

Open Report on behalf of Glen Garrod, Executive Director - Adult Care and Community Wellbeing

Report to:	Executive
Date:	06 October 2020
Subject:	Payment Arrangements for Residential Care
Decision Reference:	I020572
Key decision?	Yes

Summary:

This Report:-

- places before the Executive the latest report from the Local Government and Social Care Ombudsman (LGO) relating to the Council's payment arrangements for residential care.
- sets out the results of a review of the payment arrangements in light of the changes which have taken place since they were last reviewed in 2018.
- makes recommendations as to how to respond to the LGO's latest report and as to the payment arrangements moving forward.

Recommendation(s):

That the Executive:-

1. Receives and notes the second Report of the Local Government and Social Care Ombudsman at Appendix A to this Report and considers the recommendations made therein;
2. Notes the improvements in systems and processes since this matter was last considered in 2018 and the improvement programme in progress to continue the journey;
3. Approves the change in payment arrangements from a "net" to "gross" basis for both Resident Contributions and Third Party Contributions for all categories of adult residential care; and
4. Delegates to the Executive Director for Adult Care and Community Wellbeing in consultation with the Executive Councillor for Adult Care, Health and Children's Services authority to make decisions as to the implementation of the change including determining all necessary changes

to contractual documentation and the final implementation date for the change.

Alternatives Considered:

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| 1. | The alternative is to continue to pay for residential care on a "net" payment arrangement.

The differences between "net" and "gross" are highlighted throughout the report. |
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Reasons for Recommendation:

The change from the existing "net" payment arrangements for residential care to a "gross" payments arrangement with an appropriate mobilisation timetable is recommended for the following reasons:

- Consistency across adult care services. Home care, day care and community supported living providers are paid on a gross basis. A consistent payment basis would reduce any confusion arising from differing payment arrangements across staff, service users and their families and providers.
- A more efficient process. Information on debt at any one time would be more immediately visible to the Council and the administrative burden of collecting payments by providers would be removed.
- Building on the improvement delivered during phase one of the FAIP (Financial Assessment Improvement Plan), the change would further improve the experience of a service user and remove any risk of financial pressure being placed on service users by providers currently charged with the task of collecting service user and third party top ups on behalf of the Council.
- Removal of additional steps in the existing processes. Examples include:
 - There would no longer be the need for a separate third party top up monitoring process.
 - There would no longer be the need for a separate process to monitor non-payment by service users.
- Early indications from the market are highlighting that a move to gross would be a welcomed step forward in what will be an extremely challenging time for adult social care providers and could provide us a lever in 2021.

1. Background

Legal Background

The Care Act 2014 ("the Act"), together with its associated regulations and statutory guidance, provides a legal framework within which the Council must operate if it chooses to charge for services provided under the Act.

Section 14 of the Act provides the Council with the power to charge for its services. Chapter 8 of the Care and Support Statutory Guidance ("the Guidance") confirms "that where a local authority is meeting needs by arranging a care home, it is responsible for contracting with the provider. It is also responsible for the full amount, including where a 'top-up' fee is being paid." The Chapter also confirms "that where all parties are agreed it may choose to allow a person to pay the provider directly for the top up where this is permitted." The Guidance discourages arrangements under which payment of third party top ups is made direct to the provider.

The Council's Payment Arrangements

Historically the Council has always in the first instance paid the residential care provider the cost of the service user's care less any service user contribution and third party "top up". The care homes have then been required contractually to attempt to collect on behalf of the Council the service user contributions and any third party "top ups". It is only after the care home has been unsuccessful that the Council pays the amount of the service user contribution and/or third party top-up to the provider. This is referred to as a "net" payment arrangement.

Under a "gross" payment arrangement the Council would pay the full amount inclusive of both service user contribution and third party top-up to the provider straight away and from the start recover any outstanding service user contribution or top-up from the service user or third party without any arrangement for the provider to undertake initial collection.

The LGO's involvement

In January 2018, the LGO issued a first public report which made a finding that the Council's third party top-up payment arrangements departed from the Care and Support Statutory Guidance and that the Council had not given adequate or cogent reasons for that departure. It was therefore guilty of maladministration. In the report, the LGO recommended that the Council review its procedures to ensure that people were given the option to pay the third party "top up" to the Council; to review its third party contract to ensure the same and to review its existing top up arrangements to bring them in line with the Care Act.

That first public LGO report was considered by the Adults and Community Wellbeing Scrutiny Committee and by the Executive. At its meeting on 6 March 2018 the Executive approved the carrying out of a review and delegated to the Executive Councillor for Adult Care, Health and Children's Services the decision about whether to accept the LGO's recommendations.

On 10 July 2018 the Executive Councillor for Adult Care, Health and Children's Services received a report which provided an options analysis and set out the anticipated financial and operational impacts were the Council to accept the recommendations of the LGO.

On the basis of that report and with the support of the Scrutiny Committee, the Executive Councillor for Adult Care, Health and Children's Services did not accept the LGO's recommendations and instead agreed to implement a modified form of the existing payment arrangements for third party top-ups and service user contributions. The modifications made clearer the legal relationships between the Council, the provider and the third party and in particular made it clear that the provider was only undertaking a collection service on behalf of the Council and the payments were at all times due to the Council and not the provider.

In brief the Executive Councillor for Adult Care, Health and Children's Services' original decision in 2018 was based upon the Council's systems and processes being unable to operate an alternative, gross, payments system without significant investment.

On the basis of leading counsel's advice this was considered to be a reasonable and therefore lawful basis on which to choose not to follow the LGO's recommendations.

However, the Executive Councillor for Adult Care, Health and Children's Services also agreed that the revised arrangements should be reviewed again in 2021/22. This would bring it in line with the review of the residential rates contracts as well as looking for a sustainable social care solution which was expected from the anticipated Green Paper.

On or around 12 February 2020 the LGO published a second public report expressing dissatisfaction with the Council's response to his first report and in particular taking issue with the reasons given in the July 2018 report for not accepting the original recommendations. The LGO in the second report has recommended that the Council make the necessary arrangements to ensure full compliance with the recommendations set out in his investigation report of January 2018 and provide evidence of this within three months of the date of this report.

As a matter of law the Executive must receive and consider the LGO's second report. Due to Covid-19 the LGO has not pursued existing or new cases but that is now changing and the LGO expects the Executive to consider his Report at its meeting in October.

Given that the Executive must consider the question of its payment arrangements for residential care at that meeting the review originally proposed for 2021/22 has been brought forward and the next section of the Report sets out the results of that review.

Review of the Payment Arrangements

In 2018 the Council identified a number of reasons why it was not in a position to implement a gross payment arrangement. The table below compares the key reasons for the decision in 2018 with the position now. It should be noted that it was adopted as a principle in 2018 that whatever arrangements the Council put in place for third party top-ups would also apply to service user contributions due to the administrative inconvenience of operating two different payment arrangements for one type of care. The same principle is adopted in the review.

2018	2020 Progress
<p>The financial functionality of the Mosaic social care information system will not be implemented until March 2019 at the earliest.</p>	<p>A systems development programme is underway. Integration of core care and financial systems will enable greater automation of process, namely the bringing together of the care assessment and management system known as "Mosaic" with the financial assessment system, "Abacus".</p> <ul style="list-style-type: none"> - Phase 1 of Abacus was completed in March 2020 to enable the mobilisation of the new Adult Charging Policy from April 2020. - Phase 2 which enables both Mosaic and Abacus to communicate electronically is planned for Quarter 3. <p>The automation of payments from Mosaic is being rolled out.</p> <ul style="list-style-type: none"> - November 2019 saw the successful go live of community supported living payments through Mosaic. - July 2020 is scheduled for direct payments to go live. - We have a roll out programme for transition to Mosaic for residential and nursing with go live scheduled Autumn/Winter 2020. - The further development of a provider portal in Mosaic is expected Spring/Summer 2021.

	<p>The portal provides an opportunity for providers to electronically view and interact with contractual and financial information, directly with the Council. It is a tool which has the potential to further reduce the administrative burden for providers.</p> <p>In addition, currently invoice values are calculated and raised manually by the financial payments team within Serco where property is involved for residential service users and where service users are unable to pay their contributions to provider. This process sees a manual invoice created in BWoN due to no automatic link between BWoN and Abacus.</p> <p>Further automation of this and elements of the credit control function is being explored as part of the implementation programme for the new finance system, Hoople.</p>
<p>The requirement for significant additional investment. More specifically, the review confirmed</p> <ul style="list-style-type: none"> - a recurrent increase in Serco staff costs of £0.301m. - given the expansion of the team, additional overhead costs of £0.300m. - a non-recurrent set up cost of £0.100m. 	<p>Recent discussions with Serco have confirmed that the additional overhead costs of £0.300m are no longer required.</p> <p>With the changes in salaries since 2018, Serco also confirmed that the £0.301m has now reduced to £0.273m, however this will be the maximum costs associated with a move to gross should that be the decision.</p> <p>Non-recurrent set up costs have also reduced to £0.063m.</p>
<p>Moving to a gross payment basis would see the Council pay the provider the full cost of the third party and service users care and for the Council to recoup the third party top-up and service users contribution from the individual.</p> <p>As the Council would be recouping the contribution directly, there was expected to be an increase in non-payment and therefore of debt. The original review forecast an increase in</p>	<p>Within the residential care contractual framework, there is provision for residential providers to contact the DCouncil when the service user stops, for whatever reason, paying the provider for their care.</p> <p>In these circumstances, the Council steps in to pay the provider to maintain their cash flow whilst adult care front line workers establish the reason for non-payment. This action is taken to reflect,</p>

<p>debt of up to £0.935m per year, based on applying levels of debt in domiciliary care where the Council already operates a gross payment arrangement.</p>	<p>that in accordance with the Care Act, the responsibility for the total cost of care resides with the Council.</p> <p>The Council continues to pay the provider, in accordance with the Care Act, whilst the situation is resolved and raises an onward debt to the service user.</p> <p>To evidence base the scale of potential debt, a review looked at the 2,716 residential service users in care as at March 2020. 153 had been forwarded to the Council due to non-payment of their care costs. The 153 service users equated to £0.238m. Financial strategy picked these cases up and working with Adult Care and Community Wellbeing (ACCW) front line staff and service users reduced the debt to £0.054m. A review of these processes demonstrates that appropriate debt recovery is possible with strengthened focus, awareness and communication. From this the debt review programme was established.</p> <p>This gives a firmer basis for assessing the potential level of debt which would arise from a move to a gross payment arrangement. In essence even if the number of service users who failed to pay doubled, the maximum increase in debt would be c£0.238m which with appropriate credit control action could be significantly reduced.</p>
<p>The scale of change already underway was significant.</p>	<p>The Council has delivered the first phase of the Financial Assessment Improvement Programme (FAIP) which</p> <ul style="list-style-type: none"> - Reduced the number of financial assessment pending to business as usual levels by 31 March 2020. - Improved the customers experience by reducing the time taken to carry out financial assessments and notify customers of their charges.

	<p>Majority of assessments now completed within 28 days.</p> <ul style="list-style-type: none"> - Implemented the new Adult Social Care Charging Policy on 14 April 2020. - Piloted an automated online financial assessment which will be rolled out during 2020.
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The above table highlights the significant progress made in improving systems and processes across the Council since 2018. In summary:-

- 1) The time taken to complete a financial assessment has been reduced from 17 weeks to 28 days.
- 2) The Financial Assessment Improvement Programme will see four separate systems come together into three systems which interact.

Pre System Development Programme	Post System Development Programme
Mosaic – Care Record	Mosaic – Care Record and Payment System
Abacus – Financial Assessment Calculation	Abacus – Financial Assessment Calculation. No other system capable of this
Abacus / Abacus SDS – Payment to providers / service users	This will not be required due to move to Mosaic
BWoN – Financial Monitoring System	Hoople – Financial Monitoring System

Note : Abacus SDS licence expires 31st August 2020

- 3) The consequence of the Financial Assessment Improvement Programme has generated a level of insight into the process for debt recovery which has allowed officers to begin to prioritise improved systems and processes to enable better management of debt in the future.

In addition there are several further considerations:-

- The Council already operates a gross payment system for its other adult care contracts, in particular homecare, community supported living and day care;
- A move to a gross payment system would be welcomed by the market. The net payment arrangement does pass to providers some of the burden of collecting payments due to the Council. A gross payment arrangement would remove this burden at a difficult time for providers as they continue to cope with Covid-19 and recovery from it; and

- A move to gross payment would remove the potential for tension between the provider and service users and their families over the collection of outstanding payments.

The table above confirms additional investment will still be needed to implement a gross payment system. Due to the improvements made in the last two years this is greatly reduced from the original cost quoted in 2018 as a result of the changes described above. The recurrent cost of £0.601m originally quoted has reduced to a maximum cost of £0.273m, a 54.5% reduction.

The £0.273m cost arises from the new relationship between the Council and the residential service users to collect their financial contribution towards their care. More specifically the need to run additional billing runs to include up to 5,000 invoices and up to 400 top-ups and the potential impact of any non-payment of these costs may have upon credit control processes.

The Financial Assessment Improvement Programme will oversee the mobilisation including the likely financial impact as the £0.273m is the worst case scenario. The starting point will be the £0.273m, reducing further to reflect the proposed automation and further efficiencies detailed in this report.

Implementation of the Changes

Should the decision lead to a change in the basis for payment arrangements, there will be a substantial mobilisation period. During this period each of the following aspects, highlighted in this report, will need to align to optimise the benefits across all parties.

- System developments including the new finance system
- Strengthening of the debt collection process
- Residential and nursing procurement including rates review

In addition, a comprehensive programme of awareness and training will need to be developed to ensure consistent understanding and sustainable delivery.

Given the systems development timeline through to summer 2021 and the challenges Covid-19 is posing to the social care market, the Council would be looking at a potential mobilisation programme through to September 2021.

2. Legal Issues:

LGO Report

The LGO's second Report is issued under section 31(2A) of the Local Government Act 1974 on the grounds that he is not satisfied with the action which the authority concerned have taken or propose to take in response to the first Report. The reasons why the LGO is dissatisfied are set out in the Report. In essence the LGO does not find that the reasons given by the Council and set out in the left hand

column of the Table in the "Review of the Payment Arrangements" section of this Report were sufficient to justify not accepting the original recommendations.

The Executive must now receive the Report as required by section 31 of the 1974 Act. The Executive is the appropriate body to receive the Report as the function of determining the payment arrangements for residential care is an executive function.

If the Council does not now change its payment arrangements for residential care to a gross payment arrangement the LGO may, by notice to the Council, require it to arrange for a statement in such form as the Council and the Local Commissioner may agree, to be published in any two editions within a fortnight of a newspaper circulating in the area of the Council agreed with the LGO or, in default of agreement, nominated by him.

If the Council fails to arrange for the publication of the statement, or is unable to agree with the LGO the form of the statement to be published, the LGO must arrange for such a statement to be published.

As can be seen from the history set out in this Report a period of two years elapsed between the LGO's first Report and the publication of the second Report and 18 months between the publication of that second Report and the decision of the Executive Councillor for Adult Care, Health and Children's Services not to accept the LGO's recommendations. As a result of the impacts of Covid-19 more than two years has now elapsed since that decision. The Council had in any event agreed to review that earlier decision after three years.

During that two year period, due to improvements made to system and processes a number of the matters which impacted on the decision in July 2018 have moved on and a new assessment has been undertaken as to the relative merits of "gross" and "net" in the light of the new situation for the Council in terms of its systems and processes and the market in terms of its recovery from the impact of Covid-19.

Those changes have fundamentally altered the balance of the arguments relied on in 2018 and have led to the recommendations in this Report which align with the LGO's original recommendations although for the Council's own reasons.

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- * Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.
- * Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- * Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- * Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- * Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- * Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.

The matters set out in this report relate generally to elderly people, people with a learning disability, with mental health needs and people more generally with a disability. People with those protected characteristics will continue to receive services which are in themselves unaffected by the issues raised in this Report.

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy (JHWS) in coming to a decision.

There are no direct implications of this report for the JSNA or the JHWS. The Services which this report covers contribute to the wellbeing of older people and people with a disability. The revised payment basis makes the financial aspects of receiving those services more transparent.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting

the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

No implications relevant to section 17 of the Crime and Disorder Act 1998 have been identified in respect of this Report.

3. Conclusion

Paying residential providers based upon a gross payment arrangement will provide

- A single, consistent and therefore simpler process for service users accessing adult social care services.
- Will improve efficiency within Council processes through reducing duplication and increasing automation.
- Will alleviate a significant administrative burden on residential providers as the funding for the care they provide will come via one route rather than two.

4. Legal Comments:

The Council has the power to adopt the recommendation in the Report.

The Executive must receive the LGO's second Report as required by the Local Government Act 1974.

The legal considerations including those relating to the LGO's second Report are set out in detail in the Report.

The decision is consistent with the Policy Framework and within the remit of the Executive.

5. Resource Comments:

Moving to a "gross" payments basis will increase the number of financial transactions within the Council which will incur a financial cost. The maximum, recurrent financial impact is £0.273m.

Adult Social Care is delivering a programme of developments aimed at improving the experience for the service user and improving the efficiency and effectiveness of systems and processes across adult social care. This programme will reduce the duplication in systems and processes and therefore has the potential to enable further reductions to the recurrent cost of implementation. Improvements in business processes demonstrated through the systems development programme will enable quantification of these further efficiencies over the remainder on 2020-21.

6. Consultation

a) Has Local Member Been Consulted?

Not Applicable

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

The decision will be considered by the Adults and Community Wellbeing Scrutiny Committee on 01 September 2020 and the comments of the Committee will be reported to the Executive.

d) Have Risks and Impact Analysis been carried out?

Yes

e) Risks and Impact Analysis

See the body of the Report.

7. Appendices

These are listed below and attached at the back of the report	
Appendix A	Local Government Ombudsman's Report

8. Background Papers

The following Background Papers within the meaning of section 100D of the Local Government Act 1972 were used in the preparation of this Report.

Document title	Where the document can be viewed
Report to Executive – Report by the Local Government and Social Care Ombudsman – 6 March 2018	https://lincolnshire.moderngov.co.uk/ieListDocuments.aspx?CIId=121&MIId=4966
Report to Executive Councillor – Payment Arrangements for Residential Care and Residential Care with Nursing – 10 July 2018	https://lincolnshire.moderngov.co.uk/ieDecisionDetails.aspx?ID=446

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