Leicestershire County Council

ADULTS AND COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE 5 SEPTEMBER 2022

ADULT SOCIAL CARE REFORM - MARKET SHAPING AND CHARGING REFORM

REPORT OF THE DIRECTOR OF ADULTS AND COMMUNITIES

Purpose of the Report

1 The purpose of this report is to provide a further update to the Committee of the work being undertaken in preparation for the Government's planned Adult Social Care Reforms, set out in the "People at the Heart of Care" White Paper published in December 2021.

2 This report sets out the policy background to the Charging Reform (which is a key part of the overall Adult Social Care Reforms) and the key implications for adult social care in Leicestershire to set the current activity in context.

3 The report provides information on the nationally mandated Fair Cost of Care (FCOC) analysis. A report is being presented to the Cabinet on 16 September 2022 to seek approval for submission to the Department of Health and Social Care (DHSC) for the FCOC analysis and Market Sustainability Plan (MSP).

Policy Framework and Previous Decisions

4 On 7 September 2021, the Government announced £5.4 billion over three years solely for the reform of adult social care in England. At its spending review in October 2021, the Government announced that the investment would be used in two main areas - £3.6 billion to pay for the Charging Reform, and £1.7 billion to improve access to social care, including a £500 million investment in the workforce.

5 "People at the Heart of Care" White Paper, published in December 2021, sets out the Government's 10-year vision of how it proposes to transform support and care in England. The vision revolves around three objectives:

- People have choice, control, and support to live independent lives;
- People can access outstanding quality and tailored care and support;
- People can find social care in a fair and accessible way.

6 On 24 January and 6 June 2022 the Adults and Communities Overview and Scrutiny Committee received reports on the work underway to prepare for the Social Care Reforms.

Background

7 A number of key changes to adult social care were outlined as part of the White Paper. The proposals set out the following changes:

- Further emphasis on the duty of a Local Authority to shape healthy and diverse social care markets, reducing variation in quality of care and promoting safety of care;
- Initiatives to support the social care workforce, emphasising transferable learning and wellbeing;
- Enabling individuals to navigate the system to find the right care and support and setting a cap on what individuals will need to pay towards their care;
- Encouraging Local Authorities and providers to make the best use of Technology in Social Care;
- Expanding the choice of housing options;
- Facilitating integration of health and care services by having a single accountable body for local areas;
- Supporting local authorities to deliver reform by giving the Care Quality Commission (CQC) the power to assure the quality of Local Authority Social Care.

8 In ensuring that adult social care is fair and accessible, the Government wishes to focus on how people pay for care or contribute toward the cost of their care and to ensure that people who fund their own care do not pay more than local authorities would pay. The Government also wishes to see that local authorities are shaping care markets that are healthy and diverse based upon a FCOC in each local authority area.

9 In October the County Council, alongside all other councils with adult social care responsibilities, is required to submit to the DHSC the outcome of the FCOC exercise for care homes and home care and the initial MSP. This will also include a spend report setting out how the Council has utilised the Market Sustainability FCOC Fund.

Charging Reform

10 From October 2023, the Government plans to introduce a new £86,000 cap on the amount anyone in England will have to spend on their personal care over their lifetime. The cap will apply irrespective of a person’s age or income.

11 Only money spent on meeting a person’s eligible personal care needs will count towards the cap.

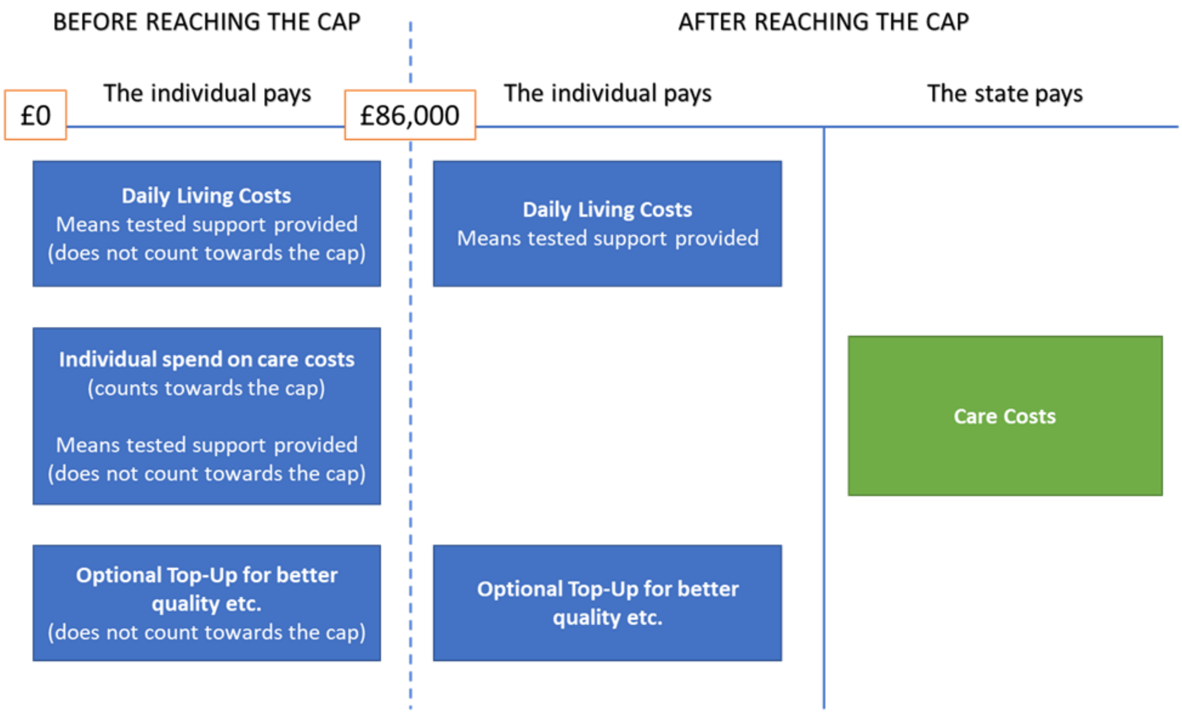
12 For those people in receipt of local authority commissioned services, the Personal Budget (PB) will count towards the cap, but only the amount that the individual contributes from their assessed contribution (as a result of their financial assessment).

13 For those people not in receipt of local authority commissioned services, an Independent Personal Budget (IPB) will set out the cost of meeting the adult’s “eligible needs” at the Council’s FCOC rate. These people must first meet the Council’s eligibility criteria for services in order to receive an IPB:

- Spending on daily living costs (commonly referred to as "hotel costs" in a care home) is not included;
- 'Top up' payments paid on top of the PB (or IPB) will not count towards the cap;
- Local authority contributions (the difference between a person's assessed contribution and the total cost of the care package – where this is higher than the assessed contribution) to a person's care package will not count towards the cap.

14 The diagram below illustrates how the cap on care costs will be applied to individuals across the County:

Figure 1 - How the cap on care costs will be applied post October 2023



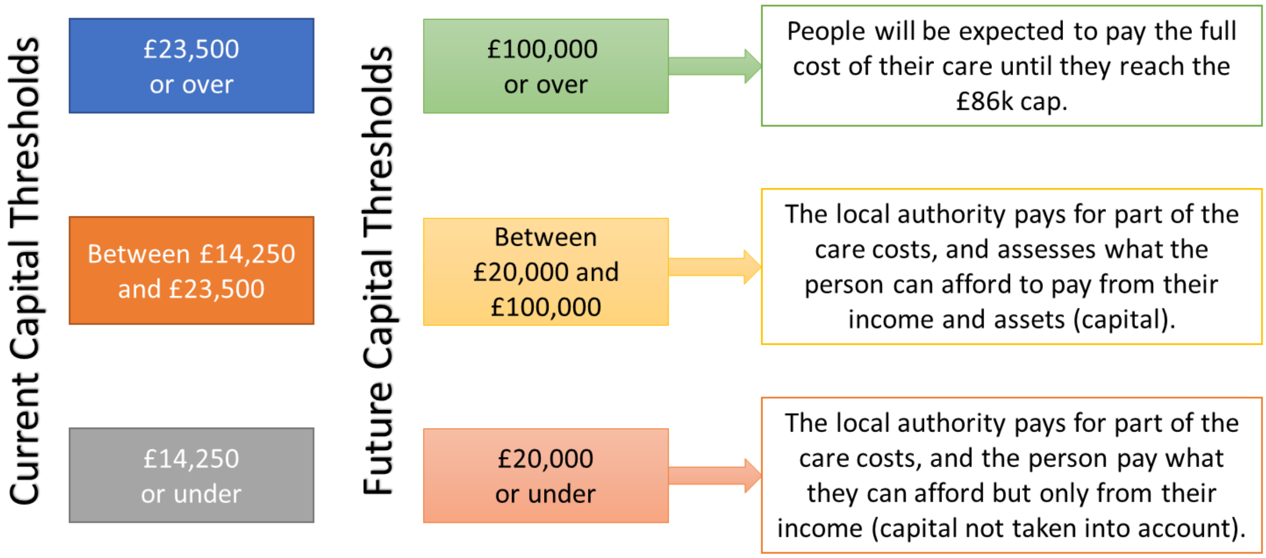
15 Local authorities will be required to set up Care Accounts that track the progress of an individual's spend on their care costs. Local authorities will also need to provide regular statements to all customers that have a Care Account. This will create a significant increase in demand on the Department's Adult Social Care Finance section and require more resource to adequately manage it. It will also require additional system functionality within the case management and financial management systems already in use by the County Council. System providers are working with other providers and the DHSC on a viable product to be available for local authorities.

16 From October 2023, the Government also proposes to make the means test for accessing local authority funding support more generous. The upper capital limit (the threshold above which somebody is not eligible for local authority support) will increase from £23,250 to £100,000. The lower capital limit (the threshold below, which somebody does not have to contribute towards their care costs from their capital) will increase from £14,250 to £20,000.

How financial assessment is changing

17 The diagram below illustrates how the new changes will affect customers through the application of the financial process:

Figure 2 - changes to Financial Assessment Capital Threshold limits



18 As a result of the reforms, more people will come into contact with the local authority, either because they qualify for help because of the extension to means-tested support available, or because they are progressing towards the cap. The changes therefore will have a significant impact on people who receive social care and support, providers and of the Council's ability to manage the significant rise in demand that is expected.

19 Analysis commissioned by the County Councils Network, carried out by Newton Europe, has suggested a potential doubling in the number of assessments (both care and support and financial) that the local authority will be required to carry out. Further detailed work is being carried out within the programme to quantify this number and an early indication is expected by October 2022.

20 Initial estimates of the cost of implementing the cap and increasing the means test threshold are expected to be the most expensive part of the reforms for the County Council. However, these are also some of the hardest costs to model as they require data on the number of self-funders purchasing care, and their level of income and assets, and this is data that is not easy to estimate reliably. Whilst work is ongoing to try to refine this data, early indicative figures put the costs of this part of the reform in the region of £32m in the first full year of implementation, rising up to £37m in the following years once the impacts of the cap have unwound.

Requirement of Local Authorities to arrange care for Self-Funders

21 Under the new reforms, self-funders would be able to ask local authorities to arrange their care for them at the local authority rates.

22 In theory the implementation of this reform should be cost neutral to the local authority, as the self-funder would still pay for the care that the local authority arranges for them. However, in reality, there might be some additional costs associated with this such as the cost of bad debt. For example, if the self-funder were to get into arrears with their payments or refused to pay for whatever reason, then the Council will be financially affected as it has already paid the provider directly. Initial estimates of this cost suggest this could be in the region of £1m per year.

Other costs associated with the care reforms

23 In addition to the areas outlined above, there are also expected to be additional costs associated with the reforms for the following:

- Additional care assessments and reviews;
- Additional financial assessments;
- Costs of administration of the Care Accounts;
- Costs associated with additional assurance requirements.

24 Whilst the modelling of the financial implications of the care reform still requires refinement, initial estimates of the cost of these above items is in the region of £4m per year.

Funding

25 Of the £3.6 billion allocated to Charging Reform over three years, it has been announced by the Government that £1.4 billion will be allocated to the Market Sustainability and FCOC Fund over three years. Leicestershire County Council's allocation of this fund in 2022/23 is £1.6m. The allocations for 2023/24 and 2024/25 are not yet known, but if the fund is allocated in similar proportions to the 2022/23 allocation, the County Council would receive approximately £6 million per year in 2023/24 and 2024/25 from this fund.

26 The remaining £2.2 billion is expected to be used to fund the costs of the charging reforms, including the introduction of the cap, the extension to the means test thresholds, and the additional assessments that will be required. In August 2022, the DHSC released a consultation on the proposed methodology of the 2023/24 allocation of £0.7 billion out of the overall £2.2 billion for charging reforms. Work is underway to inform the County Council's response to this consultation to ensure that its position is properly represented in the consideration of how this funding will be allocated. Indicative amounts in the consultation suggest that the County Council's allocation from the overall national amount of £0.7bn will be between £10.7 and £11.6m for 2023/24.

27 It could be assumed that the remaining £1.5 billion of the funding available for Charging Reform (the overall £2.2 billion less the £0.7 billion to be allocated in 2023/24) will be allocated out in 2024/25, however details of how this amount will be allocated are yet to be announced.

28 The above means that whilst the Authority has a reasonable idea of the amount of funding available in the current year (2022/23) and next year (2023/24), based on the suggested amounts included in the consultation document, beyond that there is still uncertainty over the level of funding that will be allocated. Best estimates using assumptions based on information available suggest that once all the funding has been allocated, the County Council might be in receipt of £26 million per year of funding, but this figure is very liable to change as more is known about how the Government intends to allocate this funding.

29 Whilst both the costs and the funding of the Adult Social Care Reform Programme will require significant refinement moving forwards, these early indications are pointing towards the costs being far greater than the available funding.

Fair Cost of Care and Market Sustainability Plan and supporting document

30 The Government requires local authorities to start building strong foundations and prepare markets for wider charging reform and thereby increase market sustainability.

31 Local authorities are required to evidence the work they are undertaking to prepare their markets and submit FCOC exercises for care homes for people aged 65 years and over, and domiciliary care for adults aged 18 years and over to the DHSC by 14 October 2022. This entails surveying providers to obtain details of the actual costs they currently incur in the delivery of their services (staff costs, utilities, food, etc). The findings of the FCOC are reported to DHSC as follows:

- Annex A – a standard cost of care template, detailing how constituent costs, e.g. staffing, utilities, travel insurance etc, build up to the cost per resident week in residential care and hourly rate in home care. The median value of provider reported costs should be reported.
- Annex B – a narrative report explaining how the FCOC exercise was completed, including the response rate, when data was collected and how inflation is taken into account, and assumptions relating to return on capital.
- Annex C – an MSP, which gives an overview of each market, a consideration of the key risks in relation to sufficiency of supply, workforce, quality of care and current fees compared with the FCOC analysis. The MSP should also explain how the local authority plans to address the current challenges identified in the coming years.

32 With the MSP, there should also be consideration given to the implementation of Section 18(3) of the Care Act 2014, which enables all people who fund their own care to ask the local authority to arrange care on their behalf.

33 A final plan will be submitted to DHSC in February 2023, which will enable councils to obtain additional funding from the FCOC grant, the funding identified by Central Government to support local authorities to pay higher fees improve provider sustainability and reduce the gap between the fees paid by the Council and self-funders.

34 DHSC also require submission of a spend report detailing how the £1.6m Market Sustainability and FCOC Fund allocated for 2022/23 is being spent in line with the Fund's purpose. More information concerning the allocation of this funding can be found at paragraph 41.

35 In 2022-23 local authorities are expected to start making genuine progress towards more sustainable fee rates, where they are not already doing so. This means assessing what a FCOC is locally and setting out how the local authority will seek to achieve this in fee rates paid to providers.

36 Whilst the modelling of the financial implications of the care reform still requires refinement, initial estimates of the cost of moving towards a FCOC are in the region of £6 million per year (including both residential and home care), in addition to any inflationary pressures. Further work is ongoing (see below) on the impact of moving towards a FCOC for home care but is not yet finalised across the region.

37 The Market Sustainability and FCOC Fund provides an allocation of £1.6 million for Leicestershire County Council for 2022/23 and this is intended to ensure that local authorities can prepare their markets for reform and move towards paying providers a fair cost of care.

<u>Fair Cost of Care in Leicestershire</u>

38 The Council has engaged an organisation (Care Analytics) to support the process in working with providers to ascertain costs associated with care delivery.

39 Care Analytics are working with most local authorities in the East Midlands on the same piece of work which will ensure a level of consistency in approach on both methodologies used and factors considered.

40 All providers within Leicestershire were asked to complete bespoke surveys relating to their service delivery with a focus on costs and business models. The Council engaged both EMCARE (Care Homes Association) and the Home Care Alliance to encourage providers to return surveys.

41 The results of these surveys have informed the Council's analysis of provider costs and specifically in relation to provider business models. It should be noted that across both care homes and home care there are a number of providers operating different business models depending on their organisational status (e.g. a national provider with care homes across the Country will have different structures/payment terms/overheads and capital liability to a small independent operator).

<u>Care Homes analysis (residential and nursing homes)</u>

42 A total of 33 individual care homes submitted returns to inform the FCOC exercise. This is circa 31% of the total care home market within Leicestershire and did provide a reasonable sample size/mix of providers to analyse.

43 Key data from the Exercise has been used to inform the approach to care home fees in Leicestershire as a result of the FCOC exercise for 2023/24 onwards:

- *Establish a new nursing placement rate* – this will support the Council to stimulate the nursing care market whilst ensuring that appropriate nursing care is available and funded for those individuals who require that level of care and support. It will also support new developments in the County with a clear message and direction from the Council.
- *Increasing care staff levels within commissioned care rates* – the analysis has shown that care staffing levels vary across care homes but the funding levels should reflect the needs of the people supported. The new levels would see a more stable ratio of 1:6 for direct care staff.
- Understanding care homes return on capital (ROC) and operating profits has been a key positive from this exercise. Whilst the Council is comfortable with the rate of ROC and operating profits built into the fee levels for 2023/24, there is a level of flexibility and pragmatism on both areas where new builds and new provision are part of Council-led strategic development.

44 Increased fuel and energy costs have had (and will continue to) have a significant impact on care home running costs. These costs were not captured in the analysis work undertaken and will inevitably affect the cost of care. Some care homes will be in more favourable positions (e.g. locked in rates or incentivised tariffs) but many, if not all, will experience increased costs in 2023 for energy.

Home Care analysis

45 A total of 17 home care providers submitted returns to inform the FCOC exercise. This is circa 24% of the 72 providers recorded on the capacity tracker or 19% of the 88 providers with which the Council currently commissions care.

46 Analysis of the exercise has not yet been completed but will be in place to inform both the completed MSP and the DHSC submission.

Market Sustainability Plan (MSP)

47 As detailed earlier in the report, the Council will submit an MSP to the DHSC which will provide details on:

- The current state of the older people care homes market and the home care market for people aged 18 and over;
- Market risks for those markets over the next three years (including the impact of the Adult Social Care Reforms);
- Plans to support the sustainability of those markets and the people using those services.

48 The draft MSP is attached as an Appendix to this report and will be submitted to the DHSC, on behalf of the County Council, once completed and agreed by the Cabinet.

Key messages from Leicestershire's MSP

49 The initial MSP is a short document with high level information and analysis required in readiness for a full MSP in February 2023.

50 Leicestershire's MSP details a number of key areas including:

- The County Council commissions around a third of available care homes in the County;
- There is a strong self-funder market across both care homes and home care;
- Workforce pressures across the adult social care providers is consistent with the national picture;
- Quality levels (CQC ratings) are, in the main, positive across registered providers;
- Uplift levels for both care homes and home care over recent years has meant that Council commissioned rates are competitive and favourable when compared to the region;
- There is an undersupply of both nursing care homes/placements and Extra Care within the County.

Sustainability/market development

51 The MSP provides narrative relating to market sustainability and growth. The main areas relate to:

- Developing the nursing market/new provision to support people with more complex health care needs. The Council sees this as a key driver, in conjunction with Health partners, to support people in appropriate settings with mixed funding across health and social care;
- Maximising the use of existing Extra Care provision in the County to support people with higher care needs (akin to existing residential care levels) whilst seeking to increase new Extra Care developments across the County.
- Increasing the system offer for reablement/hospital discharge and hospital prevention in conjunction with Health partners.
- Developing new initiatives for people living at home with care and support needs to maximise efficiencies for both the Council/providers and other support mechanisms (e.g. Personal Assistants/Direct Payment organisations and home care agencies).

Engagement and Consultation

Charging Reform

52 As the Programme progresses, local stakeholders and the public will be consulted on any significant changes which will be made to services as a result of the programme workstreams and reports will be presented to further Cabinet and Adult and Communities Overview and Scrutiny Committee meetings as appropriate.

Fair Cost of Care (FCOC) Engagement

53 The Council has engaged with residential and home care providers since September 2021 when the Social Care Reforms were announced via monthly provider forums and Provider News Bulletins.

54 All providers have been given the opportunity to formally feedback their costs of service delivery/provision through detailed surveys issued by the Council. These surveys have been paramount in informing the FCOC exercise and outcomes.

55 Key recommendations in relation to the residential care market relate to increasing the assumed level of staffing needed and the establishment of a separate nursing fee. These recommendations are set out in the MSP.

56 The Council is expecting the FCOC report for home care in September and any recommendations made will be used to update the MSP at that time.

57 Both surveys have been completed, in relation to the residential and nursing care sector, the cost of care report has been drafted by Care Analytics and the FCOC Annex A (financial summary) and Annex B (narrative description) are in progress.

Resource Implications

58 The Adult Social Care Reforms are expected to have a significant impact on the medium term financial position of the Council.

59 Work on a financial model that attempts to estimate the overall costs of implementing the Adult Social Care Reform Programme has begun. However, due to the complexities of the financial implications of the Programme (both in terms of the mechanics of the modelling and the inputs that needs to feed into this model), this model is likely to be continually refined throughout the duration of the Programme.

60 There are a number of elements of additional costs that are expected to affect the County Council as a result of the care reforms. These are covered in more detail in the relevant sections of the report below. Whilst all the estimated costs should for now come with the caveat that this modelling still requires more refinement, and these numbers are likely to change as work on this is refined, initial estimates of costs (and funding) are given to provide an indication of the potential scale of these costs.

61 With the above caveats borne in mind, initial estimates of the total costs of the Adult Social Care Reforms are estimated to be in the region of £43m per year from the first full year of implementation in 2024/25 (the figure will be less in the first year of 2023/24, as it will be introduced part way through the year). This figure is then expected to rise further to around £48m per year in the following few years as the impact of the introduction of the cap of care costs unwinds. This is shown in the table overleaf:

Summary of areas of additional expenditure/funding resulting from Adult Social Care reform	2023/24 (part year effect) £m	2024/25 (full year effect) £m	2032/33 (cap unwound £m
Charging Reform (cap and means test thresholds)	16.1	32.3	37.1
Fair Cost of Care	3.0	6.0	6.0
Other costs (including additional assessments and reviews; bad debt; care account admin and additional assurance costs)	2.7	4.8	5.3
Total costs	**21.9**	**43.1**	**48.3**
Estimated potential funding	16.7	26.3	26.3
Gap	**5.2**	**16.8**	**22.0**

62 The figures in the above table are based on current 2022/23 prices. With inflation rates currently running at a high level, the Council can expect the actual costs for 2023/24 and onwards to be higher than this once inflation has been applied.

63 Initial estimates of the Government funding (including the Market Sustainability and FCOC Fund) that might be allocated to the County Council in relation to the implementation of the care reforms, are in the region of £17m in 2023/24, increasing to £26m in following years. Again, these figures are currently estimates and will be refined as more information becomes known about the distribution of funding.

64 Whilst both the costs and the funding of the Adult Social Care Reform Programme will require significant refinement moving forwards, these early indications are pointing towards the costs being far greater than the available funding.

65 The Director of Corporate Resources and Director of Law and Governance have been consulted on the content of this report.

Timetable for Decisions

66 A report will be presented to the Cabinet on 16 September 2022.

67 The Cabinet and the Adults and Communities Overview and Scrutiny Committee will receive further reports early in 2023.

Conclusion

68 The White Paper sets out the Government's 10 year vision for Social Care. A programme of work has been established to ensure the Council meets the deadlines to meet the initiatives required to deliver this vision. Charging Reform and the 'care cap' will, as demonstrated in this report, require work to establish how the Council administers the process and monitors spend against the cap when it comes into force in October 2023. The Government also requires that the local social care provider market is robust and is paid a fair fee to provide services.

69 The Committee is asked to note the financial implications of implementing the Adult Social Care Reforms, along with the significant development work underway to

prepare for the Charging Reform, and provide any comments on the draft MSP which will be reported to the Cabinet meeting on 16 September 2022.

Background Papers

People at the Heart of Care" White Paper - https://www.gov.uk/government/publications/people-at-the-heart-of-care-adult-social-care-reform-white-paper/people-at-the-heart-of-care-adult-social-care-reform

Report to the Adults and Communities Overview and Scrutiny Committee: 24 January 2022 – Adult Social Care Reform and Charging https://politics.leics.gov.uk/ieListDocuments.aspx?CId=1040&MId=6838&Ver=4

Report to the Adults and Communities Overview and Scrutiny Committee: 6 June 2022 – Update on the Social Care Reform Programme https://politics.leics.gov.uk/ieListDocuments.aspx?MId=6840

Circulation under the Local Issues Alert Procedure

70 A copy of this report has been circulated to all members of the County Council.

Equality and Human Rights Implications

71 The Social Care Reform Programme has recently been presented to the County Council's Equalities Group for discussion. Workshops will be held in October 2022 to co-produce a comprehensive Equalities and Human Rights Impact Assessment for the programme as a whole.

Risk Assessment

72 The Social Care Reform Programme is complex and could present both financial and reputational risk. It has been recognised as a corporate risk and included on the Council's Corporate Risk Register. The Council's Social Care Programme also has a comprehensive risk management process with risk logs created and regularly monitored for the Programme as a whole and for each individual workstream.

Appendix

Draft Market Sustainability Plan

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