

Birmingham City Council

Report to Cabinet

14 February 2023



Subject: MARKET SUSTAINABILITY AND FAIR COST OF CARE
FUND DISTRIBUTION

Report of: Professor Graeme Betts, CBE
Strategic Director, Adult Social Care

Relevant Cabinet Member: Cllr Mariam Khan, Health & Social Care
Cllr Yvonne Mosquito, Finance and Resources

Relevant O &S Chair(s): Cllr Mick Brown, Health & Social Care
Cllr Akhlaq Ahmed, Resources

Report author: Alison Malik,
Head of Commissioning, Adult Social Care
Alison.Malik@birmingham.gov.uk

| | | |
|---|---|---|
| Are specific wards affected? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No – All wards affected |
| If yes, name(s) of ward(s): | | |
| Is this a key decision? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| If relevant, add Forward Plan Reference: 010985/2023 | | |
| Is the decision eligible for call-in? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Does the report contain confidential or exempt information? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential: | | |

1 Executive Summary

- 1.1 To confirm the allocations of elements of the Market Sustainability and Fair Cost of Care Fund grant in accordance with the Grant Determination and Conditions 2022 to 2023 issued by the Minister of State for Care.
- 1.2 To approve the Final Market Sustainability Plan 2023.

2 Recommendations

That the Cabinet; -

- 2.1 Approves the allocation of £3,615,699.35 Market Sustainability and Fair Cost of Care Fund grant funding to Birmingham adult social care providers. The details of these allocations are in accordance with the Grant Conditions and are set out in 7.3.1 and **Appendix 1**.
- 2.2 Approves the Final Market Sustainability Plan 2023 as set out in **Appendix 2**.

3 Background

- 3.1 In September 2021, the Government set out plans to reform adult social care in England. It said that £5.4 billion would be used to fund these reforms between 2022/23 and 2024/25:
 - 3.1.1 £3.6 billion would be used to reform how people pay for social care (charging reforms). This included £1.4 billion to help local authorities move towards paying a “fair cost of care” to providers.
 - 3.1.2 £1.7 billion would be used to support wider system reform.
- 3.2 The Government originally proposed that the adult social care charging reforms would be implemented from October 2023. However, at the Autumn Statement 2022, delivered on 17 November 2022, the Chancellor announced that the reforms would be delayed for two years, with the funding allocated “to allow local authorities to provide more care packages.”
- 3.3 The Market Sustainability and Fair Cost of Care Fund (“the Fund”) is a Section 31 ringfenced Grant to support Local Authorities with their Section 5 (of the Care Act 2014) duty to promote the efficient and effective operation of the care market. The Fund’s primary purpose is to; help Local Authorities’ prepare markets for wider reforms; and support Local Authorities’ to move towards paying a fair cost of care.
- 3.4 Local Authorities can use their position as a large purchaser of social care to obtain lower fee rates from care providers, which can be less than the cost of providing the care. To compensate, providers often attempt to cross-subsidise by charging more to people who fund their own care. The Government said this leads to market failure and announced two measures to address the issue:
 - 3.4.1 Provisions in the Care Act 2014 (section 18(3)) being brought fully into force, enabling self-funders to ask their local authority to arrange their care in a care home for them so that they can benefit from lower rates.
 - 3.4.2 £1.4 billion being provided to local authorities to support them to increase the rates they pay to providers where necessary (move towards paying a “fair cost of care”).
- 3.5 Prior to the Autumn Statement announcement delaying the charging reforms, the Government had announced the Market Sustainability and Fair Cost of Care element of the reforms would be implemented in stages from October 2023 to April 2025 at the latest.
- 3.6 Since the Autumn Statement, Local Authorities have been awaiting further clarification and guidance on the previously issued Market Sustainability and Fair Cost of Care Grant Conditions. Whilst these have yet to be published (as at 17 January 2022), confirmation was recently received that Local Authorities are expected to distribute Grant funding for 2022/23. This needs

to be progressed in accordance with Local Authority draft Market Sustainability Plans and associated submissions made to the Department for Health and Social Care.

3.7 The Fund and associated requirements only apply to care homes for over 65's, domiciliary care/home support for 18+ and extra care. However, these services do operate in a wider market, including care homes for younger adults. Therefore, any increase in fees can only be applied to a portion of the Birmingham adult social care market under the current Grant Conditions.

3.8 It is now expected the Grant will be split over three years following confirmed/estimated allocations for Birmingham as follows:

| | 22/23 | 23/24 | 24/25 |
|---|-----------------|---|---|
| Market Sustainability and Fair Cost of Care National Total | £162m | £162m | £162m |
| Birmingham Allocation/Estimate | £3.78m (actual) | See Market Sustainability and Improvement Fund below. | See Market Sustainability and Improvement Fund below. |
| Market Sustainability and Improvement Fund National Total | N/A | £400m | £400m |
| Birmingham Allocation/Estimate | N/A | £13.11m (estimate) | £13.11m (estimate) |

3.9 The Government proposes to maintain the current levels of Market Sustainability and Fair Cost of Care funding for local authorities for 2023/24 at £162 million. This is to continue to support the progress made this year on fees and cost of care exercises. It also reflects that elements of the Adult Social Care Reform programme have been delayed for two years (until October 2025), as well as feedback that underpayment is only one issue facing the sector.

3.10 As announced at the Autumn Statement, in 2023/24 there will be an additional £400 million available for Local Authorities for adult social care (the Market Sustainability and Improvement Fund). The government expects this new grant funding will enable Council's to make tangible improvements to adult social care and, in particular, to address discharge delays, social care waiting times, low fee rates, workforce pressures, and to promote technological innovation in the sector. This will be combined with the existing £162 million in Fair Cost of Care funding to reflect the shared goal of improving market sustainability. The government proposes to distribute this funding using the existing ASC Relative Needs Formula.

3.11 The Government are expected to announce further details on the Grant Conditions for the Market Sustainability and Improvement Fund in due course.

3.12 The Council complied with the current Fund requirements that all Local Authorities' by 14 October 2022:

- 3.12.1 Complete Cost of Care exercises for the 18+ domiciliary care and 65+ care homes markets – setting out the median cost of care
 - 3.12.2 Submit a Cost of Care report
 - 3.12.3 Submit a provisional market sustainability plan (final version due Feb 2023)
 - 3.12.4 Prepare a Spend Report – showing how the Fund has been spent/allocated
- 3.13 The Council's submissions to Department for Health and Social Care (DHSC) above set out an approach to distribution of the associated Year 1 Fund which must be distributed by 31 March 2023. However, the Council has been awaiting confirmation of the change in Grant Conditions and future years funding since the Autumn Statement. As this has not been fully confirmed, the Council now needs to distribute the 2022/23 Fund to care providers as set out below and in our Spend Report submitted to the DHSC on 14 October 2022.
- 3.14 As the Fund arrangements for 23/24 and 24/25 have still to be fully confirmed, the Council cannot incorporate any increases into our normal fee structure at this time. There is also no provision made in the Fund for any such increases to be inflated in future years. Therefore, Grant payments will need to be made as one-off non-consolidated payments, equivalent to the percentages summarised in **Appendix 1**.
- 3.15 The Council is now required to make arrangements to distribute these funds to contracted care providers in line with our agreed submissions prior to 31 March 2023.
- 3.16 The proposal is therefore to distribute this funding as set out in **Appendix 1**, having considered the information in section 4.
- 3.17 We are also seeking approval of the final Market Sustainability Plan (in **Appendix 2**) which it is anticipated will be required for submission to the DHSC in March 2023.

4 Options considered and Recommended Proposal

- 4.1 The Grant Conditions summarise the scope of the Fund and there are limited options available to the Council.
- 4.2 However, Officers carefully considered these options in light of the data obtained from the mandated Fair Cost of Care exercise and as set out in the Market Sustainability Plan in **Appendix 2** which confirmed that:
- 4.2.1 The Council intends to spend 48% of the Fund on increasing fees paid to care homes with and without nursing. This will result in a proposed payment equivalent to a fee increase of 2.0% in 2022/23. We believe this reflects that:
 - While there is a significant gap between the Fair Cost of Care exercise output and current fees there are no changes to funding streams proposed for care homes until November 2023 at the earliest.
 - There is current oversupply of care home beds in the market.
 - Workforce risks are significant but not as acute as those within the home support market, due to factors such as travel costs.
 - 4.2.2 The Council intends to spend 52% of the Fund on increasing fees paid to 18+ home support providers This will result in a proposed payment equivalent to a fee increase of 3.5% in 2022/23. We believe this reflects that:

- There is a significant gap between the Fair Cost of Care exercise output and current fee. Self-funders are already able to approach the Council to purchase care on their behalf, so providers may face an immediate pressure to income.
- There is a strong chance that demand will outstrip supply again this winter and in future years.
- Workforce risks are more acute in the home support market and there is increased vulnerability to inflation and fuel cost increases.
- The home support market is of key strategic value in promoting independence and preventing admissions to hospital and care homes.

4.3 The proposed approach is therefore to distribute funds to care providers in accordance with section 4.2, **Appendix 1** and **Appendix 2**.

5 Consultation

- 5.1.1 The draft submissions to DHSC were discussed at Informal Cabinet on 14 September 2022 and feedback incorporated into the submission made on 14 October 2022.
- 5.1.2 The Cabinet Member for Health and Social Care was further consulted on 6 October 2022 and had no further comments on the draft submissions.
- 5.1.3 The Chief Executive was updated again by way of an Information Briefing on 17 October 2022.
- 5.1.4 The Council has not received any feedback from the DHSC since 14 October 2022 and the DHSC have confirmed as at 22 December that we can proceed with distribution of the Fund.

6 Risk Management

- 6.1 The following risks have been identified in relation to this decision and have been mitigated as follows:
 - 6.1.1 The Council is required to distribute the Fund to care providers before 31 March 2023 and this decision is therefore being brought forward at the earliest opportunity to allow this take place.
 - 6.1.2 The Council has been unable to distribute these funds sooner due to the confirmed delays in implementing the Adult Social Care Reforms and awaited changes to the Fund conditions and guidance. It has now been confirmed these funds can be distributed.
 - 6.1.3 This decision will allow the Council to demonstrate compliance with the Grant Conditions.
 - 6.1.4 This decision will allow funds to be distributed to care providers, who continue to report underfunding in a sector in financial crisis and support our most vulnerable citizens.
 - 6.1.5 As the ongoing impact of the pandemic and winter pressures for the NHS and care providers continue, these funds will provide essential financial support to care sector.
 - 6.1.6 The Grant has been widely publicised by Government and a number of providers have already requested funding. Any delays in distribution may have a negative reputational impact on Birmingham City Council.

- 6.1.7 The Council is required by Government to operate this Grant in accordance with the Grant Conditions. The Council will passport funds on a one-off non-consolidated basis to contracted care providers. As the Fund does not need to be spent on any specific measures by the care provider, but is to contribute towards overall costs, there are limited financial risks.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 The proposed approach will allow the Council to comply with the Market Sustainability and Fair Cost of Care Fund Grant Conditions.
- 7.1.2 The proposed approach is aligned to the Adult Social Care Vision and Priorities.
- 7.1.3 The proposed approach will support the wider social care and health system, including supporting care providers to continue to support the Council and our citizens.

7.2 Legal Implications

- 7.2.1 The Adult Social Care Discharge Fund is a grant made under Section 31 of the Local Government Act 2003 that is ring-fenced exclusively for actions which prepare their markets for reform of the adult social care system and to support local authorities to move towards paying providers a 'fair cost of care'.

7.3 Financial Implications

- 7.3.1 The Grant funding has been provided to the Council as part of Local Government Finance Settlement Allocations 2022 to 2023. However, the Council could not spend the Grant until the required submissions were made to DHSC on 14 October 2022 at the earliest. Further changes were then announced in the Autumn Statement 2022 2023 and Officers have been awaiting updated guidance since this time. The DHSC confirmed on 22 December 2022 that the Fund should now be distributed, and that further guidance will follow.
- 7.3.2 Having taken account of the key considerations set out in section 4 above, the Council will distribute funding to care providers in accordance with **Appendix 1**.

7.4 Procurement Implications

- 7.4.1 There are no direct procurement implications associated with this decision as this is being issued as a one-off non-consolidated Grant payment.

7.5 Human Resources Implications

- 7.5.1 There are no BCC Human Resources implications associated with this decision.

7.6 Public Sector Equality Duty

- 7.6.1 An Equality Impact Assessment has not been carried out as duties contained in the Equality Act 2010 do not apply to care providers as registered companies.

7.7 Environmental and Sustainability Implications

- 7.7.1 There are no Environmental and Sustainability implications associated with this decision.

8 Appendices

8.1 **Appendix 1** – Detailed breakdown of funding allocations

8.2 **Appendix 2** – Final Market Sustainability Plan

9 Background Documents

9.1 The following background documents were used to compile this report:

- Market sustainability and Fair Cost of Care Fund 2022 to 2023: guidance
- Grant Determination and Conditions 2022 to 2023
- Annex A: example grant template
- Annex B: cost of care reports contents
- Annex C: market sustainability plan template
- Annex D: recommended functionality for the data collection tools
- Annex E: further detail on return on capital and return on operations
- Annex F: analytical principles