

Report to Cabinet

Fair Cost of Care Exercise and Living Wage Foundation National Living Wage Implementation

Portfolio Holder: Councillor Brownridge, Cabinet Member for Health and Social Care

Officer Contact: Jayne Ratcliffe, Director of Adult Social Care (DASS)

Report Author: Alison Berens, Fair Cost of Care, Commissioning Lead

21st September 2022

Reason for Decision

Approval is sought for the arrangements for the implementation of the Living Wage, following the commitment included in the 2022/23 Revenue Budget report (approved 2 March 2022) to implement this by October 2022.

Due to the timescales for the submission to the Department of Health and Social Care (DHSC) of the Fair Cost of Care proposals by the 14 October 2022, approval is sought to delegate authority to sign off the report submission to the Director of Adult Social Care, in consultation with the Cabinet Member for Health and Social Care. An update report will then follow to Cabinet to note the decisions made.

Executive Summary

This report provides an overview of the Fair Cost of Care (FCoC) exercise which the Council is required to submit to the Department of Health and Social Care (DHSC),

including the timeline and approval process required. Additionally, the paper confirms the implementation plan for the Living Wage Foundation National Living Wage (FLW).

Recommendations

That Cabinet:

- **Notes** the FCoC Exercise requirements, including key milestones and risks if these are not met.
- **Approves** Option 1 - the proposed delegation of authority for the submissions required by 14 October 2022 to DHSC. A Cabinet report will follow to note the decision made and costs and models agreed.
- **Approves** Option 3 to implement the FLW by the end of October 2022 at the current rate and from the first of April 2023 move to the rate announced in September 2022 (which is announced with six months to implement) at an estimated cost of £1M from October 2022 - March 2023. This will include an increase in the fees paid to providers and contract variations to ensure the increase is passed on to social care staff

Fair Cost of Care Exercise and Living Wage Foundation National Living Wage Implementation**1 Background**

1.1 The Government has introduced a range of reforms which impact on Adult Social Care, these include: The Health and Care Act 2022, the White Paper Build Back Better: Our Plan for Health and Social Care (March 2022), implementation of the Care Cap and section 18(3) of the Care Act 2014 – duty to arrange by October 2023. Alongside this there has been a reorganisation within the NHS, with Clinical Commissioning Groups being replaced by Integrated Care Systems.

1.2 A requirement of Build Back Better, is that local authorities conduct, and submit to DHSC, a Fair Cost of Care exercise in relation to the following segments of the care sector:

- 18+ domiciliary care
- 65+ care homes for each of four categories (separately)
 - Standard residential
 - Residential for enhanced needs (but not to the level of CHC funding)
 - Standard nursing
 - Nursing for enhanced needs (but not to the level of CHC funding)

All other sections of the care market are excluded from the modeling, however there is provision to use the funding for Extra Care services.

1.3 By 14th October 2022, the following documents are required to be submitted to DHSC:

- Fair Cost of Care Reports
- Market Sustainability Plan
- Spend Returns

1.4 The final Market Sustainability Plan is required to be submitted to DHSC in February 2023, following the local authority's budget setting process, and it is expected that fee rates for 2023/24 will have been agreed through this process. It is worth noting that this is earlier than has been usual practice, but would bring Oldham in line with most other local authorities and enable fee rates for the following financial year to be confirmed with providers in advance of additional cost pressures impacting on providers' operating costs.

1.5 Oldham Council's allocation (not yet published) of the announced national funding of £600 million in both 2023/24 and 2024/25 is dependent on the satisfactory completion, submission and sign off of the Fair Cost of Care exercises, reports, Sustainability Plan and 2022/23 spend return. No reference is made to funding beyond 2024/25. Full details of the Fair Cost of Care Exercise are contained within Appendix 1.

1.6 In addition to the Fair Cost of Care exercise, a key commitment included within the 2022/23 Revenue Budget was that all adult social care providers would be awarded sufficient funding to implement the Living Wage Foundation National Living Wage (FLW) for their staff by October 2022. The approved Council budget for 2022/23 included an allocation of £1m to implement this by the end of October 2022. The current rate for the FLW is £9.90. It is anticipated that the new level will be announced in September 2022, however there is no expectation that this is implemented instantly, and employers have up to six months to implement this rise.

2 Connection to Health Integration

2.1 In relation to NHS Continuing Health Care (CHC), the Fair Cost of Care guidance only contains one reference – a statement that the "enhanced needs" rates for care homes should be for an acuity of need higher than the level of residents on the standard rate but below a CHC level.

2.2 Given our efforts to, as far as possible, align fee rates across the local authority and the NHS for community residential and non-residential provision, it is therefore important that local NHS commissioners are kept updated on the fair cost of care exercise and FLW implementation, to ensure that public sector fee rates overall are set at a level which, on average, covers the "fair cost" of the service, as defined, without either double-funding or underfunding.

3 **Fair Cost of Care Report**

3.1 The Fair Cost of Care reports must include:

- How the cost of care exercise was carried out
- How providers were engaged
- Lower quartile, upper quartile and median cost
- How the resulting cost of care has been determined
- Approach to return on capital and return on operations shown separately

4 **Market Sustainability Plan**

4.1 There are three sections to the Plan, the draft of which needs to be submitted to DHSC by the 14 October 2022:

1. Assessment of current sustainability
2. Quantification of expected impact of market changes over the next 3 years including changes due to introduction of charging reforms
3. Plan for each service market to address the sustainability issues identified

4.3 The plan needs to consider sufficiency of supply to ensure continuity of care -particular specialisms or geographical factors need to be considered.

4.4 The Fair Cost of Care report and the Market Sustainability Plan are required to be published on the Council website once notified by DHSC.

5 **Funding**

5.1 The Council received £757,589 (of the £162m national funds) from the Market Sustainability and Fair Cost of Care Fund Grant determination for 2022/23. The guidance states that this in year funding has to be used to improve sustainability of the 65+ care home market and the 18+ domiciliary care market, not just for existing pressures.

- A minimum of 75% of the grant must be used in year to address the gap between the Fair Cost of Care and existing fees.
- A maximum of 25% of the funding can be used for implementation, this can for example to increase staffing within Commissioning, fund consultants to support the exercise or for costs associated with engaging providers in the exercise.

6 **Route to Approval**

- 6.1 Due to the timescale for the submission of the three returns to DHSC and the fact that the budget setting process will be followed up post submission (once the returns have

been accepted by DHSC) it is requested that the final submissions be signed off by delegated authority to the Director of Adult Social Care, in consultation with the Cabinet Member for Health and Social Care. A Cabinet report will follow to note the decision made and costs and models agreed.

7 Summary of Risks

- 7.1 The project is being project managed by Commissioning and Finance Leads seconded from other internal posts, with external support brought in from Commercial Gov, a consultancy who are providing support across a range of localities, around Fair Cost of Care, including Cheshire East who were an early Trailblazer. The specific support being provided by Commercial Gov is the development and issuing of a survey which providers can use to return the required information to the Council, active promotion of the survey, four focus groups (two for each of the service types), benchmarking of the data and 'critical friend' input into the development of the submission reports.
- 7.2 The governance structure in place is via a Project Group, chaired by the Assistant Director of Joint Commissioning, and made up of representatives internally from across Adult Social Care, Finance, Procurement and Legal and colleagues from within the NHS relating to Complex Care and Finance. The Project Group meets fortnightly and oversees the Project Plan, which includes a section to identify and mitigate risks.
- 7.3 If the return is not submitted by the deadline this will have implications for the grant funding allocated in year and it would be likely to impact future funding allocations. There is a clear project plan in place, including the approval process as noted in paragraph 5.1. Commissioning and Finance Leads have been seconded to manage the process with support from Commercial Gov consultants, funded through the administration element of the Fair Cost of Care Grant.
- 7.4 There is also a risk around having sufficient input from a good cross section of providers within the two service types. This would pose a risk that the median costs were not representative of the market as a whole. Commercial Gov have previously supported Cheshire East through the Fair Cost of Care Trailblazer and provided support to enable providers to complete a simple online survey to collate the information required. Commercial Gov and the Commissioning Lead have also completed regular general and targeted communications to ensure engagement.
- 7.5 Once the Fair Cost of Care is published for the locality there is a risk that providers could challenge this. This is mitigated by the fact that we currently have positive relationships with our commissioned providers and have been open and transparent about the process throughout. Engagement sessions will take place with providers prior to the submission of the returns in order to maintain this transparency.
- 7.6 There is an expectation from the DHSC that the 2023/24 fees will be set within Council budgets by February/March 2023. Historically this has not been the case in Oldham, however the preparatory work developed through the Fair Cost of Care exercise should allow for this to be achievable.

8 Living Wage Foundation National Living Wage

- 8.1 The Living Wage Foundation National Living Wage is calculated based upon the actual cost of living and the as part of the 2022/23 Budget process, the Council commitment to increase fees to providers in order to enable them to pay their staff the Foundation Living Wage from

October 2022. Contract variations will be issued and regular monitoring will take place to ensure that the providers pass the increase on to their employees. It should be noted that this commitment is broader reaching than the Fair Cost of Care exercise and is being applied across all commissioned providers in Adult Social Care, not just care homes and domiciliary care providers.

- 8.2 Modelling and budgeting was completed on the basis of the current rate which is £9.90 however the new rate will be announced in September 2022, two months earlier than previous years. It is likely that given the current rate of inflation and widely reported increases in the cost of living that the rate will increase. Organisations signed up to the FLW rate have six months to implement that increase. The Council made the commitment to implement the FLW prior to the announcement of the Fair Cost of Care exercise.
- 8.3 As previously mentioned, the latest Living Wage Foundation National Living Wage uplift is expected to be announced in September 2022. If the Council implemented the new rate by the end of October 2022 it would set a precedent that would mean that each year there would be two fee increases. This would not only be likely to cause confusion for providers, but would also create significant resource requirements in terms of the time required to implement two sets of fee increases. Taking learning from other localities in Greater Manchester, Salford Council implemented the Living Wage in April 2022 and will be paying the £9.90 rate until April 2023.

9 Options/Alternatives

Options in relation to the Fair Cost of Care Submission

- 9.1 Option 1 – Delegate authority to the Director of Adult Social Care to sign off the report submissions. Modelling is currently being undertaken so the financial impact of this not yet confirmed. However final sign off will be by Budget Setting Cabinet in early 2023. This option provides sufficient time to complete modelling and analysis of the Fair Cost of Care provider submissions and complete the required submission documents. It should be noted that this will include decisions on in year uplifts, prior to budget setting, however these would be funded within the 2022/23 grant funding provided. A Cabinet report will follow to note the decision made and costs and models agreed.

- 9.2 Option 2 – Require a Cabinet Decision on the Fair Cost of Care Submissions.
Due to the internal approval process if this option is chosen it will not be possible to achieve the submission deadline of the 14 October, which risks not only the reputation of the council but also may affect the funding received in year and expected in future years.

Options in relation to Foundation Living Wage

- 9.3 Option 3 – Pay the Foundation Living Wage at the Current rate of £9.90 effective from 1 October, with implementation by the end of October 2022
This option has already been modelled and costed. Although the rate is announced by the Living Wage Foundation in September 2022 there is an expectation that the rate announced is implemented by April 2023. This would set a precedent for the increase being made each year in April along with other fee setting.
- 9.4 Option 4– Implement the Foundation Living Wage at the September announced level by the end of October 2022
This option cannot be modelled until the new rate is announced, however given the current increases in the cost of living we can anticipate that the increase may be more significant than in previous years and there has not been provision made in the budget for this, neither

can the Fair Cost of Care Grant be used due to the prior commitment. In choosing to implement the increase in October this year a precedent would be set which would then require twice yearly fee increases, which would be more complex to budget for and double the resource burden of implementation.

9.5 Option 5 – Not to implement the Foundation Living Wage

The Council has already publicly committed to make the increase to the Foundation Living Wage and budgeted for an increase to the £9.90 rate in year. There would be a reputational risk to not implementing the increase.

10 **Preferred Options**

10.1 The preferred Option in relation to Fair Cost of Care approval is Option 1. This allows for sufficient time to complete the exercise and submit the returns to DHSC.

10.1 The preferred Option in relation to the Fair Living Wage implementation is - Option 3 is the preferred option, it has already been modelled and costed and sets a reasonable and manageable precedent, by maintaining one fee increase per year. This would appear to align with the intentions of the Living Wage Foundation who set the rate in Autumn with a six month lead in time for implementation, which would allow for annual increases to go through as part of the Councils annual budget setting process for the following year.

11 **Consultation**

11.1 The Fair Cost of Care exercise in itself is essentially a consultation exercise which has engaged providers. Further consultation sessions are taking place with providers in early September to ensure they remain engaged in the process. Existing processes will remain in place around the annual fee review process.

12 **Financial Implications**

Implementation of the Living Wage Foundation National Living Wage

12.1 Members will recall that the 2022/23 Revenue Budget Report approved at Council on 2 March 2022 included funding of £1m in 2022/23 specifically to finance the implementation of the FLW from 1 October 2022. This £1m was financed by using funds raised by the 2022/23 Adult Social Care precept, with 1% of the total 2% increase being specifically earmarked to fund the FLW.

12.2 Having regard to the implementation of the Council's commitment, Option 1 is the preferred option; to pay at the current FLW hourly rate of £9.90 from 1st October 2022 to 31st March 2023. This aligns to the timeframes of the Council's budget setting & approval process and is in line with the recommendation to implement the FLW increases within 6 months of the rate being announced.

12.3 The cost of option 1 has been modelled at the current FLW hourly rate of £9.90 at an approximate cost of £1m for the period 1st October 2022 to 31st March 2023. As advised above this cost has been included within the approved 2022/23 Revenue Budget.

12.4 There would be staffing resource implications that would need to be considered if a twice-yearly increase was approved (Option 2). This would also have implications for in year budget monitoring given the volatility in the care market and the level of care provision. .

Deployment of the Market Sustainability and Fair Cost of Care Fund Grant

-
- 12.5 As stated in section 5.1, the Council has received ringfenced funding of £757,589 via the Market Sustainability and Fair Cost of Care Fund Grant. A minimum of 75% of the grant (£568,192) must be used in year to address the gap between the Fair Cost of Care and existing fees.
- 12.6 A maximum of 25% (£189,397) of the funding can be used to support the implementation of the Fair Cost of Care. This can for example be used to increase staffing within the Commissioning team, fund consultants to support the exercise or for costs associated with engaging providers in the exercise. The current commitments against the implementation element of the grant total of £189,397 are as follows:
- Internal staffing costs including backfill arrangements £76,280
 - External consultancy support £17,280
- 12.7 At this time, a sum of £95,837 is uncommitted. These funds can be added to the 75% element of the grant to support in year payments to move towards the Fair Cost of Care rate following completion of the exercise. Clearly there may be further commitments reducing the currently uncommitted sum and the Finance Team will closely monitor the deployment of the grant to ensure maximum benefit to the Council and Council Taxpayers.

Liz Taylor, Senior Accountant 11 July 2022

- 12.5 Oldham Locality has modelled at the current foundation living wage hourly rate of £9.90 from the 1 October 2022 as part of the NHS Greater Manchester Integrated Care 2022-23 budget.
- 12.6 Option 1 is the preferred option to pay at the current foundation living wage hourly rate of £9.90 per hour from 1 October 2022 to 31 March 2023. This aligns with the Council's approved budget strategy and is in line with the recommendations to implement foundation living wage increase within the 6 months of the rate being announced.

Amanda Fox, Deputy Chief Finance Officer, NHS Greater Manchester Integrated Care, 21 July 2022.

13 **Legal Services Comments**

- 13.1 Provided all legislation and guidance is complied with in the carrying out and implementation of the Fair Cost of Care exercise and that any increase in the fees payable to providers (to incorporate the FLW) is subject to the providers agreeing to pay their staff the FLW, there are no known legal implications at this time.

Sarah Orrell 11 July 2022.

14. **Co-operative Agenda**

- 14.1 Fairness – both the Fair Cost of Care and the implementation of the Foundation Living Wage are intended to ensure that the council pays at fair amount to commissioned providers for their services and that they in turn are able to pay a fair wage to their workforce.
- 14.2 Openness – the decision to implement the Foundation Living Wage from October 2022 for Adult Social Care providers has already been widely communicated.
- 14.3 Working together – the Fair Cost of Care exercise requires the council to work closely with our commissioned providers to understand the true costs of the care they provide on the council's behalf.

-
- 15 **Human Resources Comments**
- 15.1 None
- 16 **Risk Assessments**
- 16.1 Section 7 of this report sets out the risks to the Council arising from the need to undertake a Fair Cost of Care Exercise in accordance with the White Papers produced on Health and Adult Social Care changes. Should this exercise not be completed to the satisfaction of the Department of Health and Social Care then the financial risk is that certain funding anticipated in the MTFs and expected to address the cost of the reforms will not be received.
- 16.2 In terms of the FLW the risk of non-implementation by the date in this report would be reputational given the commitments made in public by the Council
- (Mark Stenson)
- 17 **IT Implications**
- 17.1 None
- 18 **Property Implications**
- 18.1 None
- 19 **Procurement Implications**
- 19.1 The commercial team is content with the recommendations of the report and there are no procurement implications identified.
(Raj Ahuja, Lead Consultant 07.07.2022)
- 20 **Environmental and Health & Safety Implications**
- 20.1 None
- 21 **Equality, community cohesion and crime implications**
- 21.1 None
- 22 **Equality Impact Assessment Completed?**
- 22.1 No
- 23 **Key Decision**
- 23.1 Yes
- 24 **Key Decision Reference**
- 24.1 HSC-08-22
- 25 **Background Papers**
- 25.1 N/a

26 **Appendices**

26.1 Fair Cost of Care Delegated Report



Signed delegated
report May 2022.pdf