

Divisions Affected – N/A

CABINET

18 October 2022

ASC Reforms: Fair Cost of Care Exercise and Draft Market Sustainability Planning

Report by Interim Corporate Director of Adult Social Care

RECOMMENDATION

1. Cabinet is RECOMMENDED to note the process undertaken so far, so that the project group can continue to work towards presenting the final analysis, findings, and report with the provisional market sustainability plan, using the cost of care exercise as a key input in identifying risks in the local market and spend report, ready for submission to DHSC on 12 October 2022. The final market sustainability plan will be submitted in February 2023.

Executive Summary

2. The Government issued guidance to Local Authorities regarding the requirement to complete a fair cost of care exercise and a market sustainability plan, this is to ensure the market is supported and funded appropriately to support the new reforms and future provision of care and support.
3. The council carried out a request for quotation (RFQ) exercise inviting expressions of interest from 5 suitably qualified suppliers of relevant work in compliance with council Contract Procedure Rules. The RFQ was issued on 27th May and 3 responses were received by the closing date of 14 June from LaingBuisson, CIPFA and 31Ten Consulting.
4. Following bid evaluations, supported by Oxfordshire Association of Care Providers, LaingBuisson have been commissioned to support Oxfordshire County Council with the government-mandated fair cost of care exercise that needs to be completed by September 2022. This exercise relates to the implementation of Clause 18(3) of the Care Act 2014 which requires local authorities to establish a fair cost of care to ensure that local providers receive an appropriate rate. The reforms mean self-funders can ask local authorities to arrange their care so they can access local authority fee rates in the same way as it does for those who are supported by the means test. Section 18(3) will be implemented in October 2023, and from January 2023 for trailblazer local authorities.

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5. In June 2022, Oxfordshire County Council was approached to be a sixth trailblazer local authority to implement the reforms earlier than others to ensure insight, evidence and lessons learned from reform can be shared across all local authorities. This 'trailblazer' status has accelerated the original national timescales the council was working towards, in order to meet the revised timescales for submission, which the teams have positively embraced.

Background

Fair Cost of Care Exercise

6. The fair cost of care process required engagement between the council, commissioners, and care providers, through data collection and analysis to enable development of a shared understanding of what it costs to run quality and sustainable care provision in Oxfordshire that is reflective of the local market. The fair cost of care exercise will support the council identify the lower quartile, median and upper quartile costs for Oxfordshire.
7. As a condition of receiving future government funding to support market sustainability, Oxfordshire is required to demonstrate by 7 October 2022, that they are undertaking preliminary work:
 - Preparing a fair cost of care exercise, the results of which will be submitted to the Department of Health and Social Care (DHSC), reviewed, and subsequently published.
 - Preparation of a draft market sustainability plan to be submitted to and reviewed by the DHSC. Final plan then to be resubmitted and published.
 - Preparing a spend report, setting out how the funding allocation will be used.
8. For the first part of the work, Oxfordshire County Council commissioned LaingBuisson to ensure it had an independent analysis of the cost of care survey results. LaingBuisson undertook the fair cost of care exercises, for both registered care homes for older people (65+) and registered domiciliary care services for adults (18+) within the council's boundaries. To ensure consistency of approach Oxfordshire required LaingBuisson to use nationally developed tools to enable care providers to populate their returns. These were:

iESE Fair Cost of Care for care home providers through the web based CareCubed platform. The sections for providers to complete were:

 - Expenditure
 - Return on Operations (ROO) and Return on Capital (ROC)
 - Occupancy
 - Staffing hours
 - Direct staff costs
 - Costs per service user per week

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Excel based tool for home care providers. The sections for complete were:

- Costs of the care and visit types (different visit types, numbers, and allocated times)
- Average travel times and mileage expense paid
- Service volumes (including contact hours)
- PPE costs
- Staffing costs for the provision of care
- Non-contact costs (including training, holiday pay etc)
- On-costs
- Back-office costs (including other staffing costs and management)
- Other overhead cost (including franchise costs)
- Operating surplus (recognising the need for sustainable businesses)

9. LaingBuisson were asked to undertake the engagement and conduct the analysis and finalise their findings in a report, working alongside the Council to deliver a robust auditable cost of care exercise for our market This has included:

- Ensuring a collaborative approach to the delivery of the programme within the council and with care providers working with Oxfordshire Association of Care Providers (OACP), Care England and ADASS/LGA Regional Representatives to ensure the programme is successful.
- Working with OCC communications team to ensure a robust engagement and communication campaign, raising awareness with our care providers and key stakeholders
- Working with our partners to encourage all relevant care providers to complete the cost of care tool kits.
- Ensuring we have an auditable process for recording care providers we have engaged with and the relevant outcome, as well those that complete the cost of care tool kit.
- Providing support where required to providers to complete the cost of care tool kit and check the returns to ensure that are completed appropriately.
- Carrying out the full analysis of the data from the cost of care tools to deliver the range of median costs to be reported.
- Developing the draft results of the analysis in partnership with our project team and finance department.
- Sharing any additional intelligence received as a result of our engagement with our care providers throughout this exercise.
- Preparing analysis and narrative content which will form part of the market sustainability plan, in line with the guidance on what the Market Position Statement (MPS) should include.
- Developing presentation materials to sit alongside the fair cost of care report, the market sustainability plan and the spend report, so that these can be explained to a variety of audiences with differing levels of awareness and understanding.

10. The engagement with care providers took place between July and August 2022, with a closing date of 7 August. DHSC Guidance does not explicitly

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require individual care providers to participate in the Fair Cost of Care exercise or submit information to the council and has not stipulated what is deemed an acceptable provider submission return rate. The Adult Social Care Reform Programme had been proactively engaging with as many providers as possible and has been working closely with the Chief Executive of Oxfordshire Association of Care Providers and the Oxfordshire Care Homes Association to support care providers in making their submissions. Officers working together with LaingBuisson have continued to support providers on a one-to-one basis beyond the closing date of 7 August, making contact directly with individual providers who had not responded. There has been a particular focus to ensure strategic partners, such as the Live Well at Home framework providers are engaged in the process.

11. The DHSC Guidance places responsibility on the council to review and verify the returns they receive from providers; this can be time consuming and requires individual investigation by LaingBuisson and includes carrying out mystery shopper calls to confirm rates. In the validation process, toolkit submissions are checked by LaingBuisson for sense and consistency and anomalies are amended with the agreement of providers. The written report will be based on these validated submissions from registered care providers using the toolkits recommended by the Local Government Association (LGA) and the DHSC.

Timescales for Submission

12. In June 2022, Oxfordshire County Council was approached to be a sixth trailblazer local authority to implement the reforms ahead of the rest of the country. The other trailblazer local authorities are Wolverhampton, Blackpool, Cheshire East, Newham, and North Yorkshire and had begun trailblazer activity in March 2022. Trailblazer status has required the original timescales the council was working towards to be accelerated which has meant a revised timeline for submission.

Area of Reform	Activity	Initial Submission Date	Revised Submission date
Fair Cost of Care	Establish and validate the rates for regulated care providers through an engagement exercise to submit returns from care home and home care providers.	14 October 2022	12 October 2022
Market Sustainability	Populate annex C - the Market Sustainability template to assess and demonstrate how the council will ensure local care markets are sustainable, before moving	Draft submission 14 October 2022 Final Market Sustainability Plan February 2023	Draft submission 12 October 2022 Final Market Sustainability Plan February 2023

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	towards implementing the reforms.		
Spend Report	Populate annex A - establish if the spend data returns meets the requirements and expectations set out in the grant determination letter.	14 October 2022	12 October 2022

13. Oxfordshire participates in fortnightly Trailblazer Fair Cost of Care Working Group Meetings hosted and facilitated by the DHSC. These allow the six-trailblazer local authorities to share their experiences and clarify policy intentions, as well as learn from what is working or not working. They also provide an opportunity to ask the DHSC to share beneficial messaging to the care sector.
14. Cabinet is asked to note that the Fair Cost of Care exercise has an interdependency with a project to tender Oxfordshire's Care Homes framework. Oxfordshire currently has a dynamic purchasing system (DPS) in place for care homes, a framework of pre-approved suppliers of care home services. This has been extended until July 2023 in order to ensure that any new procurement work with care homes is aligned to Oxfordshire's market sustainability planning. It should also be noted that the fair cost of care exercise is not intended to replace the council's fee setting processes or be the only source of information used when setting fees.

Market Sustainability Planning

15. The next phase of the project required the council to populate annex c - the market sustainability plan template (**see Appendix A**). This plan describes the council's approach and its decisions in the following three areas:
 - current fees and market sustainability
 - expected market changes and future risk in next three years, including due to charging reforms and Section 18(3) of the Care Act 2014
 - plans to address any sustainability issues identified and move towards fair cost of care
16. This template required the council to provide a detailed position on the following areas:

Section 1: Assessment of the current sustainability of local care markets

- (a) Assessment of current sustainability of the 65+ care home market
- (b) Assessment of current sustainability of the 18+ domiciliary care market

Section 2: Assessment of the impact of future market changes (including funding reform) over the next 1-3 years, for each of the service markets

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Section 3: Plans for each market to address sustainability issues identified, including how fair cost of care funding will be used to address these issues over the next 1 to 3 years.

- (a) 65+ care homes market
- (b) 18+ domiciliary care market

17. The Market Sustainability Plan is informed by the cost of care exercise as a key input to guide the council in its assessment on the impact the current fee rates are having on the care market in Oxfordshire, alongside the potential future risks particularly in the context of wider charging reform implementation. The Draft Market Sustainability Plan is a 'statement of intent' and whilst it needs to be a methodical and robust exercise, it is not costed and it is designed to provide the foundations of the final Market Sustainability Plan, which will be submitted in February 2023. This will outline how funds will be spent in line with key actions set out after local government budgets have been finalised.
18. The Fair Cost of Care Project Working Group have populated the Market Sustainability Plan template with the support of Cordis Bright, who are working alongside LaingBuisson to create the demographic data projections to support the market sustainability report and co-ordinate the data on the fair cost of care impact on market sustainability. Cordis Bright have an expertise in providing consultancy, advice, and research for public sector projects.

Spend Report

19. A spend report has produced, the objective of which was to report the results of the cost of care exercise and break down the Market Sustainability and Fair Cost of Care Fund spending on:
 - how funding has been allocated to support 65+ care homes and 18+ domiciliary care sectors
 - how much funding has been used for implementation activities (<25%)
 - how much funding has been allocated towards fee increases (>75%)

Corporate Policies and Priorities

20. The Fair Cost of Care exercise supports the following key priorities in the County Council's Corporate Plan:
 - Tackle inequalities in Oxfordshire.
 - Prioritise the health and wellbeing of residents.
 - Support carers and the social care system.

Financial Implications

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21. The Government has provided financial support to councils to undertake this work through the Fair Cost of Care and Market Sustainability Fund 2022-2023. The allocation for Oxfordshire County Council is £1.547m and it is forecast that the funding will be sufficient to meet the requirements in the current year.
22. In 2023/24 £600m is available nationally to fund the cost of moving towards paying a fair cost of care, however at this stage the amount which will be allocated to Oxfordshire is unknown.

Comments checked by:

(Finance)

Thomas James, Finance Business Partner

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Legal Implications

23. 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.

Comments checked by:

(Legal)

Jane Hall

Locum Deputy Principal Adult Social Care

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Staff Implications

24. At this stage, there are no significant staffing implications because of this programme.

Equality & Inclusion Implications

25. Care homes for older people age 65+ and homecare providers that delivery care and support to those aged 18+ were in scope for the fair cost of care exercise and have all been engaged in the process. Residents receiving care and support services from these providers will be engaged once the exercise is complete.

Sustainability Implications

26. At this stage, there are no significant sustainability implications because of this programme.

Risk Management

27. There are a number of key risks associated with the Fair Cost of Care:
- that the council will not be able to substantiate the fair cost of care data from this exercise and that it may not be meaningful, useful, or accurate.
 - that in the medium term the rates from the exercise may be unaffordable if the output indicates a significant rise on current rates and / or if the government funding for the programme nationally is insufficient to meet the indicative fair cost of care.
 - if the previous risk is realised there would be a reputational risk if the council were unable to “move towards” the Fair Cost of Care (“FCoC”) rate.

Cabinet is asked to note that these risks will not be isolated to OCC, as other local authorities will be affected as well.

28. The Market Sustainability Plan will help to establish the council's plans to address sustainability issues, including how the fair cost of care funding will be used to address and respond to the market over the next three years, including setting out our future strategy to ensure we have a sustainable care and support market.
29. The Adult Social Care Reform Programme governance includes a risk management framework at programme and project levels, the risks are reviewed weekly by the working group and the project board and reported into the Programme Board.

Consultations

30. An Adult Social Care trailblazer's communications strategy is in place, this plan covers the communications, marketing and engagement support required to support the Adult Social Care team's (ASC) trailblazing project, which will adopt the government's adult social care charging reform at pace. Oxfordshire County Council is leading the communications response, collaborating with partners within the adult social care/HESC network.
31. An engagement and consultation exercise has been undertaken with the care market, to support providers to complete and submit their returns. In Autumn 2022, work will be undertaken to inform customers/residents and the public about the Adult Social Care Reforms.

Karen Fuller
Interim Corporate Director for Adult Social Care

Appendix: **Market Sustainability Plan Template**

Background papers: Nil

Contact Officer: [Contact officer details (name, job title, telephone, email) should be given for each service whose Director or Head is named as a signatory to the report]

October 2022

Annex C: market sustainability plan template

Plans should not exceed 5 pages – delete the guidance text in the template before completing.

Section 1: Assessment of the current sustainability of local care markets
a) Assessment of current sustainability of the 65+ care home market
<p>In this section you should set out your local authority's assessment of the current sustainability of the 65+ care home market and 18+ domiciliary care market. This assessment should draw on a range of information (for example, cost information, trend information, provider feedback), and consider the market indicators below, to give a comprehensive view and representative picture of the current situation.</p> <ul style="list-style-type: none"> • <i>Whether there is sufficiency of supply to ensure continuity of care (for example, are there some geographical areas where there are concerns regarding capacity, or over reliance on a small number of providers).</i> • <i>The levels of diversity in the market (both in type of services as well as types/sizes of providers).</i> • <i>The quality of current services and whether there are concerns about quality in particular areas.</i> • <i>Current fee rates paid and if there is an underpayment and how services are currently commissioned.</i> • <i>Whether the current market conditions support development of the workforce, whether there are recruitment challenges such as high level of staff vacancies or staff turnover rates.</i>
b) Assessment of current sustainability of the 18+ domiciliary care market
<i>[As above but for the 18+ domiciliary care market]</i>
Section 2: Assessment of the impact of future market changes (including funding reform) over the next 1-3 years, for each of the service markets
<p><i>In this section you should set out your local authority's understanding of the anticipated market changes (including potential take up further commencement of Section 18(3) of the Care Act 2014) that will or are likely to occur over the next 1-3 years, including quantification of the expected impact of these changes on the local market (for both 65+ care homes and 18+ domiciliary care).</i></p>

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For example, if the main market change relates to the further commencement of section 18(3) of the Care Act 2014 (which is currently in force only for domiciliary care) then information on the size of the self-funder market and anticipated impact should be outlined here.

Note: *You should also indicate in the data return (attached at **Annex A, Section 5**) what you consider to be the key strategic risk for each market (that is, 65+ care homes market; nursing care market; and 18+ domiciliary care market). This should be based on the assessment of risks to market sustainability that you have set out in this section of the Market Sustainability Plan.*

Section 3: Plans for each market to address sustainability issues identified, including how fair cost of care funding will be used to address these issues over the next 1 to 3 years

Note: As part of these plans local authorities should also demonstrate how they complement other strategic documents, such as, but not limited to their Market Position Statements and demonstrate how they have worked with local providers to develop the plans in this section.

(a) 65+ care homes market

In this section your local authority should set out your plan over the next 3 years to address the market sustainability issues set out above for the 65+ care homes market. Your plans should include:

- *How your local authority proposes to prioritise funding based on the cost of care exercises conducted in your local areas and taking into account the impact of fee rates on the market sustainability issues identified. The provisional plan is required to include a firm commitment for the funding for 2022/23 and plans for the funding for subsequent years (2023/24 & 2024/25). The final plan submitted in February 2023 will also include a firm commitment for how your local authority will move towards the cost of care calculated in your exercise as part of their 2023/24 budget setting process.*
- *Outline any further actions your local authority plans to take to support market sustainability, such providing targeted support to providers to help to raise quality levels or investment in alternative models of care, such as extra care services.*

(b) 18+ domiciliary care market

[As above but for the 18+ domiciliary care market]