

Executive Advisory Panel – Health, Wellbeing & Vulnerable People Friday, 2 September 2022

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| Report/Business Case Title: | The Reform of Adult Social Care: Requirements of, and costs to, the Council | | | |
| Date: | 16 August 2022 | | | |
| Author(s): | Dr Carol Tozer | | | |
| Purpose: | <input type="checkbox"/> Decision | <input type="checkbox"/> Discussion | <input type="checkbox"/> Ratification | <input checked="" type="checkbox"/> Information |
| Confidential: | <input type="checkbox"/> YES | | <input type="checkbox"/> NO | |
| Outline/Decision required: | <p>This report provides CLT with an overview of the key reforms to adult social care (ASC), an initial analysis of the likely costs to the council undertaken by Newton Europe and an update of the work currently underway in ASC to prepare for the implementation of the reforms from 2023.</p> <p>These reforms represent the most significant changes to ASC to be undertaken in more than a generation. They have widespread implications for how ASC is designed and delivered locally and for the council's existing medium term financial planning and savings targets. Equally, the reforms introduce the formal assurance of adult social care by the Care Quality Commission from April 2023 – with resulting ratings and the ability of the Secretary of State for Health and Social Care to direct interventions when a council is assessed by CQC as failing to deliver its statutory duties.</p> <p>Over the next three years, Government is providing additional funds to councils in order to implement the reforms of ASC. NNC's allocation of the Market Sustainability and Fair Cost of Care Fund equates to £852K in 2022/23, £4.818M in 2023/24 and £2.409M in 2024/25. These additional funds have now been factored into the council's MTFP. Beyond 2024/25, it is currently unknown what Government will do with regards to council funding for the reforms.</p> <p>However, based on the detailed analysis of costs to NNC by Newton Europe (attached to this report), there could be as much as a £8.3M gap until the end of 24/25 between the funds received from Government (via the Market Sustainability and Fair Cost of Care Fund) and the actual costs to North Northamptonshire Council (NNC) of doing so.</p> <p>This could well be a best-case scenario because ASC managers are concerned that the Newton analysis under-estimates the costs to the council of having to undertake financial means testing for self-funders as well as creating and maintaining (including the preparation of statements) to everyone with a Personal Care Account. ASC is meeting with Newton on 27th July to explore</p> | | | |



this matter in greater detail as their analysis suggests that only one additional officer will be needed in the means testing team in ASC.

It should also be noted that Newton estimates the costs of funding charging reform to NNC (covering the implementation of the new means test lower and upper limits and care cap, operational expenditure such as additional staffing needed and implementing a fair cost of care for residential and nursing care homes only) will amount to £157M in the nine years between 2023/23 and 2031/32. This EXCLUDES any capital costs which will also be incurred by councils (e.g., such as the implementation of the required Personal Care Account system which NNC is required to have in place by October 2023).

Finally, by way of introduction, many of the candidates in the current election to the leader of the Conservative Party, and thus our future Prime Minister, are suggesting that they will reverse tax increases being introduced, in part to fund the reforms planned for ASC, should they be elected. Accordingly, there is now a level of uncertainty about what this means for the implementation of the planned reforms. Caveat aside, however, it is important that CLT understands the scope and potential impact of the reforms to ASC – as they are significant and will have corporate financial, performance and reputational impacts that extend beyond ASC.

Recommendations:

1. That the DASS and s151 officer establish a joint working group to identify how NNC will fund the new duties and responsibilities for ASC heralded by the reforms set out in the Health and Care Act 2022 over the course of its medium-term Financial Strategy.
2. That ASC meets with Newton Europe to better understand the granularity of their costing estimates – especially with regards to the costs that will be attached to NNC's new duties to undertake financial means tests for self-funders, create and maintain Personal Care Accounts and ensure that everyone with an Account receives a regular and accurate statement of their contributions towards their care cap of £86k. Should this scrutiny result in changes to the estimates of costs to NNC, a further report should be brought to CLT.
3. That the DASS brings the results of the Fair Cost of Care exercise currently being undertaken as required by Government, and the resulting Draft Market Sustainability Plan, to a meeting of CLT and the Northamptonshire Health and Care Partnership in October 2022.
4. That ASC continues to share data and intelligence with CLT about its current performance, including the sector led improvement activities it has and is engaged in, as part of its preparations for the forthcoming assurance of ASC by the CQC.
5. That the Northamptonshire Health and Care Partnership prioritises the completion of a self-assessment against the known domains that CQC will examine in its assessment of Integrated Care Systems from April 2023.
6. That the Northamptonshire Health and Care Partnership gives urgent attention to the development of an integrated workforce strategy for health and social care 2022/23, engaging private care providers and people with lived experience.



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| <p>Background/ Context:</p> | <p>1. An overview of the reforms to ASC</p> <p>The Health and Care Act 2022 received Royal Assent in April 2022 and heralds a series of significant reforms to the delivery of health and ASC services in England.</p> <p>a. Integrated care Systems</p> <p>The Act formalises integrated care systems (ICSs) so that the providers and commissioners of health and care services work together in meeting the needs of the populations they serve: integrated care boards (ICBs) are tasked with the commissioning and oversight of most NHS services in their area and account to NHS England; integrated care partnerships (ICPs) bring together the NHS, local authorities and other key partners in addressing the broader health, public health and adult social care needs of the local population. Recognising the key importance of organisations working together at the level of “place”, the Act gives local leaders flexibility in how they establish and govern their ICPs – and indeed how each ICP informs, and is informed by, the host ICS (which will often include more than one local authority).</p> <p>b. Fair Cost of Care and Care Market Sustainability</p> <p>With regards to ASC, and in addition to proposals that urge further integration and improved partnership working with health, the Act heralds: changes to the means test for social care; a cap on social care costs to the individual; and intervention in the social care market designed to ensure that councils pay a “fair price” for care, thereby improve the sustainability of the market.</p> <p>More specifically, from October 2023:</p> <ul style="list-style-type: none">• No one will have to pay more than £86k in care costs over their lifetime. This is limited to eligible care needs – i.e., personal care needs - and excludes “hotel costs” (which the government has set at a level of £200 per week at 21/22 prices). The cap will not apply retrospectively. Equally, any money paid by a local authority towards meeting a person’s eligible care needs will not count towards someone’s care cap. Research by the Health Foundation suggests that people with less than £106K assets will actually derive very little benefit from the cap (e.g., because of the hotel costs for someone going into a care home) and that some people will still face the prospect of having to sell their home in order to fund their care.• Anyone with less than £20k assets will not have to pay anything towards their care from their assets.• If someone has between £20-100K in assets, they are eligible for some means tested financial support from their council towards the cost of their care needs on a sliding scale. The new lower limit of £20k (it is currently £14,250) and new upper limit of £100k (it is currently £23,250) means that more people will be eligible for state funded care: the Kings Fund estimates that this change will benefit between 40-50,000 more people per annum. |
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- People will have the right to a Care Act assessment – including people currently funding their own care - in order to establish whether or not they have eligible care needs which will count towards their care cap.
- Self-funders will have the right to ask councils to secure care home placements for them (as they can currently for home care) at the council's fee level.
- Everyone who has approached the council for an assessment and who are found to have eligible care needs, whether or not they subsequently self-fund their care and support or are supported by their council, will have a Personal Care Account operated by the council – so that people's own financial contributions towards their own care are constantly "metered" towards their £86k cap – at which point the council becomes financially responsible for the purchase of their care and support. And people will be able to access their Personal Care Account in order to check on their progress towards the cap.

Councils, of course, will have to make significant changes to existing financial means testing procedures in order to adhere to these new rules. This will include undertaking new means tests for some people already drawing on care and support that is commissioned by the council and who currently contribute towards the costs of their care (e.g., because of the new lower and upper capital limits, as well as the assumptions made about responsibility for paying the daily living costs associated with living in care homes which are excluded from anyone's accrual of their Care Cap) as well as new people entering the means testing system because they want their care contributions, if being used to pay for eligible care needs, to contribute towards the "metering" of their £86k Care Cap.

For instance, initial analysis by the NNC service manager who oversees ASC financial means testing reveals that of 1010 people aged 65 and older already living in care homes whose care is directly commissioned by the council and who already contribute towards the cost of their care under current means testing rules, 687 contribute less than the £200 per week established for daily living costs in the new regulations. This means that their contributions will not count towards their metering of the Care Cap. Indeed, NNC analysis reveals that 1815 people already in receipt of domiciliary care or residential/nursing care and support commissioned by NNC will require new means testing and the creation of a Personal Care Account.

Councils already have a duty to deliver a high quality and sustainable care market and they commonly use their position as the single largest commissioner of care in their areas to obtain lower fee rates from care providers. Key aspects of the ASC reforms, therefore, aims to remove the current levels of cross subsidisation (whereby people who fund their own care currently pay far higher fees to care providers than the fees paid by councils for the people they are financially responsible for) and to drive improved sustainability in care markets because councils' fee levels are based on "fair cost of care" calculations.

The ASC reforms stipulate that Councils must submit to DHSC a (care) market sustainability plan (a provisional version by 14 October 2022 and a final version by February 2023) setting out how they will deliver quality and sustainability in their local care market and how they will progress towards paying a “fair price for care” to their commissioned care providers by 2025.

Alongside the October 2022 submission to DHSC, councils must include details of how a council has engaged its care providers to develop and derive their delivery costs (including their returns on investment) and subsequently calculated its “fair cost of care” for domiciliary care (for all adults) and residential and nursing care homes for people aged 65 and older.

c. The Health and Social Care Levy

The Government is currently funding the ASC reforms via the 1.25% increase in national insurance introduced in April 2022 – costing someone on a salary of £20k an additional £130 per annum. From 2023, however, national insurance rates will revert to previous levels and the additional funding will derive from the introduction of the Health and Social Care Levy. In total, Government estimates that the Levy will generate an extra £12Bn in annual revenue – and this will be earmarked for both the health service and ASC. However, only £1.2Bn in each of the next three years has been fully committed to the ASC reforms for how people pay for their social care. In explaining this, Government estimates that the annual cost of the charging reforms, including the “fair cost of care”, will start relatively low (£1.42 Bn in 23/24) and rise to an estimated £4.74Bn in 2031/32 (both estimates are at 21/22 prices).

In total, therefore, £5.4Bn of revenue from the new Levy will be used to fund the ASC reforms over the next three years: £3.6Bn will be used to reform how people pay for care (including £1.4Bn to help local authorities move towards paying for a fair cost of care to care providers); and £1.7Bn to support wider system reform.

Important analysis undertaken by Newton Europe on behalf of the County Councils Network¹ (which has included NNC) suggests that the additional funding to councils being made available in the nine years from when the ASC reforms are introduced in 2023 is at least £10bn less than the costs councils will actually incur. Whereas the Government’s Impact Assessment suggests that the reforms will cost £19Bn over ten years, Newton’s analysis suggest that it will be between £29Bn and £32Bn because: the older adults means test and cap analysis suggests a more significant total cost; the proposed phasing of this cost suggests it will be recognised earlier; the fair cost of care analysis suggests a higher cost to local authorities; and the operational analysis suggests a greater workforce requirement and associated cost.

Based on the assumption that a member of staff can carry out either 3.5 assessments or 5 reviews per week, Newton’s analysis concludes that an

¹ Preparing for Reform, 25 May 2022, Newton Europe and the County Councils Network



additional 5000 staff will be needed to carry out extra care and financial assessments for people seeking to benefit from the reforms, including 4,300 social work staff to carry out Care Act assessments and an additional 700 people to carry out financial assessments. This is because Newton assess that an additional 200,000 care and financial assessments will be required annually across England, primarily as a result of self-funders approaching their councils for assessment in order to start the metering of their financial contributions towards their care cap. In coming to this number, Newton have assumed that 80% people with assets over £100k will ask for Care Act Assessments/Reviews (due to metering to cap and/or asking the LA to commission their care) and that 5% of these people will receive Financial Assessments/Reviews or request Deferred Payment Agreements).

The report concludes that councils in county and rural areas will face the biggest financial and workforce challenges – with a minimum funding deficit from Government of £7.6bn.

d. New duties awarded to the Care Quality Commission (CQC) in assuring councils' ASC functions and Integrated care Systems

From April 2023, CQC will start to assure how well all 151 English councils with ASC responsibilities are meeting Care Act 2014 (Part One) duties and responsibilities as pertaining to: prevention; information and advice; and high quality, appropriate services.

The intention is that each council's ASC offer will be rated by CQC (although the decision as to when ratings will start to be published currently remains with the Secretary of State for Health and Social Care) as either: outstanding; good; requires improvement; and inadequate. Those councils judged as failing to meet their statutory duties will subsequently be subject to two levels of intervention: supported intervention (wherein sector led improvement methods are deployed); and statutory intervention (whereby the SoS, because failings are so significant, can decide to bring in commissioners to oversee a council's ASC functions and monitor its progress).

CQC has confirmed that its focus of local authority assessments will be across four themes, or domains:

- Working with people (i.e., assessing needs; supporting people to live healthier lives and thereby diverting/reducing/removing the need for care and support).
 - Providing support (i.e., care provision, integration, and continuity; partnership working and engaging with local communities and people with lived experience).
 - Ensuing safety (i.e., safe systems, pathways, and transitions; and safeguarding).
- And
- Leadership and workforce (i.e., governance, management, and sustainability; and learning, improvement and innovation).

Each of these domains is underpinned by an accompanying series of “We” (organisational) and “I” (individual) statements – and these will be scored by CQC (in order to help ensure transparency in how they arrive at their final rating for ASC).

Equally from April 2023, CQC will commence assurance of the 42 ICSs covering England and this overlaps with, and has additional significant implications for, councils. CQC’s ICS assurance focus will be:

- Leadership (i.e., shared direction and culture; capable, compassionate, and inclusive leaders; governance and assurance; partnerships and communities; learning, improvement, and innovation; environmental sustainability; and workforce equality, diversity and inclusion).
- Integration (i.e., safe systems, pathways, and transitions; care provision, integration, and continuity; and how staff, teams and services work together); and
- Quality and safety (i.e., learning culture; supporting people to love healthier lives; safe and effective staffing; safeguarding; equity in access; and equity in experience and outcomes).

ICSs will also be rated by CQC as to whether they are: outstanding; good; require improvement; or inadequate. Recognising that most ICSs are in their infancy, CQC has recently announced that it will, in all likelihood, add a “direction of travel” judgement to augment its overall rating.

CQC has recently announced the six categories of evidence it will use in its assurance of a council’s ASC functions and ICSs: people’s experiences; feedback from partners; feedback from staff and leaders; observation (both off and on site); processes; and outcomes and performance data. CQC has also confirmed that a key principle it will abide by is the minimisation of burden for councils and ICSs: it will use existing data and processes as much as possible, calling on other public bodies also to help provide that data (e.g., Skills for Care; Health Education England; NHSE).

Currently, of course, no “baseline” of evidence exists in assessing the quality of either a council’s delivery of its adult social care functions nor the performance of an ICS. Consequently, CQC has confirmed that it will be seeking to establish this baseline during the first two years of its new duties commencing in 2023 – meaning that all councils and ICSs will be assured/assessed by CQC between April 2023 and April 2025. Equally, it has confirmed that it will be evidence led as to where, and when, it will undertake the assessment of a council’s ASC functions or an ICS – with no timetable as yet in place. Helpfully, however, CQC has confirmed that all ASC assurance and ICS detailed inspections will be announced: there will no unannounced assessments of ASC or ICSs except those that already happen for individual social care providers and NHS Trusts.

As a consequence of the forthcoming introduction of assurance for ASC, over the last year or so, ADASS nationally has been leading a programme of work designed to strengthen and standardise existing sector led improvement (SLI)



activities – as the Act makes explicit reference to the importance of SLI in driving improvement and indeed deploying SLI in those councils who become subject to “directed support” or “statutory intervention”.

NNC has been an active participant in this work by ADASS, with the DASS being a member/co-chair of the newly established ADASS Improvement, Innovation and Assurance Network. Equally, NNC has been a leading participant in the development of the East Midlands ADASS performance and SLI activities. Specifically, NNC has helped develop a quarterly data set that all 10 councils in the East Midlands ADASS region are currently piloting and it has participated in an independently led “Annual Conversation”, providing an assessment of its current performance in ASC, its priorities for improvement and recommendations as to how to best deliver these priorities.

2. The Financial Impact of the ASC reforms regarding how people pay for their care in NNC: Analysis by Newton Europe.

As part of the work commissioned by the County Council Network, Newton has provided all CCN members with their bespoke analysis, including NNC.

Newton’s slides which they prepared for NNC are attached to this report.

Ten per cent of all over 65s in NNC have chargeable assets of over £100k (and are thus responsible for their own care) and a further 15% have assets in the £23,250-£100k bracket (and thus will contribute towards their care).

For people aged 65 and older, Newton have provided two cost scenarios – an upper and a lower – for each of the nine years in the period 2023/24 to 2031/32. In the “upper” scenario, Newton estimate that the cumulative financial impact of the means test and cap over these nine years to 2031/32 will be £67M (including £1.2M in 2023/4, £3.8M in 24/25 and £6.8M in 25/26). In addition, they estimate that the cumulative financial impact of additional staffing in NNC will be £3M over the nine years to 2031/2 (including £0.39M in 23/24, £0.4M in 24/25 and £0.41M in 25/26). Finally, they estimate that the nine years to 2031/32 cumulative financial impact of implementing a fair cost of care in NNC (using Laing Buisson market data and modelling) will be £57M (including £7.2M in 23/24, £7.4M in 24/25 and £7.6M in 25/26).

In total, therefore, Newton estimate that the costs of implementing the charging reforms on older adults only will be as much as £127M in the nine years to 31/32 (and £9M in 23/24, £12M in 24/25 and £15M in 25/26). Newton’s “lower” case scenario amounts to £125M.

Newton estimates that NNC will need to undertake an additional 200 Care Act Assessments per annum – requiring an additional 7 social workers. Equally, Newton estimate that NNC will have to undertake an additional 160 financial assessments per annum – requiring one additional officer. This latter conclusion, as already highlighted above, is being queried by NNC as there are concerns that it underestimates the volume of work that will be required



in implementing the new means testing rules and accompanying creation of Personal Care Accounts.

At the very least, therefore, Newton's analysis means that, up to 2024/25, there will be a £8M gap in the funding NNC will receive from Government via the Market Sustainability and Fair Cost of Care Fund (£3M in 2023/24 and increasing further in 2024/25).

3. Government requirements for councils in implementing charging reforms

To satisfy the funding requirements of the Market Sustainability and Fair Cost of Care Fund, local authorities must submit to the Department of Health and Social Care ("DHSC") by 14 October 2022: a fair cost of care exercise (FCC) for homecare and care homes for older people; a provisional market sustainability plan; and a spend report detailing how the 2022/23 funding has been allocated in line with government expectations.

For the FCC submission, it is expected that data on providers' costs will be collected via the open-source homecare toolkit provided by LGA & ADASS (CHIP) in partnership with ARCC and the is "Care Cubed" Care Home Cost of Care Tool (commissioned also by CHIP) on behalf of CHIP. Both are free to all councils (and any 3rd parties working with councils on cost of care) and providers to use.

The Provisional Market Sustainability Plan must: show how long it will take to move towards a sustainable fee rate; consider the impact of section 18(3); and consider other pressures. The template document makes it clear that the plan should not exceed 5 pages and that it should contain: assessment of current sustainability of the 65+ care home market; assessment of current sustainability of the 18+ domiciliary care market; assessment of the impact of future market changes (including funding reform) over the next 1-3 years, for each of the service markets; plans for each market to address sustainability issues identified, including how fair cost of care funding will be used to address these issues over the next 1 to 3 years.

Very importantly, if DHSC is not satisfied by the quality of the work undertaken by a local authority in establishing its Fair Cost of Care or its Provisional Market Sustainability plan, then it can withhold funding in 2023/4.

4. Work underway in ASC to satisfy these requirements

To develop its FCC, the ADASS East Midlands region has commissioned Care Analytics to undertake the analysis for all ten councils' FCC calculations – thereby saving NNC valuable resource. Although this means that the ten councils are not using the national templates referred to above in section 3, senior managers from NNC ASC have checked that the work being conducted by Care Analytics fully complies with Government requirements.

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| | <p>Locally, the launch meeting for the Care Analytics work was held with NNC care providers on 17 June 2022. This meeting was attended by approximately 30 providers and the deadline for data submission by providers was the 15 July. Commissioners reported that providers found the meeting to be very helpful in terms of both understanding the Care Analytics survey tool and discussing the implications of the government’s reforms to adult social care that commence in 2023/24. At the time of writing this report (18 July), 12 care homes and 7 domiciliary care agencies have submitted data to Care Analytics and commissioners in ASC are very actively engaged in persuading other care providers to submit their data as the submissions represent only a small fraction of the total number of providers operating in NNC.</p> <p>Care Analytics has informed NNC commissioners that it will not receive its fair cost of care data, based on providers’ submissions, until “September”. This is a risk because the draft Market Sustainability Plan requires this information and, depending when precisely in September it is received, NNC officers will not have much time to digest and analyse the results, ensure that the Provisional Market Sustainability Plan adequately reflects the fair cost of care data and secures the necessary corporate and political approvals prior to submission to DHSC on 14 October.</p> <p>As a consequence, the DASS has established a working group of senior Managers in ASC, Business Intelligence and Finance, with 7 days of support provided by a recently retired DASS, to review the fair Cost of Care data, produce the Provisional Market Sustainability Plan in good time for the October submission to DHSC, including completion of the spend template. She will also develop a number of key actions designed to: raise the quality of care in NNC (e.g., currently, there are no care home providers in NNC rated as “outstanding”); secure the views of people with lived experience in the development of NNC’s market position statement; and develop proposals for how NNC commissioners can work more closely with care providers.</p> |
| <p>Next Steps:</p> | <p>Meeting with Newton Europe to review their costings of the impact of charging reforms in NNC – scheduled 27 July 2022</p> <p>The DASS to provide updates to CLT about the calculation of NNC’s Fair Cost of Care and preparations for assurance as requested and required.</p> |
| <p>Supporting Papers:</p> | <p>Preparing for reform: understanding the impact of adult social care charging reform and planning for successful implementation North Northamptonshire Council detail pack</p> |