SUPPLEMENTARY AGENDA

CABINET

Thursday, 21st April, 2022, at 10.00 am	Ask for:	**Emily Kennedy**
Council Chamber	Telephone:	**Tel: 03000 419625**
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<u>UNRESTRICTED ITEMS</u>

(During these items the meeting is likely to be open to the public)

6. People at the Heart of Care - Adult Social Care White Paper (Pages 1 - 14)

Benjamin Watts
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Wednesday, 13 April 2022

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From: Clair Bell, Cabinet Member for Adult Social Care and Public Health Richard Smith, Corporate Director Adult Social Care

To: Cabinet – 21 April 2022

Subject: **People at the Heart of Care- Adult Social Care Reform White Paper**

Classification: Unrestricted

Summary: This paper sets out the Government policy commitments in respect of the Adult Social Care reform in England, as described in the 'People at the Heart of Care- Adult Social Care Reform White Paper'.

The implications associated with the 'Fair Cost of Care' and the planned implementation of the provisions which give self-funders the legal right to request their local authority to arrange their care are also discussed.

Recommendations:

a) Cabinet is asked to **consider** the contents of this report and decide what further action is necessary in relation to the key implications.

b) **Note** the steps being taken to ensure that KCC can meet all the relevant government deadlines.

1. Introduction

Cabinet considered a report on the 'Building Back Better – Our Plan for Health and Social Care' policy document on 30 September 2021. The policy document signalled some of the aspects of the Adult Social Care reform such as, the extended means-test and the cap on personal care costs which have subsequently been expanded in the White Paper and follow-up policy position statements.

The 'People at the Heart of Care- Adult Social Care Reform White Paper' relates to a series of previous government policy initiatives such as the 'Health and Care Bill' (November 2021), 'Data saves lives' (June 2021), 'Transforming public health' (March 2021), 'Integration and Innovation White Paper' (February 2021). The 'Adult Social Care Reform White Paper' should also be seen in the context of other subsequent government policy position such as 'Levelling Up United Kingdom White Paper' (February 2022) and the 'Health and Social Care Integration, joining up care for people, places and populations White Paper' (February 2022).

1.1 The Government published 'People at the Heart of Care- Adult Social Care Reform White Paper' on 1 December 2021, as the basis for addressing the long overdue reform of how people pay for their social care. One of the overarching objectives is that people should not be forced to pay unlimited and unpredictable costs for their care, and to give them certainty and peace of mind. The White Paper sets out an ambitious 10-year vision for how care and support will be transformed in England. The vision puts people at the heart and centred around three core objectives:

1. People have choice, control, and support to live independent lives.
2. People can access outstanding quality and tailored care and support.
3. People find adult social care fair and accessible.

1.2 The central principle of putting people at the heart of care and support and the policy objectives of enabling people to exercise greater choice and control are welcome. Indeed, the broad thrust of the approach and vision described in the 'Making a Difference Every Day – our strategy for Adult Social Care 2022 to 2027' chimes well with three core objectives of the White Paper.

1.3 Whilst some of the individual policy elements of the White Paper including commitments such as, providing the right care, in the right place at the right time and empowering those who draw on care, unpaid carers and families are supported, the White Paper is far from providing the basis for the long-term funding solution for Adult Social Care that this Council and many others have made the case for over several years. This is against the backdrop of established evidence of budgetary and wider market pressures to which the existing system has been and continues to be subjected. We are concerned that the Social Care Charging Reform Impact Assessment does not comprehensively and appropriately address the combined effect of the introduction of the cap on personal care costs, the extended means-test threshold, 'Fair Cost of Care', and bringing into force the existing duties under Section 18(3) of the Care Act 2014. As a result, we have grave concerns that the funding committed by the Government will not be sufficient to match what councils are being asked to deliver in respect of the requirements and the 'new burden' principles.
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1.4 The case of insufficient funding to match the Government policy commitment was recently highlighted in the County Council Network (CCN) commissioned research carried out by LaingBuisson. The independent assessment of the financial impact of the planned introduction of a 'Fair Cost of Care' and Section 18(3) of the Care Act 2014, puts a spotlight on the extent to which the funding announced so far falls short of what is required. The central estimate outlined in the CCN report indicates that it will require the Government to raise funding allocations by at least £854m per annum to account for the 'Fair Cost of Care' to enable councils to pay fees at a rate that is sustainable to providers and able to offset the impact of Section 18(3). This compares to the Government funding allocation of £378m. The details of the CCN financial modelling and research can be found in the full report published in March 2022. A summary of the key conclusions and recommendations of the CCN report is attached as Appendix 1.

2. Adult Social Care Reform White Paper – key policy commitments

2.1 The White Paper seeks to drive improvement in how people access the right information and advice at the right time for people to understand the different options available to them that best meet their preferences and circumstances, including options for where care and support would best be delivered, and costs they may need to meet. A summary of 10-year key activities within the Social Care Reform programme is shown in Appendix 2.

2.2 The White Paper proposes to set up a fairer system where people who self-fund their care do not have to pay more than local authorities for the same service. This will be through bringing Section 18(3) into force for people who are or will be living in care homes. The provision under the Care Act 2014 for people who fund their own home care has already been put into effect. The consequential impact of bringing in Section 18(3) for residential nursing care is discussed later in section 3 below.

2.3 From October 2023 the cap on personal care cost will be set at £86,000. Anyone assessed by the local authority as having eligible care and support needs, whether a new entrant or an existing person who draws on care and support, can begin to have their personal care cost accrue to towards the cap on personal care cost from October 2023 onwards. The maximum amount anyone who starts receiving care and support from this date will have to pay for care to meet their eligible care and support needs will be £86,000, or the equivalent figure increased each year in line with inflation.

2.4 A new means-test will come into effect from October 2023 when the lower capital limit changes from £14,250 to £20,000 and the upper capital limit changes from £23,250 to £100,000. From that date anyone with capital and assets above £100,000 will fund their own care unless the individual chooses to exercise their right to request the local authority to meet their care under Section 18(3) provision.

2.4 The White Paper acknowledges that there is “an abundance of good practice, aspiration, and the Care Act legislation provides strong foundations for our 10-year vision”. However, there is a need to do more including shaping healthy and diverse social care markets, tackling the variation in quality and safety of care, supporting our adult social care workforce, helping people to navigate the system and find the right care and support, accelerating adoption of technology, expanding the choice of housing options and promoting integration of health and care services.

2.5 In respect of providing the right care, in the right place at the right time, the White Paper outlines several investment commitments over the next 3 years including:

- At least £300m to integrate housing into local health and care strategies with a focus on increasing the range of new supported housing options.
- At least £150m additional funding to drive greater adoption of technology and achieve widespread digitisation across social care.
- At least £500m regarding social care workforce proposals such as the right training, portable care certificates and skills passport.
- At least £570m on a new practical support service to make minor repairs and changes in people’s homes alongside increasing the upper limit of the Disabilities Facilities Grant for home adaptations such as stairlifts, wet rooms and home technologies.
- Up to £25m to work with the sector to kick start a change in the services provided to support unpaid carers, with at least £5m to fund a new national website to explain the upcoming changes.

- £30m to help local areas innovate around the support and care they provide in new and different ways.
- £70m to increase the support offer across adult social care to improve the delivery of care and support specialised housing.

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2.6 The White Paper also outlines a range of measures designed to improve information and advice, empower unpaid carers and supporting autistic people and people with a disability into employment with at least £5m to fund a national website providing information and simple explanations about adult social care reform. Also, up to £25m to work with the sector to kick start a change in the services provided to support unpaid carers. As well as testing a range of new and existing interventions, which could include respite and breaks, peer group and wellbeing support, and new ways to combine these to maximise support, the proposal also seeks to explore different models of respite, how they are accessed and what the barriers to access are.

2.7 The White Paper acknowledges that people working in social care need to feel recognised, rewarded and equipped with the right skills and knowledge. There is commitment to introduce a Knowledge and Skills Framework (KSF), career pathways and linked investment in learning and development to support progression for care workers and registered managers. Funding for Care Certificates, alongside significant work to create a delivery standard recognised across the sector will improve portability, so that care workers do not need to repeat the Care Certificate when moving roles. Furthermore, Continuous Professional Development (CPD) budgets for registered nurses, nursing associates, occupational therapists, and other allied health professionals will be established. The White Paper identifies the need for initiatives to provide wellbeing and mental health support and to improve access to occupational health for staff.

2.8 To deliver the social care reform and the vision, the Government will provide £3.6bn between 2022 and 2025 to reform the social care charging system and enable all local authorities to move towards paying providers a fair rate of care. Support will be provided for sustainable care markets and investment in strengthening market shaping capability.

2.9 Through the Health and Care Bill, allowing for Parliamentary time legislation will be enacted which will pave the way for the introduction of a new assurance framework for the Care Quality Commission (CQC) to independently review and assess local authority performance in delivering adult social care duties under the Care Act 2014 and assure the performance of the Integrated Care Boards and Integrated Partnership Board.

2.10 The White Paper acknowledges that there is a lack of data and evidence on the extent to which care needs are not being met and the expectation that better quality data, including client level data, will help increase understanding about both who accesses care, how and with what impact, and who does not and what the barriers are by establishing an adult social care data framework by Spring 2022.

2.11 The White Paper commits Government to work in partnership with stakeholders and people who draw on social care to develop and design the implementation of the White Paper's various measures. Co-productive forums will be set up to ensure the voice of people who draw on social care is involved in the ongoing design and implementation of reform.

2.12 Work with councils, housing providers and others to agree how to target investment in housing and design the Innovative models of care programme as well as consult on changes to the upper limit for the Disabled Facilities Grant.

2.13 Plan to publish a social care technology blueprint and develop advice on ‘what good looks like’ for social care technology and develop information and advice: develop and refine further policy proposals on information and advice. With regards to unpaid carers, the Government will set up a series of workshops with stakeholders to inform the development and direction of the funding earmarked to support unpaid carers.

3. Consequential implications of the ‘Fair Cost of Care and S.18 (3)

3.1 Kent is a large county with a mix of towns and a footprint of large rural areas, coupled with, a high proportion of people aged 65 and over with other demographic pressures. It is a county with one of the largest (if not the largest) care home bed capacity in England and a relatively high percentage of self-funders. With such a background, whilst we support the policy reform objectives and the underpinning principles, including the introduction of cap on personal care cost, the extended means-test, and positive steps to improve the overall quality of care and ensure sustainable market conditions, we are nevertheless concerned that the Social Care Charging Reform Impact Assessment did not adequately factor in the combined effect of introducing the cap on personal care costs as the same time as giving self-funders the legal right to request their local authority to arrange their care. This potentially risks exposing the county council to a level of financial risk that is not acceptable.

3.2 KCC has persistently set out the case for full and sustainable funding and the reform of the ‘near-broken’ adult social care system in England. Given the unique factors in operation in this corner of the country, all the available evidence indicates that the implications flowing from the implementation of the twin policy proposals of the ‘Fair Cost of Care’ and Section 18(3) of the Care Act 2014 necessitate further consideration of the funding commitment; otherwise, there will be real risk that the council could be subject to unacceptable financial risk.

3.3 The Fair Cost of Care exercise which will inform the Market Sustainability Plan requires the council to engage all registered providers for specified care settings located in Kent. Currently, the county council makes use of less than 40% of the available residential and nursing bed capacity. Far greater resources and effort will be required to comply with the policy requirements related to the cost of care exercise which must be delivered by October 2022. It is noted that future funding (2023/24 and 2024/25) from the Government is not guaranteed unless KCC satisfies the conditions set out in the grant determination letter. KCC will be required to engage care providers during a time that several care providers report experiencing operational difficulties post-pandemic, characterised by recruitment and retention challenges. Not to mention that KCC will need to marshal additional resources to handle the large number of self-funders (circa

16,000 assessments) if they chose to exercise their right to ask KCC to arrange their care and/or to have their needs assessed for cap on care cost purposes.

3.4 KCC remains concerned that the additional new burdens associated with the implementation of ‘Fair Cost of Care’ and Section 18(3) which lead to the rapid expansion of assessments capacity to be established, possibly in the months between April and October 2023, will be challenging. Whilst maintaining capacity to manage business as usual, the quantum of demand would be more challenging than we are able to determine at the present time.

3.5 KCC must carefully consider the potential risks presented to itself and providers alike, from the implementation of the ‘Fair Cost of Care’ and the introduction of Section 18(3). We believe both policy elements are underfunded, based on our understanding of the funding announced. Government failure to address the funding issue could severely undermine the stated policy objectives and even the eventual success of the reforms and cause instability of an already fragile care market. Based on the evidence that has come to light, most notably by the Local Government Association, the Institute of Fiscal Studies and as detailed in the CCN LaingBuisson report, this council holds the firm view that central government commitment to further funding will be needed to support the implementation of one of the core pillars of the reform of Adult Social Care. We are not convinced that the Social Care Charging Reform Impact Assessment sufficiently addresses this important issue and underestimates the funding required to support these elements of reforms. This view was echoed by the Institute of Fiscal Studies, as referenced in the CCN report, stated that:

“Without further increases in central Government funding to pay for these reforms, councils would face the unenviable choice between very large council tax increases (potentially requiring winning a local referendum), cuts to other services, and failure to improve adult social care services. And even if additional funding is forthcoming, other issues – such as raising the pay of social care workers and relaxing the needs assessments to undo some of the previous reductions in the numbers receiving care – would cost billions per year more. Adult Social Care services are therefore likely to remain a headache for both councils and the Chancellor for years to come” The IFS Green Budget, The Institute for Fiscal Studies, October 2021.

3.6 KCC’s view is informed by the fact that it appears that the Government has not undertaken any credible detailed research to understand behavioural issues that may influence the potential take up of Section18(3) and the route taken by both prospective and existing people who draw on care. It is our understanding that the Department of Health and Social Care, the responsible government department, has assumed an 80% take-up in registration for the care costs cap, but it has not made any detailed forecasts for the take-up by the self-funders of the right to request the local authority to arrange their care under Section 18(3). We are strongly of the view that this is a major error that must be addressed as soon as practicable and before the scheduled implementation date of October 2023.

3.7 Should further Government funding fail to materialise, or suitable policy correction put in place, this council believes a reassessment of the implementation timetable for Section 18(3) will be necessary, to both facilitate deeper understanding of the impact of these policies and allow for greater resources to be invested from the Health and Social Care Levy from 2025 onwards. We would urge the Government to give a cast-iron guarantee that the proportion of the Levy earmarked for local government from 2025 will be honoured as originally intended.

3.8 Assuming responsibility for a cohort of self-funders who come forward for assessments because of the provisions of Section 18(3) of the Care Act, would force commensurate increase of more staffing resources to undertake care needs and financial assessment. We note that the process of doing so may lead to the potential identification of hidden demand activity which the local authority must address such as, safeguarding and lack of mental capacity issue. It is right to address these needs, but the increased demand will come with further costs in other indirect council services.

4. Conclusions

4.1 Reform of Adult Social Care has been long called for and the case for adequate and sustainable funding of the sector has been a recurring theme, more so over the last decade. There are well intentioned policy objectives set out in the Adult Social Care Reform White Paper including proposals for a fairer system for how people pay for their care, commitment to introduce changes to support the workforce, innovating support for carers.

4.2 The extension of the means-test and the introduction of the cap on care costs from October 2023, will have a significant effect in two ways. First, it will lead to significant changes to operational and system processes and secondly, it will result in a significant increase in workload. There is every likelihood that the financial impact flowing from Section 18(3) and potential rapid reduction, or elimination of self-funders' cross-subsidies will have a huge impact and add to the pressures on the council's budget, if adequate funding is not provided. Also, we should not underestimate the public communication challenges associated with the reform because of the difference between the perceived headline media reporting and the understanding of people who draw on care, carers and families.

4.3 The Senior Management team have established project/programme management arrangements with the right level of support and effective challenges through the 'Making a Difference Every Day' management governance with timely reporting to the Corporate Management Team and/or the Strategic Reset Programme Board.

5. Recommendation(s):

a) Cabinet is asked to **consider** the contents of this report and decide what further action is necessary in relation to the key implications.

b) **Note** the steps being taken to ensure that KCC can meet all the relevant government deadlines.

6. Background Documents

People at the Heart of Care- Adult Social Care Reform White Paper

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Appendix 1 Adult Social Care Reform White Paper Report to Cabinet 21 April 2022

Impact Assessment of the Implementation of Section 18(3) of The Care Act 2014 and Fair Cost of Care

A Report Commissioned by The County Councils Network, MARCH 2022

The summary of the key conclusions of the report are as follows:

- DHSC appears to have severely underestimated the cost of implementing a Fair Fees policy. LaingBuisson's estimates of costs to councils of implementing Fair Fees that are sustainable for the care sector are orders of magnitude higher than those cited in the DHSC's Impact Assessment document. This in turn raises concerns that the Government has seriously underestimated the amount of new funding required to make the combined Fair Cost of Care / Section 18(3) strategy work effectively.
- In its Impact Assessment, the government have not sought thus far to estimate the combined financial impact of Section 18(3). But our analysis demonstrates that based on a 50% take up rate of 18(3) and current Fair Cost of Care funding levels for councils, providers across the country would experience significant financial challenges as a result of lost revenues amounting to £560m per annum. Providers in County & CCN Unitary authorities would account for 86% of all net financial losses to the social care sector, with the largest loses in the South-East, East of England and South-West, reflecting these council areas geographical spread and high levels of self-funders.
- In order to prevent the widespread market instability that would result from these revenue losses, councils' Fair Cost of Care would need to be raised significantly compared to current government funding estimates to offset these losses and ensure on-going investment in the social care sector, particularly in the short term.
- LaingBuisson's central estimate is that this would require government to raise funding allocations by at least £854m per annum for Fair Cost of Care in residential and nursing care homes to enable councils to pay fee levels at a sustainable rate and avoid market disruption. However, even if councils were funded at this Fair Cost of Care level, some care economies would still face financial significant pressures as a result of the impact of Section 18(3).
- Given past and current funding challenges already facing councils, they are extremely unlikely to be in the position to fund fee increases above current funding allocations without a detrimental impact on existing social care services or challenging their own financial sustainability.
- Therefore, without additional resources from central government, councils will face the possibility of provider failure and market exits. This will negatively impact on the ability of councils to secure high quality care placements for those eligible for local authority arranged care, in addition to market exits impacting on the availability of provision for the NHS of continuing health care.
- The reforms introduce new market shaping and fee negotiations duties for councils hitherto not witnessed before. It is important to consider the significant historical challenges in fee negotiations with providers and the success in undertaking fair cost of care exercises. Even if Government were to provide further resources for Fair Cost of Care, there are likely to be significant challenges in conducting these exercises with providers within a relatively short timescale on

behalf of both local authority and new self-funder clients, alongside new administrative burdens for councils.

- The DHSC Impact Assessment is based on somewhat limited understanding of how care homes currently work commercially, and an idiosyncratic view as to how negative effects of equalisation of fees might be managed, for example, ‘ reducing the size of home or transferring elsewhere’. More seriously, the DHSC impact assessment states providers will have to 'consider options, including but not limited to seeking self-funders from elsewhere, reducing the size of home or transferring elsewhere’ will likely be met with widespread scepticism, as well as alarm, in the care sector.
- Overall, LaingBuisson questions whether the full implementation of Section 18(3) of The Care Act 2014 is the right policy at the right time. The implementation of such wholesale changes to funding models comes at a time when the care market is particularly fragile in the aftermath of the COVID-19 pandemic, with significant regional blackspots.

Recommendations

- The Government urgently reassess funding allocations to support the combined implementation of Fair Cost of Care and Section 18(3) from 2023/24 onwards. Our central estimate is that this would require Government to raise funding allocations by at least £854m per annum for Fair Cost of Care in residential and nursing care homes to enable councils to pay rates at a rate that is sustainable to providers and able to offset the impact of Section 18(3).
- Overall, LaingBuisson questions whether the full implementation of Section 18(3) of The Care Act 2014 is the right policy at the right time. The implementation of such wholesale changes to funding models comes at a time when the care market is particularly fragile in the aftermath of the COVID-19 pandemic, with significant regional blackspots.
- The timetable implied by a full implementation in October 2023, with six ‘Trailblazer’ local authorities potentially working towards implementation in January 2023, is ambitious, given the multiple stakeholders and dimensions of the proposed reforms. The timetable should be reconsidered, and robust pilots be given more time.
- DHSC predicts an 80% take-up in registration for the care costs cap, but it has made no detailed forecasts for the take-up by the public of Section 18(3). Research should be undertaken into the behavioural side of the policy implementation and the pathway for residents, both existing and prospective.
- The Fair Cost of Care must be agreed by each local authority working with its local care association, or, where such associations do not exist, with groups of providers. Guidance for such exercises has not been disseminated. DHSC should revisit previous evidence of the difficulties of agreeing such fair cost of care.
- Despite the increasingly collaborative relationship between local authorities and NHS bodies, particularly Clinical Commissioning Groups, and the advent of Integrated Care Systems, it appears NHS-funded residents (those with both a health and care need) will not be included in the Section 18(3) provisions. Clarity on the direction of travel would be welcome.

- Although DHSC has confirmed it will encourage ‘top ups’ where appropriate, it should further research the way top ups currently work and the way in which they may now assume particular importance to providers which require higher fee rates than offered by a Fair Cost of Care.
- DHSC should release details of infrastructure and technology to allow for current assessment capacity at county council to be significantly extended to cope with the demand for such assessments which will be triggered by Section 18(3).
- DHSC should engage with the investor community to explain its vision for Section 18(3) and to canvass views from investors, lenders and other financial stakeholders, so as to avoid a potential ‘cliff edge’ adverse reaction to the proposed reforms in the coming months.

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Appendix 2 The 10-year national programme includes the following key changes:

1. Reform of Adult Social Care charging with the introduction of a cap on personal care cost and extended means-test
2. Fair cost of care and market sustainability reforms
3. Implementation of Section 18(3) of the Care Act which gives self-funders a right to ask a local authority to arrange their care
4. New national assurance framework under which the Care Quality Commission inspects local authorities and the Integrated Care Systems (Integrated Care Boards and Integrated Care Partnerships)
5. Professional development plan for the social care workforce
6. More supported housing and reform of the Disabled Facilities Grant
7. Integration of health and social care (vis-à-vis the Integration White Paper)
8. Accelerate the digitisation of social care
9. Innovative Models of Care Programme - new ways of delivering care in the community
10. Change in services to support unpaid carers.

Note: The first 4 key changes have specific timescales associated with them, therefore, KCC considers these to be priority areas and the focus of attention.