



Northumberland County Council

Cabinet

Tuesday, 12 September 2023

Additional Market Sustainability and Improvement Grant

Report of Councillor: Wendy Pattison, Cabinet Member for Caring for Adults

Responsible Officer: Neil Bradley, Executive Director for Adults, Ageing & Wellbeing

1. Link to Key Priorities of the Corporate Plan

The proposals are relevant to the Council's key priority of tackling inequalities, and in particular to the intention to "coordinate the Council's resources to address the key long-term strategic challenges facing adult social care, including the sufficiency of the care workforce".

2. Purpose of report

This report presents outline proposals for the use of additional grant funding announced by the Government on 28 July 2023, and requests delegated authority to resolve details to ensure that the grant can be spent effectively.

3. Recommendations

3.1 The Cabinet is recommended:

- a) To endorse the overall approach to the use of the additional Market Sustainability and Improvement Fund (MSIF) set out in paragraphs 6.28 to 6.30 of this report
- b) To authorise the Executive Director for Adults, Ageing & Wellbeing to agree detailed allocations of expenditure within that overall approach, and to manage the overall resources available from the MSIF and the Adult Social Care Discharge fund flexibly to as to maximise the benefits for people with care and support needs, subject to consultation with the Cabinet Member for Caring for Adults, and the Executive Director of Transformation and Resources

4. Forward plan date and reason for urgency if applicable

The report was published in the Forward Plan on 23 August. The notice given was less than 28 days because of the need for early decisions about funding announced four months into this financial year which is required to be spent before the end of

the year. Outline confirmation of plans for the use of this funding and of arrangements for delegated decisions about details is urgently needed to ensure that effective use can be made of the grant.

5. Background

- 5.1 The Cabinet approved at its meeting on 9 May plans for the use of the Market Sustainability and Improvement Fund (MSIF), which allocated the whole of the £3,563K grant allocated to the Council for 2023/24, and committed £4,563K of the £5,357K grant expected to be available in 2024/25.
- 5.2 On 28 July, the Government announced that a further £600m is to be allocated to local authorities over the same two years. Of this, £30m will be targeted on areas where the NHS is under particular pressure, which are not expected to include Northumberland, and £570m has been allocated as additional MSIF funding. Northumberland's additional allocation is £2.314m in 2023/24, and will be £1.3m in 2024/25 if the same allocation formula is used.
- 5.3 The additional funding is described as the "Market Sustainability and Improvement Fund - Workforce Fund", and the accompanying policy statement says that its purpose is:
- "to improve and increase adult social care provision, with a particular focus on workforce pay. We expect this additional funding to support more workforce and capacity within the adult social care sector. This will help to ensure that appropriate short-term and intermediate care is available to reduce avoidable admissions and support discharge of patients from hospital when they are medically fit to leave."
- 5.4 The grant conditions, however, do not require the additional funding to be spent on workforce costs, but impose only the conditions which attached to the initial MSIF allocation, which included a requirement that it must be used to make improvements in at least one of three Target Areas:
- a) Increasing fee rates paid to adult social care providers in local areas
 - b) Increasing adult social care workforce capacity and retention
 - c) Reducing adult social care waiting times
- 5.5 A further requirement is that "the recipient authority must allocate its full funding allocation from the grant on adult social care, as part of a substantial increase in planned adult social care spending". DHSC indicated in previous guidance an intention to assess whether this condition had been met by comparing overall financial returns made by local authorities showing their budgets for each service area. The funding must be spent in the financial year for which it is allocated.
- 5.6 The policy statement on the additional MSIF funding states an expectation that local authorities will submit to DHSC by 28 September "a summary description, aligned to NHS winter surge plans, of how they will ensure sufficient capacity to meet potential adult social care surges in demand over winter, including through use of this fund". This is not strictly a grant condition, but local authorities will presumably become objects of ministerial concern if they fail to submit this report, which will be the fourth planning document required from local authorities since March on capacity planning in adult social care. We have to date received no feedback on any of the

previously-submitted plans, other than being asked to resubmit a spreadsheet return about capacity in services because we had not understood how DHSC had expected the figures to be calculated. We understand that many other local authorities received similar requests to resubmit and this is likely to be because the guidance was not entirely clear about what was required.

- 5.7 While additional funding for adult social care is welcome, the receipt of additional funding at this point in the financial year, with a requirement to spend it during the year, makes it difficult for local authorities to plan expenditure and manage their budgets effectively. The proposals in this report are not necessarily those which would have been recommended if this funding had been announced as part of the local government financial settlement in the usual manner, with sufficient notice to make it possible to plan and implement service developments in a more considered way.

6. Options open to the Council and reasons for the recommendations

- 6.1 In broad terms, the options open to the Council for the use of this additional grant (which could be combined in varying proportions) are:
- a) General increases to fees paid to care providers, aimed at addressing the gap which some provider representatives argue exists between local authority fee rates and the costs of providing services.
 - b) More targeted long-term targeted increases to the fees paid to care providers, potentially accompanied by revised contractual conditions designed to maximise the overall impact across the system on the recruitment and retention of care workers, and to encourage the development of services better aligned with assessed care and support needs.
 - c) Time-limited increases to fees aimed at supporting the recruitment and retention of care workers during the winter months.
 - d) Other initiatives aimed at reducing waiting times for *services* during periods of peak pressure on the NHS
 - e) Time-limited initiatives to eliminate waiting lists for *assessments or reviews*.
- 6.2 The timing and grant conditions for this funding restrict the scope for expenditure which would incur longer-term commitments. The £2.3m additional funding in 2023/24 will in effect have to be spent within six months or less, and the additional funding in 2024/25 is £1.3m, which represents less than a third of the full-year effect of any recurring increases to expenditure during the second half of 2023/24 – and this gap would be greater for any recurring expenditure which could not start immediately from the beginning of October because of a need for consultations or other preparatory work.
- 6.3 As the table below shows, the plans for the use of the MSIF grant adopted by the Cabinet in May 2023 did not fully commit the MSIF funding which was already expected to be allocated to the Council in 2024/25, which means that it would in principle be possible to make use of some or all of that uncommitted funding to meet the costs of new recurring commitments. The overall uncommitted MSIF funding in 2024/25 is now just under £2.1m.

	2023/24		2024/25	
	Total	Committed	Total	Committed
MSIF allocated in May	£3,563K	£3,563K	£5,357K	£4,563K
Additional MSIF	£2,314K		£1,300K	
Total	£5,877K	£3,563K	£6,657K	£4,563K
Total unallocated	-		£2,094K	

- 6.4 There are, however, a number of reasons for caution about making further recurring commitments now which would be costed against the anticipated 2024/25 grant:
- a) The 2024/25 costings for the MSIF schemes approved by the Cabinet in May are at 2023/24 prices. While future rates of inflation remain uncertain, the cost of these schemes will undoubtedly be higher at next year's prices.
 - b) Projected figures for MSIF allocations in 2024/25 are estimates based on the assumption that the funding will be allocated between local authorities in the same proportions next year as this. The Government has not confirmed that assumption.
 - c) The Council has previously decided to treat the original MSIF allocations as effectively additions to its base budget, though formally they have been announced only for the years 2023/24 and 2024/25. It is not yet clear whether it would be reasonable to treat the additional funding in the same way, given that the amount announced is lower in the second year than the first; the Council will need to make a decision about this in preparing the Medium Term Financial Plan for the period starting in April 2024, but in the meantime it is appropriate to be cautious.
 - d) There can also be no certainty about the grant conditions that may apply to the MSIF in 2024/25. The MSIF grant circulars published in March and July set out conditions only for the 2023/24 funding; it seems likely that conditions will be similar in 2024/25, but this cannot be relied on.
 - e) Long-term decisions about issues such as the fee levels and fee structures for commissioned services are best not made in haste. In particular, the Council's current three-year contract with care homes for older people comes to an end in March 2024, and care providers have a reasonable expectation that there will be a significant period of consultation before any changes are made to contract terms, and that they will have an opportunity to make out a case for any changes to the fee structure that they would prefer.
- 6.5 Specific options under each of the headings listed in paragraph 6.1 are discussed further in the following paragraphs.

Option A: general increases to fees

- 6.6 As was reported to the Cabinet in October 2022, we do not currently have any clear evidence that there is a need to increase fees to meet a general gap between their current level and the "fair cost of care", in either care homes for older people or home care, which are the two services for which the Government required local authorities to carry out a detailed survey of costs and analyse these on a prescribed basis, and in officers' view there is no reason to think there is a gap of this kind in other commissioned care services.

- 6.7 It remains likely that, if a future government were to decide to proceed with the charging reforms originally proposed for implementation from October this year, which have now been deferred until October 2025 at earliest, there would be a need to review fee arrangements for care homes for older people, which would be the sector in which the reforms would most substantially affect the functioning of the market. Officers' current view is that in that situation fee increases would be most likely to be called for in areas where there is only one care home serving a large geographical area, with insufficient demand to sustain an additional home, and with the care home currently requiring a mix of private and publicly funded residents to remain viable. However further analysis and consultation would be needed to confirm this view, and it would in any case be premature to make increases to fees on these grounds at a time when reforms are at least two years in the future.
- 6.8 Care homes for older people have already been allocated a time-limited general fee increase of 1.5% in the current financial year, on top of the fee uplift provided for in the Council's existing contract, in recognition of financial pressures including short-term increases in some of their costs which are not fully recognised by the contract inflation formula. We anticipate that Care North East, a trade association representing a minority of the care homes in Northumberland, and some individual care home operators, will be arguing for an increase to base fee levels in the new contract expected to commence in April 2024, and will be wishing to discuss the future inflation formula, but it would be premature to make now a decision based on anticipating the outcome of those discussions.
- 6.9 In the home care sector, a two-stage fee increase funded from the original MSIF was agreed by the Cabinet in May, and is being implemented in the current year, though this was felt to be necessary primarily because of the severe capacity issues in the sector rather than because of concerns as to whether providers were being paid a "fair cost". Officers are not currently aware of evidence that funding levels for any other category of service are generally failing to meet providers' costs.
- 6.10 This option would undoubtedly be welcomed by whichever care providers received fee uplifts, and the additional funding might to a greater or lesser degree contribute to improvements in service quality, but the benefits are uncertain, and it would reduce the Council's financial ability to provide more targeted support in future.

Option B: targeted long-term fee increases

- 6.11 In some specific instances, there is a case for immediate fee increases which would incur longer term commitments, targeted at improving capacity to meet needs for which we currently struggle to find satisfactory solutions.
- 6.12 One particular issue continues to be finding care home accommodation for older people whose dementia causes them to behave in ways that create risks for themselves or others. Officers have for some months been in discussion with care home operators about possible enhancements to the Council's existing scheme offering a fee premium to reflect the additional staffing costs likely to be incurred if they accept residents with needs of this kind. Some further work is still needed on the details of an enhanced scheme, but if remaining issues can be resolved it would be highly desirable to have this in place in time for the coming winter, since older people with these needs are often particularly difficult to discharge from hospital when their medical treatment has been completed.

- 6.13 Because of its importance for hospital discharge, this scheme is also potentially chargeable against the separate Adult Social Care Discharge Fund, but to ensure that the Council has sufficient financial flexibility to meet the unpredictable demands which we have been asked to plan for this winter, it would be helpful to have the option of funding it from the MSIF. It might be possible to introduce some elements of an enhanced scheme could be introduced on a pilot basis, without long-term commitments, but the scheme would be likely to include higher payments and broader eligibility, both of which could not be time-limited.
- 6.14 It may also be helpful to be able to treat part of the additional MSIF funding as available if necessary to supplement the funding for the MSIF schemes involving long-term fee increases approved by the Cabinet in May. For instance consultations with home care providers are still in progress on the home care worker guarantee scheme planned for implementation in October, and costings have not been finalised. The MSIF itself may also have an indirect impact on costs for Northumberland if neighbouring local authorities' fee increases mean that the costs of out-of-county placements increase by more than was budgeted for.

Option C: time-limited increases to fees

- 6.15 A time-limited increase in fees could be either an unconditional increase or an increase with specific conditions attached. For the reasons set out in the discussion above of Option A, officers' advice is that there is no clear need for a further unconditional fee increase in any care sector, beyond the 1.5% time-limited increase already agreed by the Cabinet in May.
- 6.16 In each of the past two winters, some care services in Northumberland have received additional funding in return for a commitment to implement early the wage increases which would ordinarily have been introduced from the following April. In the winter of 2021/22, a scheme of this kind covering most care services was funded by NHS clinical commissioning groups across the North East; in the winter of 2022/23 the Council used funding from the Adult Social Care Discharge Fund to introduce a scheme specifically for home care workers.
- 6.17 The additional MSIF was announced specifically as a "workforce fund", with "a particular focus on workforce pay" though it is not restricted to that use. One obvious option for the use of this funding in the current year, which we understand is being considered by some neighbouring local authorities, is to repeat in some form the scheme funding early implementation of pay increases.
- 6.18 One issue about this option is that we do not at present know what the April 2024 rates will be either of the statutory National Living Wage (NLW) or of the non-statutory Real Living Wage (RLW), set by the Living Wage Foundation, which has for the past two years been used to set the minimum wage level which care providers have been required to commit to to qualify for additional funding from the Council. The Living Wage Foundation intends to publish the new RLW rate in the last week of October, and the new rate of the NLW is likely to be announced at around the same time. In the case of the NLW, the Low Pay Commission consulted between March and June this year on an increase of between 4.6% and 9.7%. The level of uncertainty about the cost of any specific scheme to bring increases forward is illustrated by the fact that the additional cost of an increase at the top of this range would be more than double the cost at the lowest end of the range.

- 6.19 There are a number of ways in which any scheme could be adjusted to bring its costs within available funding, including varying the range of service types for which a pay increase was funded and varying the date from which it started, but it would be premature to make a specific proposal at this point.

Option D: other initiatives to reduce waiting times for services

- 6.20 During the winter of 2022/23, the Council allocated part of the Adult Social Care Discharge Fund grant to a scheme in which temporary additional funding was allocated to the Joint Equipment Loan Service (JELS), to fund an increased stock of equipment and a temporary arrangement in which an additional delivery van was hired and staffed to make it possible to deliver equipment within 24 hours when that was necessary to enable someone to return home quickly when they no longer needed to be in hospital. The total cost of these temporary enhancements to the service during that winter was £182,969.
- 6.21 The scheme was significantly more expensive than the usual operation of JELS, but did mean that, at times of peak demand on hospital services, 38 patients were able to be discharged more rapidly than would ordinarily have been possible, as well as making possible some improvements to delivery times more generally.
- 6.22 There is a case for introducing a similar scheme during the coming winter, possibly with some changes to its detailed operation based on lessons learned from last year. If the scheme was repeated, it would be best to make a judgement about its duration and scale nearer the time, as the scale of demand pressures on the NHS becomes clearer.
- 6.23 There may also be other opportunities to introduce smaller initiatives to reduce waiting times for patients to return home, though Northumberland already has a low number of delayed discharges by national standards, so the scale of improvement is likely to be modest.

Option E: initiatives to reduce waiting lists for assessment

- 6.24 One of the objectives of the MSIF which the Council did not set any funding aside for in May is to reduce waiting lists for assessments. The measures being implemented with the aim of improving capacity in care services will, if successful, reduce the number of people who have to wait for the *service* which they have been assessed as needing, but will not increase capacity for assessing people's needs. The absence of any proposal of this kind for the initial MSIF funding reflected officers' view that the most immediately urgent issues were about service capacity.
- 6.25 In general, the Council does not at present have long waiting lists for needs assessment or for reviews, though frontline teams are currently under pressure, with recruitment and retention difficulties and a higher than usual level of staff sickness, and there is work in progress on developing improved assessment arrangements. It might be reasonable to consider these as potential longer-term uses of MSIF funding. However changes would be likely to require some significant changes to staff working arrangements which would need to be fully consulted on, and would probably need to be piloted in one part of the County before being rolled out generally. On the timetable for the 2023/24 MSIF, there are too many issues still to be resolved for it to be sensible to commit any of this funding to support mainstream needs assessment processes.

- 6.26 However there is one specific statutory assessment function for which there has been a significant waiting list for a number of years. The Council has a duty to carry out a specific assessment in any situation where it becomes aware that a person's care arrangements amount to a "deprivation of liberty" which the person does not have the mental capacity to agree to. Ever since the Supreme Court decided in 2014 that the legal definition of a "deprivation of liberty" includes a much broader range of situations than had previously been supposed, Northumberland, in common with many other local authorities, has struggled to meet the statutory time scales for carrying out these "deprivation of liberty safeguards" (DoLS) assessments. Recently, the position has been that the DoLS team has the capacity to maintain the waiting list at its current level, but has not been able to clear a list which at any one time typically stands at between 350 and 400. The existence of this waiting list creates legal and reputational risks, and we cannot be certain that there may not be some people are experiencing levels of supervision and control which are unnecessary and may be infringing their human rights, though we prioritise DoLS assessments to ensure that we see quickly the people where the risk that this might be the case appears to be highest.
- 6.27 In this situation, the obvious means of becoming compliant with statutory requirements would be to fund a one-off programme of assessments of cases on the waiting list, in the expectation that it would afterwards be possible to meet statutory timetables within existing resources. The difficulty has been that there is currently no capacity available regionally within the usual arrangements for commissioning independent social workers with the required statutory qualification. We have, however, become aware through the regional DoLS network of a company which has supplied us with details of a proposal to carry out an intensive programme of assessments over a 16-week period to clear the backlog. At least one local authority in the region has already made use of this service. The costs of clearing the backlog in this way would be substantially higher than the usual cost of commissioning assessments carried out by independent social workers, with a projected overall cost of the order of £300K, when usual arrangements, if available on the scale required, would have incurred a cost of less than half that sum, but we have been unable to identify any alternative option which would enable us to meet this statutory duty on a reasonable timetable.

The proposed approach

- 6.28 The timing and conditions of this grant significantly constrain the Council's ability to make considered plans for its use, and effectively rule out in the current financial year some of the ways of using the funding which might have been most effective in increasing the capacity of care services to meet needs. The suggested approach is to include elements of each of the potential options other than option A (a general increase in long-term fees). At this stage, it is recommended that the allocation of funding between these elements should be regarded as indicative and provisional. It is also recommended that MSIF funding and funding from the separate Adult Social Care Discharge Fund should be managed flexibly, to achieve the best overall outcome, and in particular to maximise the effectiveness of the available funding in addressing the unpredictable challenges of the coming winter, when it is widely expected that health services may come under exceptional pressure, and depend heavily on the capacity of adult social care.
- 6.29 With these qualifications, the table below shows *indicative* expenditure for each of the schemes which it is proposed to fund through the additional MSIF.

Scheme	Indicative cost	
	2023/24	2024/25
Bring forward some pay increases from April 2024	£1,664K	-
Enhanced funding for complex dementia in care homes	£100K	£250K
Enhanced capacity during winter in JELS	£200K	-
Clear backlog of DoLS assessments	£300K	-
Other costs within MSIF grant conditions (including further increased cost of out of area placements)	£50K	£100K
Total	£2,314K	£350K

6.30 None of these figures is a firm projection, for a number of reasons:

- a) The amount of funding available for **bringing forward pay increases** may need to be adjusted depending on revised estimates of other costs, and the period of time and the range of services to be covered by this scheme will depend on the levels at which the NLW and RLW are set
- b) The cost of the enhancements to the scheme for **residents with dementia in care homes** whose behaviour creates risks for themselves or others will depend on how much revised premiums increase take-up of the scheme, which is not wholly predictable
- c) The estimated cost of **clearing the DoLS assessments backlog** is based on a per-assessment quote, and the actual numbers of assessments required may be lower or higher than anticipated
- d) **Other costs**, such as further increases in the cost of out-of-county placements because of the use made of the additional MSIF by other local authorities, may be largely outside the Council's control
- e) **Flexible use of funding between the two available grant schemes** may also change the balance between expenditure headings. In particular, either funding source could within the grant conditions be used to fund support for care homes accepting residents with dementia whose behaviour is difficult to manage, and additional capacity in JELS

7. Implications

Policy	The proposals are designed to support the key policy objective of increasing the capacity of care and support services.
Finance and value for money	Grant conditions require that this funding must be added to the Council's adult social care budget, and must be spent in the current financial year. As explained in the body of the report, the recommendations are designed to ensure that any financial commitments beyond the current financial year total substantially less than the projected uncommitted funding from this grant in 2024/25.

Legal	Section 5 of the Care Act (2014) sets out duties on local authorities to facilitate a diverse, sustainable high quality market for their whole local population, including those who pay for their own care and to promote efficient and effective operation of the adult care and support market as a whole. Alongside this, the Council has a critical role in local market shaping to encourage quality, choice and sufficiency of provision. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 confirm that the matters within this report are not functions reserved to Full Council.
Procurement	Procurement issues relating to the proposed use of an external company to clear the backlog of deprivation of liberty assessments are under discussion.
Human resources	There are no direct implications for Council-employed staff, other than some addition to the workload of back-office staff in functions whose capacity is already stretched. The proposals aim so far as possible to minimise that additional workload.
Property	No implications identified.
Equalities Act: is a full impact assessment required and attached?	No - not required at this point Screening has identified no issues requiring a full impact assessment. The proposals will primarily benefit disabled people; individual assessments will address any issues related to other protected characteristics of those disabled service users.
Risk assessment	A full risk assessment is not required.
Crime and disorder	No implications identified.
Customer considerations	The proposals are intended to improve the capacity of services to meet people's care and support needs, and the legal protections for the rights of people with limited mental capacity.
Carbon reduction	No implications identified.
Health and wellbeing	The proposals aim to improve the capacity of services crucial for the health and wellbeing of people with a disability or a long-term health condition.
Wards	(All Wards)

8. Background papers

[Market Sustainability and Improvement Fund 2023 to 2024 \(guidance\)](#), published on www.gov.uk 28 March 2023, updated 2 June 2023

[Market Sustainability and Improvement Fund Grant Determination 2023 to 2024](#), published on www.gov.uk 28 March 2023, updated 4 April 2023

[Market Sustainability and Improvement Fund - Workforce Fund: policy statement](#), published on www.gov.uk 28 July 2023

[Market Sustainability and Improvement Fund - Workforce Fund: grant determination and conditions 2023 to 2024](#), published on www.gov.uk 28 July 2023

[Adult social care winter letter 2023 to 2024](#), published on www.gov.uk 28 July 2023

9. Links to other key reports already published

Cabinet report 11 October 2022: [The Market Sustainability and Fair Cost of Care Fund 2022 to 2023](#)

Cabinet report on a delegated decision, 17 January 2023: [Use of Adult Social Care Discharge Fund](#)

Cabinet report 13 March 2023: [Market Sustainability Plan for Adult Social Care](#)

Cabinet report 10 May 2023: [The Market Sustainability and Improvement Fund 2023/24](#)

Health and Wellbeing Board report: [Better Care Fund Plan 2023/25](#)

10. Author and Contact Details

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