

**Decision Maker:** EXECUTIVE

**With pre-decision scrutiny from Adult Care & Health Policy  
Development and Scrutiny Committee on 15 March 2023**

**Date:** 29 March 2023

**Decision Type:** Non-Urgent Executive Key

**Title:** ADULT SOCIAL CARE MARKET SUSTAINABILITY PLAN AND ADULT  
SOCIAL CARE MARKET SUSTAINABILITY AND IMPROVEMENT FUND

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**Chief Officer:** Kim Carey, Director of Adult Services

**Ward:** All Wards

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## 1. REASON FOR REPORT

- 1.1 In support of government social care reforms the Council is required to submit an Adult Social Care Market Sustainability Plan to the Department of Health and Social care. The purpose of this plan is to assess the impact the Council's current fee rates are having on the local adult social care market and how the Council is preparing for the introduction of legislative change that will give self-funding social care service users a right to ask councils to find their care and access the same rates that councils pay for the care and support from October 2025.
- 1.2 This report sets out the proposed Bromley Adult Social Care Market Sustainability Plan for agreement and seeks agreement on the spending of the Council's allocation of the government's Market Sustainability and Improvement Fund that supports the changes outlined in the plan.

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## 2. RECOMMENDATION(S)

- 2.1 Adult Care and Health PDS is asked to note and comment on the contents of the report.
- 2.2 Executive is recommended to:
  - a) Comment on and agree the Bromley Adult Social Care Market Sustainability Plan
  - b) Agree the spending proposals for the Council's allocation of the Market Sustainability and Improvement Fund

- c) Delegate to the Director for Adult Services, in consultation with the Portfolio Holder and Director of Finance, the allocation of Market Sustainability and Improvement Funding with reference to the government guidelines and in accordance with principles outlined in the the Market Sustainability Plan

### Impact on Vulnerable Adults and Children

1. Summary of Impact: To ensure the continued provision of statutory services to adults with eligible care and support needs living in Bromley.
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### Corporate Policy

1. Policy Status: Existing Policy
  2. Making Bromley Even Better Priority:  
(2) For adults and older people to enjoy fulfilled and successful lives in Bromley, ageing well, retaining independence and making choices.  
(5) To manage our resources well, providing value for money, and efficient and effective services for Bromley's residents.
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### Financial

1. Cost of proposal: £2,788k
  2. Ongoing costs: n/a
  3. Budget head/performance centre: Adult Social Care
  4. Total current budget for this head: £82.1m
  5. Source of funding: ASC Market Sustainability & Improvement Fund
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### Personnel

1. Number of staff (current and additional): N/A
  2. If from existing staff resources, number of staff hours: N/A
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### Legal

1. Legal Requirement: Statutory Requirement, underpinned by Statutory guidance.
  2. Call-in: Applicable
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### Procurement

1. Summary of Procurement Implications:
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### Customer Impact

1. Estimated number of users/beneficiaries (
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: N/A

### **3. BACKGROUND**

- 3.1 In December 2021 the government published a white paper, People at the Heart of Care, that outlined a 10-year vision for adult social care. Included in the white paper were proposals for a Fair Cost of Care and Market Sustainability policy that intended to address the practice of councils paying provider fees for care homes and domiciliary care services that do not adequately cover the cost of these services.
- 3.2 These arrangements, a result of shrinking council budgets, have created a situation whereby people who fund their own care (self-funders) can often pay higher fees for the same service than councils pay for those who are eligible for the public funding of their care. Providers have become reliant on charging self-funders additional fees that in effect subsidise their council funded service users.
- 3.3 The Fair Cost of Care policy seeks to end this cross-subsidy by giving self funders the right to access the same rates that councils pay through being able to ask councils to arrange their care. This will be made through the application of Section 18(3) of the Care Act 2014.
- 3.4 In order to mitigate the risk of destabilising providers by removing the cross-subsidy the government is looking to encourage councils to 'move towards' paying a 'fair rate' - a process that would take a number of years. The government's intention is that over time council rates and self-funder rates will converge and the cross-subsidy end. In support of 'moving towards' this levelling off of fees the government is to give councils some additional grant support.
- 3.5 The impact of this policy change for LB Bromley is significant because Bromley has a large and elderly self-funder population and a large number of care homes located in the borough. For these reasons the gap between what the Council pays for care and support services and what local care homes and domiciliary care services charge self-funders will be greater than that for other areas. It is estimated that of those Bromley residents accessing community based care and support services 59.7% are self-funders and in care homes 51.4% of placements are occupied by self-funders. The Council would need to put in place additional care assessment and brokerage and placement resources to meet a new demand for support from self-funders. Without government support the cost to LB Bromley of levelling up its fees with that of self funders could be in the region of £10m per annum.
- 3.6 The Fair Cost of Care reforms were scheduled for implementation from October 2023. However, in November 2022, and as part of the Autumn Statement, the government announced that the reforms set out in the People at the Heart of Care white paper were to be postponed. In particular the policy giving self funders the right to access the same rates that councils pay for care and support are to be postponed to October 2025. However, councils are still expected to prepare themselves and their local care and support markets for the policy change in October 2025 with some government funding to support the 'move towards fair rates.'

### **4. Cost of Care Exercise and Provisional Market Sustainability Plan**

- 4.1 All upper tier councils began working towards a set of Cost of Care requirements and guidelines published in 2022. These guidelines were then revised in the first two months of 2023. In support of the changes two grants have been made available to Councils - a Market Sustainability and Fair Cost of Care Fund in 2022/23 and a Market Sustainability and Improvement Fund for 2023/24. To draw down these funds and to comply with the reforms councils are to complete a series of market reform preparations. In summary these are:
- a cost of care exercises for older people's (aged 65+) care homes and aged 18+ domiciliary care;

- a provisional market sustainability plan, using the cost of care exercise as a key input to identify risks in the local market in preparation of giving self funders the right to access the same rates that councils pay for care;
  - a final market sustainability plan for submission by 27 March 2023 and then to be published on the Council's website, and
  - a spend report detailing how any grant funding associated with these changes is being spent in line with the fund's purpose
- 4.2 Officers engaged with the local market and undertook a cost of care survey of the older people's care homes and domiciliary care agencies based in the borough. The providers were asked to complete a government designed questionnaire on their activities and the actual costs of providing services. The Council received a very positive response rate from local providers.
- 4.3 The survey results were used to arrive at a median cost of care for the borough for these types of provision and to make an analysis of the local market of providers. The cost of care results were shared with the Department for Health and Social Care (DHSC) and published on the Council's website.
- 38 returns (44% out of 87) were received from Domiciliary Care Providers delivering services in Bromley. Of which 37 have been included in the Bromley Fair Cost of Care Exercise following a review of the returns for completeness, identification of outliers seeking clarification from the providers and agreeing adjustments where needed to validate the data.
  - 21 returns (62% out of 34) were received from Registered Care Homes - 65+ Older People in Bromley. Of which 20 have been included in the Bromley Fair Cost of Care Exercise following a review of the returns for completeness and identified outliers to validate the data.
- 4.4 The Cost of Care Exercise was used, along with a wide range of other data and market intelligence to draft a Provisional Market Sustainability Plan and this was submitted to the DHSC with the Cost of Care Exercise results.
- 4.5 When making the Council's returns to the DHSC in October 2022 the Director of Adult Services and Director of Finance stressed that the reforms represented a new burden for LB Bromley and must be fully funded. They advised that the Council is of the opinion that given the significant inflation and other substantial new pressures facing the Council, for the changes to be more successful, the Care Cap and Cost of Care Reforms should be delayed by a further year. A similar response was made by other Council's and professional bodies and this will have influenced the government postponing the introduction of the reforms from October 2023 to October 2025.

## **5. The Final Market Sustainability Plan**

- 5.1 The last part of the reform preparations to be made in 2022/23 is the submission of a final Market Sustainability Plan to the DHSC. Using the cost of care exercise and engagement with the market as a key input, this plan is to assess the impact current fee rates are having on the local care market and the potential future risks, particularly in the context of adult social care reform and with consideration given to self funders being given the right to access the same rates that councils pay for care and support. It is to outline mitigating actions, including the pace at which the local authority intends to 'move towards the fair cost of care' (where it is not being paid already) between 2022 to 2025, in order to ensure improved market sustainability. The Plan is to also outline how grant funds will be spent in line with the policy intentions.
- 5.2 The plan is prepared by completing a template to criteria provided by the DHSC.

5.3 The proposed Bromley Market Sustainability Plan is attached as an appendix to this report. The plan was submitted to the DHSC, still subject to the agreement of the Executive, on 27 March 2023.

5.4 Local authorities are also required to publish their final market sustainability plans with commercially sensitive information redacted on their GOV.UK website. A copy of the plan prepared in accordance with the guidance is included in the appendix to this report. In the interests of transparency no redactions are being made to the published draft of the plan.

## **6. Allocation of Grant Funding: Market Sustainability and Fair Cost of Care Fund 2022-2023**

6.1 The Council has received £804k Market Sustainability Funds for 2022-2023. Local authorities are required to use all funding to improve the sustainability of the aged 65+ care home and aged 18+ domiciliary care markets and not just to cover existing pressures. Local authorities are expected to use at least 75% of allocated funding in 2022 to 2023 to increase fee rates paid to providers in scope, where necessary, and beyond pressures funded by the Local Government Finance Settlement 2022 to 2023. Up to 25% of allocated funding in 2022 to 2023 can be used to fund implementation activities associated with meeting the fund purpose.

6.2 The Executive gave delegated authority for the spending of this fund to the Director for Adult Social Care in consultation with the Director of Finance and the Portfolio Holder for Adult Care and Health on 19<sup>th</sup> October 2022 including agreement over how 25% of the funds would be used for implementation activities.

6.3 In support of the Bromley Market Sustainability Plan 75% (£603k) of this grant funding is to be deployed to realise more sustainable and affordable care home capacity by making an additional back dated fee payment to those care homes who reliably and consistently run with a high occupancy rate of LB Bromley funded residents (c.20% occupancy.)

## **7. Allocation of Grant Funding: Market Sustainability and Improvement Fund 2023-2024**

7.1 The Council has been allocated £2,788k Market Sustainability and Improvement Fund for 2023-2024. The government expects that this new funding will enable local authorities 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. A maintained element of the fund is expected to continue to support the progress local authorities and providers have already made in 2022/23 on fees and cost of care exercises.

7.2 Local authorities will have flexibility to use the fund to drive improvements across a range of priority areas, to best address local sustainability and improvement needs. These are:

- Increasing adult social care capacity
- Reducing waiting times
- Increasing workforce capacity and retention
- Increasing fee rates to close the cost of care gap in an area

- 7.3 A requirement of the funding is that against a set of measures at least one of these priority areas is improved and none is worsened.
- 7.4 It is proposed that the Bromley allocation, delegated to the Director for Adult Services, is spent in 2023-2024 as follows:
- a) £2,238K is allocated in support of the Market Sustainability Plan to increase fees to realise more sustainable and affordable care home capacity by making further additional fee payments to those 65+ care homes who reliably and consistently run with a high occupancy rate for LB Bromley funded residents, (c.20% or more) and other new placements made within the borough during 2023-2024. In allocating this additional fee payment care will be taken to ensure that the extra payment can be absorbed by Council uplifts in later years in the event of the Council not receiving further additional government funds in support of the cost of care reforms. Those care home providers that receive the additional funds will be advised that future fee uplifts will be affected in the event of the government not sustaining these funds being paid to the Council. The additional fee payment will be offered as part of the overall fee offer made to providers for 2023-2024. Part of these funds will be held by the Director of Adult Services to direct to other providers in line with the principles and priorities outlined in the Market Sustainability Plan.
  - b) £400k is allocated in support of the Market Sustainability Plan to support the capacity and expansion of the Council 8 Domiciliary Care Patch Providers. This will be made by way of a one off payment to providers to put in place resources that better enable these providers to take on more referrals and move towards the target of having 60-70% of service users placed with these providers.
  - c) £150k is allocated to support the preparations for the new arrangements including the purchase of new digital technology to support self-funders who may seek Council support in finding their care and support from 2025.

## **8. TRANSFORMATION/POLICY IMPLICATIONS**

- 8.1 Implications for the Council transformation strategy will include the need to take care over potentially increasing costs for care and support and the need to use new ways of working supported by digital to respond to the changes. The Council may need to introduce new processes and policies at the point of implement the government reforms in October 2025.

## **9. FINANCIAL CONSIDERATIONS**

- 9.1 The Council received £804k in 2022/23 relating to the fair cost of care element of the reforms through the Market Sustainability and Fair Cost of Care, the majority (75%) of which is required to be used to increase the rates paid to providers of adult domiciliary care and care homes for aged 65+ where the rates are below the fair cost of care.
- 9.2 Although the reforms have been delayed by two years, the government still expects councils to work towards to the fair rate of care, and has allocated the Council £2,788k for 2023/24 through the ASC Market Sustainability & Improvement Fund.
- 9.3 The full grant determination and guidance are still awaited; however an explanatory note was published in February which provided high level expectations as set out in paragraphs 7.1 to 7.3 above. As a

result, it is requested that authority is delegated to the Director of Adult Social Care, in consultation with the Portfolio Holder and Director of Finance, to agree the final details of how the grant will be spent; currently proposed as detailed in paragraph 7.4 above and summarised below:

	<b>£'000</b>
Increased rates to 65+ care homes	2,238
DomCare patch providers	400
Preparatory work including digital technology	150
	<b>2,788</b>

- 9.4 Although the grant will be paid by way of increasing the rates, there will need to be arrangements in place to ensure that the increase relating to the grant is not charged to full cost payers in care homes.
- 9.5 To mitigate any risk of reduction in the grant level in future years creating an increased burden on the Council, providers will be informed that future fee uplifts may be affected in such an eventuality.
- 9.6 The outcome of the fair cost of care work indicated a potential increase in costs to the Council in the region of £10m per annum in order to fully implement the fair cost of care before government funding. However, it should be noted that there are a number of unknowns within this estimate, in particular the actual number of self-funders.
- 9.7 In addition, the fair cost of care rates are based on simple median rates which does not take account of the number of placements in care homes in the way a weighted average would. As a result the current fair cost of care rate may not be sustainable for providers with a large number of self funder paying high rates.

## 10. LEGAL CONSIDERATIONS

- 10.1 As set out in section 5 of the Care Act 2014 (“the Act”) , 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. The Care Act aims to bring forward wide-ranging reform of adult social care. The Market Sustainability and Fair Cost of Care Fund is intended to support local authorities to prepare their markets for reform.

<b>Non-Applicable Sections:</b>	SOCIAL VALUE, CARBON REDUCTION AND LOCAL / NATIONAL PRIORITIES; IT AND GDPR CONSIDERATIONS; STRATEGIC PROPERTY CONSIDERATIONS; PERSONNEL CONSIDERATIONS, PROCUREMENT CONSIDERATIONS
Background Documents: (Access via Contact Officer)	<ul style="list-style-type: none"> <li>• Market Sustainability and Fair Cost of Care Fund 2022-2023: DHSC Guidance 2022</li> <li>• Market Sustainability and Improvement Fund 2023-2024: DHSC Guidance 2023</li> </ul>