this increase. It is expected that future grant determinations to Essex County Council will be to at least the level provided for in 2022/23, as the overall funding for this in the next two years has been announced with a greater sum for both years. However, to mitigate the risk on next year's budget, the temporary uplift is provided up to the end of 2022/23. Once we have received confirmation of local authority allocations and the methodology, which is expected in early 2023, we will review the uplift and make changes to the rates accordingly. We aim to

make the uplift permanent if the funding is received to the value of at least the level of the 2022/23 grant allocation to Essex County Council, in accordance with the authority given in this decision.

- 6.1.4. If domiciliary care volumes and framework compliance increase, the additional cost would exceed the Grant value. However, there would be a compensatory reduction in the value of spot-purchased packages and wider-reaching benefits for the health and care system, including improved quality of care and additional capacity in services currently reporting sub-optimal length of stay due to delays in ongoing sourcing of domiciliary care, such as reablement.
- 6.1.5. It is acknowledged that the fee rate increase calculation applying from 3 April 2022 will result in a lump sum payment being made to the Live at Home Framework 2022 providers for the time elapsed to the date of the change on the system. These payments will be provided to the market to be used to boost retention and resilience in the market for their businesses. This will ensure the rate increases are in accordance with the Grant conditions.

Table 1 – Proposed spending plan of grant funding 2022-23 with full year impact

Element of Grant conditions	Description	2022-23	2023-24
Costs to carry out FCoC Exercise and implement uplift	External consultancy and internal resources	£0.1m	£0.0m
Uplift to the market - domiciliary care	Increase framework rates for existing and new packages*	£3.9m	£3.9m
Total		£4.0m	£3.9m

- * Assumes framework replaced by framework and spot replaced by spot packages. Uplifting framework rates is assumed to cause no change in prices between packages.

6.2. Legal implications

- 6.2.1. Pursuant to section 31 (4) of the Local Government Act 2003, the Minister of State made available this Grant from the Market Sustainability and Fair Cost of Care Fund for 2022-23 to local authorities, subject to certain conditions. The payments to care providers are ones which the Council is not required to make. However, the fact that this funding is available to all domiciliary care providers means that this is unlikely to amount to a subsidy for the purposes of the Subsidy Control Act 2022.
- 6.2.2. The money we are spending from central government is subject to grant conditions which define “fair cost of care” as follows: *“in terms of understanding the cost of care, the median actual operating costs for providing care in the local area (following completion of a cost of care exercise) for a series of care categories. This must include and evidence values for return on capital and return on operations. Together, this is what is described as the “fair cost of care” and is, on average, what local authorities are required to move towards paying provider”*

- 6.2.3 The grant conditions require that any money paid to providers '*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).*'
- 6.2.4 While the conditions are not completely clear, it is only arguable that we can use the funding to increase any rates which we believe to be at or above the fair cost of care. There is therefore some legal risk with respect to using the funding in this way.
- 6.2.5 Condition 5 in the Grant Determination requires the Council to submit a number of returns, including a spending return detailing how the Grant has been used, and to provide evidence of compliance with all conditions in the Determination by 14 October 2022. The Council will need to build into the contract variations and/or other notifications to the domiciliary providers the necessary reporting obligations to enable the Council to comply with the Grant Determination.
- 6.2.6 With respect to the variations to the agreements, the Live at Home framework agreement includes provisions for the Council to adjust the pricing matrices and therefore the prices used for payment and the Council can lawfully modify the agreements.
- 6.2.7 Any contracts that do not contain the right to modify pricing - potentially the spot contracts for domiciliary care - will need to be amended, and whether such modifications are permitted under the provisions of Regulation 72 will need to be considered.

7. Equality and Diversity Considerations

- 7.1. The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful.
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

- 7.3. The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

8. List of Appendices


Appendix A - Equality Impact Assessment

9. List of Background Papers

None

I approve the above recommendations set out above for the reasons set out in the report.	Date
Councillor John Spence, Cabinet Member for Adult Social Care	21.10.22

In consultation with:

Role	Date
Executive Director of Adult Social Care 	21/10/22
Nick Presmeg Executive Director, Corporate Services (S151 Officer)	19.10.2022
Stephanie Mitchener on behalf of Nicole Wood Director, Legal and Assurance (Monitoring Officer)	19.10.2022
Paul Turner	