

Forward Plan Reference Number: FP/014/01/23

Report title: Essex Adult Social Care Market Sustainability Plan	
Report to: Cabinet	
Report author: Councillor John Spence – Cabinet Member for Adult Social Care and Health	
Date: 21 March 2023	For: Decision
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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. Having a strong and sustainable care market, providing quality and choice for residents across the county is central to our health and wellbeing ambitions in Essex.
- 1.2 As such it is critical that we work with providers to ensure the capacity in the various different geographical and functional markets; that we continue to explore all options for how the market can operate; and that we are focused on the medium and long-term needs that will be associated with an ageing population. All of these elements come together as our Market Shaping Strategy.
- 1.3 The Council recognises the critical and valued work that care providers and care workers across Essex perform, supporting the most vulnerable people in our society. The Council also recognises the exceptionally challenging economic climate for the care market, in the light of high inflation, increasing interest rates, and high and rising energy costs. The Council is committed to doing what we can to increase funding in the care market and ensure that the sector as a whole is sustainable.
- 1.4 At the same time, we are required by the government to set out, and for Cabinet to approve, a Market Sustainability Plan. These set out the detail on market trends and capacity and the plans for ensuring market sustainability through which all the aspects of market shaping will be addressed, that fair cost of care is achieved, and that we ensure market readiness for the social care reforms scheduled for 2025. The market sustainability plan has to cover all the markets in which we operate including domiciliary, residential, and adults with disabilities.
- 1.5 The purpose of this paper is therefore to seek Cabinet approval for the strategic priorities for the future of the Essex care market in the Essex Care Market Strategy and the Market Sustainability Plan (MSP).

- 1.6 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 Approve the Essex Market Shaping Strategy 2023-30 in the form appended to this report.
- 2.2 Approve the Market Sustainability Plan for submission to Government by 27 March 2023 in the form appended to his report.

3 Background and Proposal

- 3.1 Local authorities have a duty under Section 5 of the Care Act 2014 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.
- 3.2 Essex has a large and relatively stable care market of over 700 registered providers, including 340 domiciliary (homecare) providers and 384 residential and nursing care providers. There are also a wide range of voluntary and community organisations that support and provide care to frail older people, adults with learning disabilities or autism, those with mental health support needs, and those living with physical and sensory impairments.
- 3.3 The care sector performs some of the most vital services in our society and is one of the largest employers in Essex, but it also faces significant challenges.
- 3.4 Essex is committed to valuing the care market and the care workforce. It provides a vital role supporting people with care and support needs to live with dignity, respect, and wellbeing. The two documents help set out our strategic intentions over the next 7 years.

Market Shaping Strategy

- 3.5 Over the last 18 months the Council has refreshed its Market Position Statement for Adult Social Care, which provides insight into our existing adult population demography, benchmarking insight, market insight and existing commissioning intentions on our social care markets. The Market Position Statement is directed at providers that support Essex residents and shares information and analysis of the markets that deliver services to or support adults in Essex.
- 3.6 In 2022 the Council completed an engagement exercise with care providers and with adults with lived experience, carers, and the NHS to develop a new Essex Market Shaping Strategy. Engagement took place via online

questionnaires, provider forums, one to one discussions and webinars. From our engagement the key feedback points were:

- The need for continued collaboration of existing services and addressing future challenges through commissioning and procurement activities. Providers want to work with ECC to innovate and improve their service offer.
- Improve cultural practice between providers, adults with lived experience and operational teams to ensure services are delivered effectively and the adults needs are met.
- Support providers to recruit, retain and upskills their workforce to meet existing and future demand whilst delivering services effectively.
- Improve relationships and services delivered across health and social system, providing consistent and safe outcomes for adults.
- To support providers to be financial sustainable, providing clear financial intentions to allow our market to shape their businesses.

Key findings are set out in the draft strategy which is appended to this report.

- 3.7 The proposed Market Shaping Strategy sets out our vision on the direction of our Social Care market, covering the period 2023 until 2030:

Enabling people to live their lives to the fullest through a vibrant and sustainable care market, supporting Essex residents to develop their strengths and personal independence

- 3.8 The Market Shaping Strategy sets out our intention to shape the market over the next seven years so that we can help develop and grow market solutions and capacity where it is needed and to support people to be as independent as possible and to remain in their own homes. In summary the Council will:

- Increase and evolve community-led services such as domiciliary care, and other services that supports the Adult and the Carers in the community. This includes supporting living services, personal assistants, micro-enterprises and the utilisation of technology.
- Seek to reduce the over-supply of residential beds and continue to reduce permanent admissions into residential care
- Slightly increase availability nursing provision and placements for an Adult with complex needs or behaviours.
- Improve our short term and early help offer and promote local community networks and provision for Adults and Carers that incorporates our voluntary sector.

- 3.9 The Essex Market Shaping Strategy identifies key challenges and priority themes that need to be tackled:

- a) **Addressing care market workforce recruitment and retention challenges:** pay in the care sector is low, about 12% of jobs are vacant, and 28% of the care workforce are already over 55 years old and possibly due to retire in the next 10 years. We need to make the sector attractive and valued to work in and develop a sustainable future workforce pipeline.

- b) **Ensuring effective management of capacity and demand, both now and for the future:** there are some supply issues in parts of the county, especially for domiciliary care in more rural parts of the county and also for complex nursing care, while intermediate care services are fragmented and cannot fully meet demand. There is, however, an over-supply of residential care beds, and this is likely to widen as we aim to reduce avoidable admissions into residential care.
- c) **Putting lived experience of the person at the centre of what we do:** there is a need to improve Information, Advice and Guidance (IAG) and promote choice and control, work to support the development of the personal assistant market and develop more systematic ways for capturing lived experience of care across Essex.
- d) **Ensuring delivery of good quality services:** 80% providers are good or outstanding, but this is slightly down from 83-84% pre-pandemic.
- e) **Digital & Technology that maximises independence and workforce efficiency:** care technology is under-utilised in the sector and can support independence and quality of life. There are opportunities for technology to support workforce efficiency and workload, which will be critical as demand continues to grow from an ageing population.
- f) **Promoting the financial sustainability of the sector as a whole:** there is a need to prepare for the forthcoming national reforms to social care charging (see section on Health and Care Act 2022).

3.10 The Market Shaping Strategy also sets out some enabling themes:

- To continue to improve Health and Social Care Integration across the sector and enhance our approach to working in local places with the NHS, district/borough/city councils and the voluntary and community sector through joint place-based plans and integrated neighbourhood teams.
- To ensure diversity, equality and inclusion is incorporated into Adult Social Care, adopting a zero-tolerance approach to protected characteristics, promote levelling up within place-based plans and promote employment opportunities through the supply chain.
- To continue to implement Social Value and Climate & Environment across our supply chain, creating baselines, managing performance, and educating suppliers to incorporate this into their businesses.

Health and Care Act 2022

3.11 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, as set out to Cabinet in July 2022.

- 3.12 The Health and Care Act implements changes to existing social care legislation and is planned to take effect from October 2025. The key changes link to the charging regime for individuals receiving care and support by introducing:
- i. a 'care cap' on eligible lifetime costs for all individuals of £86,000;
 - ii. a more generous means test for financial support, which will mean that more adults will qualify for funding support from local authorities; and,
 - iii. the reform will also implement the commencement of Section 18(3) of the Care Act 2014 in October 2025, which will mean privately paying care home residents will be able to require their council to arrange care for them by directly contracting with the provider on behalf of the individual at the usual council rate.
- 3.13 These reforms have implications for care provider income and financial sustainability, as well as to the Council. 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. In the East of England, it is estimated that 45% of adults receiving care are self-funded. 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.
- 3.14 There is also a national requirement for local authorities to move towards paying sustainable rates to care providers. Local authorities were required in 2022 to undertake a fair cost of care exercise to understand the costs of care for domiciliary care services for people over the age of 18 and for residential and nursing care providers for older people (over 65).
- 3.15 Local authorities are required to start preparing for these reforms and to publish a Market Sustainability Plan by 27 March 2023 in response to this, setting out how councils will make progress towards paying sustainable rates and ensure a sustainable market.
- 3.16 The Government's Autumn Statement of November 2022 and subsequent local government financial settlement confirmed allocations to the Council of funding set aside for implementation of the reforms (though this has now been repurposed by the Government and can be used for wider purposes for adult social care and children's social care). The Autumn Statement also announced additional monies for adult social care that were not anticipated by the Council.
- 3.17 The new monies announced for 2023/24 include the Social Care Grant (repurposed funding for the delayed care charging reforms) of £31.5m, and the ASC Market Sustainability and Improvement Funding Grant (MSIF Grant) of £13.9m, which includes the £4m allocated to ECC in 2022/23 for the Fair Cost of Care. Detailed terms and conditions on these grant monies are yet to be published but the Government published a policy paper on 6th February 2023 stating that local authorities will have flexibility to use the Market Sustainability and Improvement Funding Grant to drive improvements across a range of

priority areas, to best address local sustainability and improvement needs. These are:

- a) Increasing adult social care capacity
- b) Reducing waiting times
- c) Increasing workforce capacity and retention
- d) Increasing fee rates to close the cost of care gap in an area.

3.18 The Council's Market Sustainability Plan sets out how those funds are being used to support and shape the care market and to move towards cost of care and address capacity gaps. Local authorities must submit a further update to their Market Sustainability Plans ahead of winter 2023. This will include an additional section in relation to adult social care capacity planning.

Fair Cost of Care

3.19 In 2022 the Government required local authorities to complete a 'Fair Cost of Care' exercise to understand the costs that operators say they incur in providing care. From this information the mathematical median is calculated from the providers submissions. The median rates are used by the Council to triangulate financial and commercial insight to inform decisions on setting 2023/24 framework rates. The Cost of Care rate is used as part of the evidence base when considering annual uplifts and refreshes on existing contracts. The information gathered through this exercise has been used on the Integrated Residential and Nursing and Live at Home Contracts for 2023/24.

3.20 The cost of care exercise gives local authorities an important insight into provider costs to inform fees that local authorities should be paying. It is important to note, however, that it is a median rate, rather than the rate that every provider will be paid at. There will inevitably be differences between costs of care for different types of providers serving different markets and different geographies. The exercise was also not mandatory for care providers and so response rates can and do vary. In Essex, 32% of older people's residential providers responded and 16% of domiciliary care providers responded.

3.21 Supported Living and Extra Care Housing was not included in the national Government Fair Cost of Care exercise; however, the Council has taken the opportunity to complete a light touch exercise to ensure cost of care rates are identified for both services. The outcome of this exercise will support the uplift of packages in these services from April 2023.

3.22 In April 2022 the Government allocated £4m to Essex County Council for 2022/23 to support the implementation of the Fair Cost of Care exercise and increase fee rates paid to providers in scope of the terms and conditions of the grant for 2022/23. Out of the £4m, the Council allocated £3.9m to the domiciliary care market to uplift hourly rates by £1.12 in 2022/23 and start to move towards the Cost of Care rate. This recognised the Council's priority to grow and develop capacity in the domiciliary care market.

3.23 On 1 February 2023, the Council was required to publish the outcomes of the Fair Cost of Care exercise for residential and domiciliary care (known as the

Annex B Cost of Care Report within the required documents to Government) and to raise awareness of it with care providers. The Annex B documents provide details of the methodology, approach and outcomes of the Fair Cost of Care exercise completed by the Council and was shared with the Government on 14 October 2022.

Essex Market Sustainability Plan

- 3.24 To meet the conditions of our allocated grant funds, the Council are required to submit a Market Sustainability Plan to Government and publish the content on our Provider Hub by 27 March 2023. This will then need to be updated and re-submitted in winter 2023.
- 3.25 The Market Sustainability Plan is required to reflect our current market position with our residential and nursing provision for Adults over the age of 65 and our domiciliary market for all Adults over the age of 18. The Market Sustainability Plan incorporates the following areas:
- i. A reflection of our current domiciliary, residential, and nursing market, assessing our existing market and the impact of current inflationary pressures.
 - ii. Information on the potential impact of future market changes between now and October 2025, understanding of our anticipated market changes and activities to support the implementation of the Social Care Reform.
 - iii. Plans for our domiciliary, residential, and nursing markets to address sustainability issues.
- 3.26 Following publication of the final local government finance settlement for 2023/24, the Council's Market Sustainability Plan confirms the Council's use of monies to uplift rates for care providers in 2023/24, in line with our market shaping strategy ambitions.
- 3.27 These uplifts - which are or will be the subject of separate decisions – mean that in 2023/24:
- i. An uplift in price points on the Council's Live at Home (LaH) framework for domiciliary care providers by £2.84, including the continuation of the temporary £1.12 uplift awarded in 2022/23. In addition, we are amending the Target Support Areas (TSA's) and increasing payments from £1.40 and £2.80 to £2 and £4 (see decision FP/597/12/22).
 - ii. An uplift in rates on the Council's integrated residential and nursing framework (IRN) that result in increases of 20% for nursing providers and increases of 8% for residential care without nursing. These increases move the framework rates to £647.57-£746.27 for residential care and £796.46-£1,009.40 for nursing, the highest nursing rate now being above the inflated FCoC result of £995.32. In addition to this we are also increasing exceptional needs payments from £80.01 to £140 (see decision FP/009/01/23).

- iii. Cabinet is also asked to approve at the meeting in March (see decision FP/024/01/23):
 - a. An uplift in rates for Supported Living by 11.1% to £19.16 per hour for non-complex placements, and £21.04 per hour for complex needs. This will bring rates in line with the median result of the Council's Cost of Care exercise (adjusted for inflation), which mirrored the approach of the national FCoC exercise for domiciliary care.
 - b. An uplift for existing personal care packages within Older People (OP) extra care schemes by an average of 11.1%, to between £16.72 and £21.04.
 - c. An uplift in rates of 8% for residential services for adults with disabilities and mental health support needs
 - d. An uplift in rates for Mental Health accommodation services by up to 7.7%, capped at £19.16 and £21.04 per hour for non-complex and complex needs respectively.
- 3.28 As part of the Market Sustainability Plan, we are also required to provide an assessment of the impact of the implementation of the Social Care Reform on our Adult Social Care market in October 2025. This includes the financial impact of meeting the results from our Fair Cost of Care exercise, which would be approximately £41m in 2023/24 on our residential, nursing and domiciliary markets. However, this does not factor in our wider markets such as supported living, extra care housing, direct payments, personal assistants, and micro-enterprises.
- 3.29 It is not affordable for the Council to move immediately to 'fair cost of care' rates. Our Market Sustainability Plan has largely bridged the gap for domiciliary care providers. Uplifts to supported living and extra care also move us closer to cost of care rates. The gap for residential care will be bridged over the next two years as we prepare for reforms. This also recognises that care homes continue to benefit from higher rates from private funders and that Essex currently has an over-supply of residential care beds.
- 3.30 The impact of the social care reforms (which will make more people eligible for council-funded support and also require private funders to approach the Council for an assessment in order to access their Care Account to protect themselves against unlimited lifetime costs) may result in an additional 8,000-10,000 adults that would be eligible for assessments from October 2025. This is a 40-50% increase in volume in assessments, with an expectation that the Council will source care for private funders on our agreed terms, conditions, and rates with our Social Care Markets. In July 2022, Cabinet noted the possible scale of operational and financial impact on the Council and the importance of the reform being fully funded by Government.
- 3.31 The Autumn Statement announced a delay of the care charging reforms from October 2023 to October 2025. It also announced that grant funding for the reforms would be re-purposed to allow councils to invest in both adult social care and children's social care. The Council therefore has an opportunity, but also a responsibility, to balance the ability to invest monies in the care market

while also ensuring that we prepare for the implementation of, and impact of, the care charging reforms in 2025.

- 3.32 The Market Sustainability Plan specifies our strategic objectives for our residential, nursing, and domiciliary markets and provides a two-year plan on the Council's plans to shape our markets, funding permitting, to ensure where possible the market is financially sustainable.

Provider Engagement

- 3.33 Throughout 2022 the Council have completed a number of engagement and collaboration sessions with providers and with adults with lived experience to develop the Market Shaping Strategy. During this time questionnaires, webinars, 1-2-1 interviews, collaborative workshops we held alongside our engagement sessions on the Fair Cost of Care exercise. The views of our providers have been factored into our Market Shaping Strategy and Market Sustainability Plan.
- 3.34 In December 2022 initial engagement with the Essex Care Association took place on the outcome of the Fair Cost of Care exercise and the awareness of the implementation of the Social Care Reform.
- 3.35 An engagement plan has been developed to inform and collaborate with our wider social care market on the outcome of the Fair Cost of Care, the key messages within the Market Sustainability Plan and our Market Shaping Strategy.
- 3.36 In preparation of the implementation of the Social Care Reform collaborative workshops will take place until October 2025 with providers to ensure our market are prepared for changes.

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 not submit our Market Sustainability Plan and do not approve our Market Shaping Strategy (not recommended)

This option is not recommended. The Council is required to submit the final Market Sustainability Plan to Government as part of the conditions of receiving Central Government funding.

The Market Sustainability Plan has been developed alongside our Market Shaping Strategy, and therefore aligns to our strategic intentions to shape our social care market alongside the implementations of the Health and Care Act from October 2025.

5.2 Option 2. Agree to submit the Market Sustainability Plan and approve the Essex Market Shaping Strategy 2023-30 (Recommended)

Agreeing to the Market Sustainability Plan will secure funding from central government. Strategically allocating funding that works alongside our Market Shaping Strategy will indicate our future commissioning intentions to our social care market between 2023-2030. The approach for this will be to apply inflationary uplifts in line with the 2023/24 budget from April 2023 and then apply additional funding in proportion to commissioning intentions for the following services (which are subject to separate decisions):

- Domiciliary Care through LAH framework,
- Residential Care and Nursing Care through IRN framework,
- Supported Living,
- Extra Care Housing, and
- Mental Health accommodation services.

6 Issues for Consideration

6.1 Financial implications

- 6.1.1 The Council's 2023/24 budget and Medium-Term Resource Strategy (MTRS) allows for inflation in-line with NLW, CPI and RPI as per the tables below:

	2023/24	2024/25	2025/26	2026/27
NLW	9.7%	6.1%	2.0%	2.0%
CPI	6.6%	1.8%	2.0%	2.0%
RPI	7.6%	2.8%	2.0%	3.0%

This results in the following framework/contract rate uplifts

CoC	2023/24	2024/25	2025/26	2026/27
OP Residential	7.9%	4.5%	2.0%	2.0%
OP Nursing	7.9%	4.6%	2.0%	2.0%
LAH	8.5%	5.6%	1.9%	1.9%
Supported Living	7.7%	5.2%	1.9%	1.6%
AWD Residential (inc MH)	6.6%	4.6%	2.0%	2.0%

- 6.1.2 The new grant monies announced for 2023/24 include the ASC Market Sustainability and Improvement Funding Grant (MSIF Grant) with £13.9m allocated to ECC. The final terms and conditions for this grant have not yet been published, however, an explanatory note from DLUHC has set out a high-level view of the expected grant conditions which align to the proposals recommended in this report.
- 6.1.3 The IRN increases of 8% in Residential and 20% in Nursing, in addition to an increase in exceptional needs payments from £80.01 to £140 is estimated based on October 2022 data to cost £9.2m in 2023/24, £2.4m of which will be funded through the new MSIF Grant (see Cabinet decision FP/009/01/23 for detailed financial implications).
- 6.1.4 The LAH increases of £2.84 (including the continuation of £1.12 FCoC uplift) and amendment to TSA's price and areas is estimated to cost, based on October 2022 data £13.9m in 2023/24, £5.4m of which will be funded through the new MSIF Grant (see Cabinet decision FP/597/12/22 for detailed financial implications).
- 6.1.5 The increases for Supported Living, Extra Care, applicable Mental Health Accommodation services and Adults with Disabilities and Mental Health residential services are estimated to have a maximum cost of £17.8m in 2023/24 and will require additional funding through the new MSIF Grant of up to £4.1m (see Cabinet decision FP/024/01/23 for detailed financial implications).
- 6.1.6 The uplifts in the aforementioned decisions will increase the rates paid in those markets by a total of £39.4m in 2023/24, of which £12m is only possible by using new grant funding. We are committed to further reviewing the markets during 2023/24 to ensure we prioritise those areas highlighted in our market shaping strategy, with a view to further uplifts if they are felt required to meet market shaping needs.
- 6.1.7 The MSIF Grant has been announced for 2023/24 and 2024/25 only, and there is a risk that the funding ceases after this time as it is expected that funded from 2025/26 onwards is used for social care reform including the impact on Councils

of changes to charging thresholds. If that happened assumptions would need to be updated in the MTRS where expenditure in the decisions referenced above is permanent and funding is only announced for two years.

6.2 Legal implications

6.2.1 These documents set out what the Council is doing or plans to do. It is important to note that the Council cannot itself directly increase or reduce capacity in the market; it can only change its commissioning behaviours in a way which seeks to drive change. In doing so it must be mindful of its duties to ensure a strong care market but also of its duties under the Competition Act 1998 to not enter into agreements restricting competition and not abuse our position in the market. Healthy competition is important to the Council and to providers alike.

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

8.1 Appendix A - Equality Impact Assessment

8.2 Appendix B – Market Shaping Strategy

8.3 Appendix C – Market Sustainability Plan (Annex C)

9 List of Background Papers

- 9.1 IRN Cabinet Paper – February 23
- 9.2 LAH Cabinet Paper – February 23
- 9.3 Working Age and Older Adults Care and Support Provision Uplifts Cabinet Paper– March 23
- 9.4 Market Engagement Findings
- 9.5 Annex B – Care Home Fair Cost of Care exercise
- 9.6 Annex B – Home Care Fair Cost of Care exercise