



**REPORT OF THE CABINET MEMBER, ADULT SOCIAL CARE AND PUBLIC HEALTH**

**ADULT SOCIAL CARE REFORM IMPACT AND RISKS**

**Purpose of the Report**

1. The report sets out the programme of Adult Social Care reform and how the Council will respond to this. It describes the potential requirements, cost, and risks to the Council associated with implementation of the reforms.

**Information**

**Background**

2. Adult Social Care services are faced with implementing no less than eight pieces of reform through 2022 and 2023. These are:
  - Social Care assurance and Integrated Care System assurance (Health and Care Act and Build Back Better)
  - Build Back Better - new models of care for workforce and system improvement
  - The Health and Care Act 2022
  - Fair Price for Care
  - Charging Reform
  - Liberty Protection Safeguards
  - Mental Health Act Reform
  - Integration White Paper.
3. The key areas of legislative change are summarised below:

<b>Area of Reform</b>	<b>Legislation</b>	<b>Summary of change</b>	<b>Implementation Dates</b>
Social Care assurance and Integrated Care System assurance	Health and Care Act 2022	Introduction of Integrated Care Board and an Integrated Care Partnership to deliver joined up care for the local population	April 2022 - Intelligence gathering and baseline
	Build Back Better		April 2023 - Assessment regime anticipated to commence

		Inspection regime for Local Authority Adult Social Care Statutory functions with a single word rating outcome	
Fair Price for Care	Social Care White Paper  Build Back Better	Equalisation of rates for regulated care providers	October 2022 - Cost of Care Exercise  February 2023 - Final Market Sustainability Plan
Charging Reform	Social Care White Paper  Build Back Better	Increase in the Minimum Income Guarantee.  Maximum set on amount of contribution to care costs for individuals	October 2023 - Cap on care to commence  October 2023 - Self-funders being able to approach the Council to fund their care at contracted rates under section 18(3) of the Care Act
Liberty Protection Safeguards	Liberty Protection Safeguards were introduced in the Mental Capacity (Amendment) Act 2019 and will replace the Deprivation of Liberty Safeguards (DoLS) system	Changes to social work practice set out in the new Code of Practice	To be agreed 2022
Mental Health Act Reform	New Mental Health Act	Changes to the detention and treatment of adults.  Implications for the Adult Mental Health Professional (AMHP) service	Autumn 2022
New models of care for workforce	Social Care White Paper  Build Back Better	<b>Housing</b> - Investment in Disabled Facilities Grants and supported housing	To be confirmed

Social Care System Improvement		<p><b>Innovation models of care</b> for reablement, prevention and outcomes-based commissioning</p> <p>Information, advice and social care technology blueprint awaited</p> <p><b>Workforce –</b> Knowledge and skills framework to deliver a trained, healthy, sustainable, and recognised workforce</p>	
Integration measures and establishment of Integrated Care System (ICS)	Health and Social Care Act 2022	<p><b>Leadership and Accountability</b> - A single person who is accountable for the delivery of the shared plan and outcomes for the place</p> <p><b>Shared Outcomes Framework</b> - Person centred locally adopted framework to include individual health, population health and wellbeing</p>	<p>1<sup>st</sup> July 2022 - ICS established as legal entity</p> <p>By April 2023 Governance and Accountability model in place</p>
Joining up care for people, places, and populations	Integration White Paper	<p><b>Finances</b> - Pooling/ Aligning of Budgets</p> <p><b>Data and Digital</b> - Shared Care Records, rapid adoption of proven technologies by Social Care</p> <p><b>Workforce</b> - Develop and test joint roles in health and social care</p>	<p>By 2024 Shared Care Records in place</p> <p>By 2026 Placed Based arrangements in place</p>

### Quantum of Adult Social Care Reform

- This Council has for some time impressed the need for reform on the Department of Health and Social Care. The reform of the Mental Health Act and Liberty Protection Safeguards

have been outstanding for some years and make essential changes to the way that the Council supports some of the most vulnerable residents receiving care and support.

5. Phase two of The Care Act 2014 was paused in July 2015 given the affordability of some of the changes to the way the Council charges people for their care and support, and the current unfairness of higher costs being paid by people who fund their own care. The plan to tackle charging is welcomed and in the interests of many residents.
6. That said, the timetable for implementing the proposed reforms presents significant risks. Like other local authority areas, Nottinghamshire is coming to the end of the most protracted emergency since the Second World War and currently the Adult Social Care department is in a recovery phase. Additional infection control measures persist in care settings which impacts on the collective capacity within the Council and within the 500+ social care providers whom the Council relies on to support residents.
7. Adult Social Care has a key role in supporting the NHS to manage both the day-to-day significant pressures it is experiencing and the planned recovery of elective procedures. The challenge of both activities has been well described in the media.
8. The last two years have taken a significant toll on the workforce (some 25,000 social care workers in the County) and local social care providers. Covid created additional pressure on an already challenged system; this was regularly reported to the Adult Social Care and Public Health Committee throughout the pandemic but in summary:
  - there is a gap of around 5% between demand and capacity for support at home due to challenges in the recruitment of care workers
  - on average there are 500 people waiting for support at any one time, often in the wrong care setting, such as hospital or reliant on family carer support
  - requests for specialist support in mental health assessments and safeguarding concerns have increased by over 25% in the last three years, signalling the impact of Covid on the wellbeing of our residents
  - staff turnover in the Council's adult social care services has increased to 11%, and for local care providers it is 29%, creating an unprecedented level of vacancies across the County.
9. Each set of reforms increases the requirement for skilled and qualified staff, even where digital and self-serve options (which are not currently available in the market) are fully optimised. Much of the reform requires capacity in corporate services and within areas where there are existing recruitment challenges.
10. In the report 'Preparing for Reform' by the County Council Network and Newton (a UK based specialist in operational improvement) they conclude that the government could potentially need to spend half of the Health and Social Care Levy (funded by National Insurance increases) on these proposals alone by 2032, irrespective of other social care pressures in the system. The allocation of this between national bodies such as the Care Quality Commission and Department of Health and Social Care programme costs, or how money will pass to Local Government has not yet been set out.
11. The report estimates that the total costs of the reforms could be between £5.6bn and £6.2bn a year by 2031/32. The levy will generate an extra £12bn in annual revenue

earmarked for both the health service and social care, but only £1.2bn in each of the next three years has been committed to these social care reforms so far.

12. For Adult Social Care, £5.4bn has been announced nationally over three years from which:

- £1.4bn has been allocated for market support - split as following across the years:

2022/23	£162m
2023/24	£600m
2024/25	£600m

- From a national pot of £162m in 2022/23 the Council has been allocated £2.381m or 1.47%
- £500m has been announced nationally for workforce support, with currently no indication on how this will be allocated.

### Charging Reform

13. In 2014 the Council published the potential capacity and cost requirements for Part 2 of the Care Act. These were indicative costs and based on assumptions of the number of self-funders that would come forward and the costs assumed using the traditional model of social care assessment. The cost ranged from £40m to £51m depending on the number of self-funders that come forward for support.

14. Several planning assumptions have changed since then and these need to be considered in modelling:

- introduction of the Three Conversations approach within Social Care
- the Asset Thresholds and Cap value have changed
- the type of care cost that counts toward the cap has changed
- the economic situation has changed, and cost of living increases will mean that self-funders may come forward at an earlier stage.

15. The Association of Directors of Adult Social Services (ADASS) has modelled the capacity that is required to implement Charging Reform and has used average costs from across the country. This work proposes that 80% of self-funders will come forward. Given the wealth of people in Nottinghamshire and the cost-of-living pressure, this is likely to be an underestimate and it is more likely that 90-95% of self-funders will come forward. The number of self-funders in Nottinghamshire is not known and the Office for National Statistics is supporting reform by undertaking work to establish self-funder numbers. The Council now knows how many self-funders are supported in residential care, but not those who live independently.

16. The proposed approach for Nottinghamshire is to continue with prevention and promoting independence strategies and to support people to support themselves wherever possible. Therefore, the Council would seek to invest in technology solutions to support self-assessment and to increase investment in information, advice, and guidance services. Research with East Midlands ADASS shows that self-funders report problems with navigating support and negotiating with providers for care. Investment in advocacy support

to enable self-funders to optimise and maximise their care would be required. These costs are not yet fully modelled and are currently estimated to be in the region of £5m.

17. There is no guidance as to the allocation of resource for meeting the new burden of Charging Reform in community social work capacity.
18. Analysis undertaken by Newton and the County Council Network estimates that 4,300 social work staff will be required to carry out Care Act assessments, reviews and care management on top of the current vacancy rate of 1,782. For the East Midlands this equates to a further 221 social work staff and 45 financial assessors.
19. Modelling for Charging Reform will be refreshed in the coming months to provide an up-to-date estimate of cost. An early indication is detailed in a recent County Council Network and Newton report which estimates the cumulative cost of the over 65's means test and cap at £614m - £743m for the East Midlands for the period 2023-2032.

### **Fair Cost of Care**

20. This area of reform requires the Council to engage with home care and care home providers to undertake and report on a fair cost of care exercise by 14<sup>th</sup> October 2022. The exercise, as it is scoped, does not address the two current financial risks facing social care providers - price and wage inflation. Neither does the exercise look to address rates for new models of care referenced in the Build Back Better paper.
21. There is a risk that the two main policy objectives of the Fair Cost of Care cannot be realised in full within the budget envelope and the timetable set out in the Department of Health and Social Care policy paper (December 2021).
22. It is therefore difficult to see how Nottinghamshire's share of the £1.4bn attributed to the delivery of this policy over the next three years will be sufficient to meet the stated objectives for the Fair Cost of Care reform. There is no formula announced for the distribution of this funding, but assuming the department has a similar share to that received in 2022/23 when it received £2.381m, the Council could get £8.8m per year in 2023/24 and 2024/25.
23. The Council does not currently know of the rates paid for care across the County by self-funders. It can draw assumptions from national modelling work undertaken in the County Council Network commissioned report by Laing and Buisson dated March 2022. This work modelled that the Fair Cost of Care for Ageing Well Care homes will cost £1.232bn nationally, however the government have only allocated £378m nationally for this exercise for 2023/24. For the Council that could mean an additional £18m which would be a 19% increase.
24. For home care, there is no national costing exercise, but the UK Care Home Association (UKHCA) publish an annual calculation for what a fair cost of home care is. Using this as a guide for what an equalised rate would be, UKHCA suggest the rate should be £23.20 per hour, which would be a 17.5% uplift costing approximately £5.15m or a 19% uplift based on care homes would cost £5.6m for homecare only, compared to an allocation of £3.2m in funding.

25. Supported Living providers, Day Service providers and Personal Assistants are also a key part of the social care market. Any change of rates in home care and care homes would destabilise the market unless fee rate increases across the market are considered. If similar modelling assumptions are applied across the total community care provision commitment of £135m, the cost would be **£23.57m** instead of the £5.15m referenced in **paragraph 24**.
26. Based on these modelling assumptions, the department could be looking at additional costs of either £23.15m (£18m Care Homes uplift and £5.15m Homecare) or £41.57m (£18m Care Homes uplift and £23.57m across the market for homecare) as described in **paragraphs 23, 24 and 25**, but funding of only £8.82m if it receives an allocation of 1.47% of the £600m in 2023/24 and 2024/25 as described in **paragraph 12**. Therefore, a significant shortfall is anticipated.
27. The Council is working with East Midlands ADASS to undertake a cost of care exercise across the region to determine the actual cost of care for the Council. As well as meeting the requirements of the Department of Health and Social Care guidance, this will enable Nottinghamshire to understand the cost risk of neighbouring councils.
28. The County Council Network and Newton recent report describes the risk that Fair Cost of Care will have on an unstable market, as some providers will gain, and some providers will lose income. Market instability is already costly for the Council given the impact that managing provider risk has on Adult Social Care staff capacity, and Adult Social Care savings in the Council's Medium Term Financial Strategy rely on a sufficient supply of good quality care.
29. The Fair Cost of Care exercise requires local authorities to publish the results of their local assessment by 14th October 2022, with a timescale of 2025 to reach this published Fair Cost of Care. Potentially, this places local authorities in a position of making unfunded commitments for fee levels until 2025, without the requisite financial certainty given the department had a one-year funding settlement and is facing significant wage and price inflation impacts across the Council.
30. Based on the recent Preparing for Reform report by the County Council Network and Newton, across the East Midlands region there is an estimated overall funding shortfall of £221m over the next decade.

### **People at the Heart of Care**

31. The Health and Care Act and the Adult Social Care White Paper both set out that Integrated Care Systems and Social Care within local authorities will be subject to assurance through the Care Quality Commission (CQC). This is in addition to the CQC inspection regime that has been in place for many years across local provider services where the department has been rated Good or Outstanding consistently in its regulated services - Reablement, Short Breaks and Shared Lives.
32. Moving to a system where the department will be required to evidence compliance to the Care Act will be a significant change and will require investment to implement the requirements.

33. The department is still waiting to understand what the new assurance framework will look like and the CQC is in the initial stages of setting this out through a small number of stakeholder events. It is unclear how Adult Social Care inspection will relate to the Integrated Care System, or what specifically the CQC will look for when assessing how well the Council is meeting its duties under the Care Act. Further guidance is expected in September 2022.
34. The CQC has set out that the Making it Real Statements - published by Think Local Act Personal - that relate to the experience and outcomes of people who draw upon care and support, and of staff, will underpin the gathering of evidence in the inspection. These statements were used to produce the department's Adult Social Care Core Metrics in 2021, but the reporting capability to routinely gather and report on these indicators is not yet in place. The department's Co-Production Strategy that was agreed by the Adult Social Care and Public Health Committee in March 2022 is a key enabler for the improvement required.
35. The department has begun to set out the requirements to resource assurance which will include dedicated roles, as well as work to change and improve corporate systems to automate reporting and record keeping that evidence compliance such as HR, MOSAIC (electronic social care records of people) and performance management.
36. East Midlands ADASS has begun work to support inspection readiness and to build on the Sector Led Improvement process to grow capability and confidence within the leadership of councils.
37. The funding for the burden of inspection has not yet been announced. For 2022/23 the CQC is gathering evidence and inspections will start from 2023 onwards.
38. As well as the risk of funding and resourcing the required capacity in the department, there is also the risk to the Council further to inspection, given the current quality and capacity concerns in Adult Social Care following the emergency period.

### **Build Back Better**

39. Build Back Better describes the service model and workforce action required to implement reform. Much of the work is consistent with the Adult Social Care Transformation Programme agreed by the Adult Social Care and Public Health Committee in January 2021.
40. The changes require working across the Council to deliver improvements in areas such as digital and workforce support, as well as working across the Housing, Health, and Care system in areas such as Supported and Independent Living.
41. Funding for this is yet to be announced and early work has started to map the requirements against the department's existing social care programme. This work is a lower priority than the earlier parts of reform described above.
42. Nationally £500m over three years has been announced to support the workforce. There are multiple demands for this funding that outstrip the amount of the grant:
  - training for new models of care both for our own staff and the 22,000 people who work in social care



- training for legislative changes such as Liberty Protection Safeguards and Mental Health Reform
- recruitment and retention of care workers – tackling career pathways and pay
- increasing numbers training for Social Work Occupational Therapy (SWOT) and SWOT placements
- wellbeing and recovery from the pandemic
- leadership succession.

## Implementation of Adult Social Care Reform

43. Adult Social Care has a funded programme of Transformation and Service Improvement agreed by Committee in January 2021. This sets out the aspiration to deliver several changes reflected in the new models of care and delivers £10.593m benefit in the Council's Medium Term Financial Strategy. This programme is currently experiencing obstacles and delivery is delayed, due to the department needing to stand down activity during the emergency period which ended in March 2022 and the situation is currently exacerbated by staff vacancies in key roles. Staff time is currently focussed on reducing the time people are waiting for Care Act assessments and reviews.
44. The dilemma is that the Council needs to reform to reduce the financial risk it is facing through improving outcomes for people and reducing their costs, but it lacks the capacity and time to change in the required timetable.
45. The department has identified five key themes which it is using as a framework to navigate this multi-faceted complex change and they are set out below:
- **Charging Reform** – introduction of the cap on care costs
  - **Fair Price for Care** – changes to the rates local authorities pay to CQC registered providers
  - **People at the Heart of Care** – introduction of a CQC Assurance Framework
  - **Integration White Paper** – introduction of an Integrated Care Board and Integrated Care Partnership across the Integrated Care System footprint
  - **Build Back Better** – workforce and service reform as set out in the White Paper.
46. A programme for responding to reform has been implemented and the following actions have been undertaken:
- Adult Social Reform is now a Corporate Transformation Programme
  - Adult Social Care and Public Health has launched a Quality Assurance Framework
  - the required reform and assurance resources have been identified and are partially funded by reform monies and departmental underspend
  - the reform programme is in place
  - Mental Health Act reform and Liberty Protection Safeguards are existing workstreams within the All-Age Approaches Programme given the implications of those pieces of law reform.

## Key significant risks and mitigations

47. The Council expressed its concerns in a letter to Sir Chris Wormald, Permanent Secretary at the Department of Health and Social Care, about the risks associated with the fair price

for care deliverables and social care assurance. In response Michelle Dyson, Director General for Adult Social Care, has provided little assurance around the affordability of the changes or flexibility in terms of the tight deadlines the department is working towards.

48. To summarise the main areas of significant risk are:
- funding fee increases across home care (18+) and care homes (65+) that will be established following the cost of care exercise as part of the Fair Price for Care deliverables
  - funding and recruiting sufficient workforce capacity to implement and embed the Charging Reform deliverables especially around the increase in self-funders the Council will be required to support (section 18(3) of the Care Act)
  - managing the significant change within the required timescales and with a depleting workforce
  - preparing for CQC Assurance and managing any reputational damage that may emerge from inspection.
49. To mitigate the risks the department is:
- setting out the Council's concerns about the timetable and funding available for the implementation of the Government's Social Care Reform to the Department of Health and Social Care as mentioned in **paragraph 47**
  - working nationally on behalf of ADASS on implementation options with the Department of Health and Social Care
  - collaborating regionally with ADASS on work that reduces duplication and supports economies of scale
  - where possible prioritising work in the department to focus on Social Care Reform
  - using a Stage and Gateway approach to reform implementation, working closely with the Cabinet Member and Cabinet to understand the risks, costs, and quality at key stages in the reform timetable (**Appendix A**).

### **Other Options Considered**

50. No other options have been considered as Cabinet is asked to consider whether there are any further actions it requires in relation to the programme of Adult Social Care reform and the potential requirements, cost, and risks to the Council associated with implementation of the reforms.

### **Reason/s for Recommendation/s**

51. The report requests endorsement from the Cabinet of the ongoing issues and risks linked to the implementation of the Adult Social Care reforms, the proactive work in progress to mitigate these risks as far as possible and support to make further representations to Government about the impact of the reforms.

### **Statutory and Policy Implications**

52. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty,

safeguarding of children and adults at risk, service users, smarter working, sustainability, and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

## Financial Implications

53. The financial implications are as follows:

<b>Fair Cost of Care</b>	<b>Potential Costs</b>	<b>Potential costs for the Council per annum</b>
Care Homes (Laing Buisson Report March 2022)	<b>£1,232bn (for the country)</b>	<b>£18m (19% uplift)</b>
Home Care (UKHCA)	<b>£23.30 per hour</b>	<b>£5.15m (17.5% uplift)</b>
Homecare (UKHCA) including Supported Living Day Services & Personal Assistances	<b>£23.30 per hour</b>	<b>£23.57m</b>

<b>Charging Reform</b>	<b>Potential Costs for the Council</b>
In 2014 modelling was undertaken which estimated the costs but was dependent on the number of self-funders. This will need to be refreshed.	£40m to £51m

<b>East Midlands potential costs (CCN-Newton Report May 2022)</b>	<b>2023-2032</b>
Fair Cost of Care	£802m
Over 65's means test and cap	£614m Lower Scenario £743m Upper Scenario
Operational Spend	£100m
Additional assessment/review capacity	221 Social Care Workers
Additional Means Test Capacity	45 Financial Assessors

54. The department awaits further allocation of government funding around workforce, social care assurance and other aspects of Social Care Reform, therefore further financial implications cannot be detailed at this time.

### **Public Sector Equality Duty implications**

55. As more guidance emerges from central government, the department will review the equality impact of the reforms and decide if a quality impact assessment is necessary. Currently there is insufficient information available to understand the equality duty implications.

### **Implications for Residents**

56. The ambitions of Social Care reform are to give residents greater choice, control, and support to live independent lives, access to personalised care and support of outstanding quality and fair and affordable adult social care.

## **RECOMMENDATION/S**

- 1) That Cabinet recognises the potential requirements, cost, and risks to the Council associated with implementation of the reforms.
- 2) That Cabinet makes further representations to the Government about the issues and risks highlighted in this report and endorses continued work through the Corporate Director, Adult Social Care and Health to raise the specific issues for Nottinghamshire to Government.

**Councillor Matt Barney**  
**Cabinet Member, Adult Social Care and Public Health**

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### **Constitutional Comments (GMG 15/06/22)**

57. This is an information only item and no constitutional issues arise.

### **Financial Comments (KAS 28/06/22)**

58. Further modelling and more information from government regarding potential funding is required before we can provide a better indication of the potential costs.

59. Currently the only confirmed funding nationally, is the Market Sustainability and Cost of Care Fund of which we will receive £2.381m in 2022/23. Should we receive a similar proportionate allocation of 1.47% of the funding announced for 2023/24 and 2024/25 we could receive a further £8.82m as described in **paragraph 12**.
60. The indicative costs within the report are either £40m - £51m as described in **paragraphs 13 to 16** for charging reforms based on the modelling the council undertook in 2014 for phase 2 of the Care Act but this needs to be refreshed and either £23.15m or £41.57m for the Fair Cost of Care as described in **paragraphs 23 to 25**.

## **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Social Care Reform White Paper: [People at the Heart of Care: adult social care reform white paper - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/people-at-the-heart-of-care-adult-social-care-reform-white-paper)

Build Back Better [Build Back Better: Our Plan for Health and Social Care - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/build-back-better-our-plan-for-health-and-social-care)

Health and Social Care Act 2022 [Get in on the Act: Health and Care Act 2022 | Local Government Association](https://www.local.gov.uk/news/health-and-social-care-act-2022)

Integration White Paper [Health and social care integration: joining up care for people, places and populations - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/health-and-social-care-integration-joining-up-care-for-people-places-and-populations)

Liberty Protection Safeguards [Liberty Protection Safeguards: what they are - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/liberty-protection-safeguards-what-they-are)

[Changes to the MCA Code of Practice and implementation of the LPS: consultation document - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/changes-to-the-mca-code-of-practice-and-implementation-of-the-lps-consultation-document)

Mental Health Act Reform [Reforming the Mental Health Act: summary - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/reforming-the-mental-health-act-summary)

[Laing Buisson Report – Impact Assessment of Section 18\(3\) of The Care Act 2014 and Fair Cost of Care](https://www.local.gov.uk/news/laing-buisson-report-impact-assessment-of-section-183-of-the-care-act-2014-and-fair-cost-of-care)

County Councils Network and Newton Report 25<sup>th</sup> May 2022 [New analysis reveals the regional impact on local councils of the government's flagship adult care reforms - County Councils Network](https://www.local.gov.uk/news/new-analysis-reveals-the-regional-impact-on-local-councils-of-the-governments-flagship-adult-care-reforms)

Report to Adult Social Care and Public Health Committee 11<sup>th</sup> January 2021 [Adult Social Care and Public Health Service Improvement Programme 2021/22- 2023/24](https://www.local.gov.uk/news/adult-social-care-and-public-health-service-improvement-programme-2021-22-2023-24)

## **Electoral Division(s) and Member(s) Affected**

All.

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