

# North Yorkshire County Council

## Executive

19 April 2022

### Adult Social Care Charging Reform Trailblazer Initiative (2022 – 2024)

Report of the Corporate Director – Health and Adult Services

#### 1.0 Purpose of Report

- 1.1 To update the Executive on the Charging Reform Trailblazer programme, published in September 2021 and the subsequent 'People at the Heart of Care' White Paper.
- 1.2 To request approval for North Yorkshire County Council's participation in the early adoption of the Government's charging reforms programme.
- 1.3 To note the review points in May, August and November 2022, at which point the County Council and/or the Department for Health and Social Care (DHSC) can determine North Yorkshire's ongoing participation in the programme

#### 2.0 Background

##### 2.1 Adult Social Care Charging Reform

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.

2.2 Only money spent on meeting a person's personal care needs will count towards the cap. Spending on daily living costs (commonly referred to as "hotel costs" in a care home) is not included. Local authority contributions will not count towards the cap.

2.3 Also from October 2023, the Government 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.

2.4 As a result of the reforms, more people will come into contact with their 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 course councils.

##### 2.5 Trailblazers

Government has invited a number of councils, with different economic, geographical and care market characteristics, to be part of a Trailblazer programme for adult social care charging reform, including potential early implementation of these changes from January 2023, 9 months ahead of the all-England roll-out. It is hoped that this programme will help to inform the Government, councils, care providers and people who receive care, of the impact of the changes ahead of a national rollout.

2.6 It is intended that the programme will allow the DHSC to test:

- the demand for the policy among care users;
- the capacity of LAs to implement reform;
- care users' perspectives of charging reform and its impact on them;
- the technology system architecture requirements for reform;
- the capacity of provider markets to respond to the reform; and,
- support required to enable implementation.

2.7 As such, the charging reform Trailblazer initiative will generate valuable evidence and insight that will support national roll out. Trailblazer authorities will act as charging reform co-production partners, contributing to the development of the Departments implementation plan, guidance, service design, and support offer. Early adoption of charging reform will enable barriers and challenges to be identified early and addressed.

2.8 The Department will use insight and data gathered from Trailblazers to inform its plans for charging reform implementation, monitor progress, and inform key decision points embedded within the Department's implementation plan.

2.9 North Yorkshire was one of a small number of councils invited into discussions with DHSC. The Council has made clear that, whilst it welcomes the overall reforms, there are concerns around what implementation (whether in January or October 2023) could entail, in terms of workforce pressures, IT/systems issues, administrative overhead and, crucially, the funding required for activation of section 18(3) of the 2014 Care Act. This latter point would mean that self-funders would be able to request that their council arrange their care to meet eligible needs, in the same way as those who are supported by the means test.

2.10 Section 18(3) provides that where an adult with financial resources above the financial limit asks the local authority to meet their needs, the local authority is under a duty to comply. However, although it was originally intended for this duty to be implemented in its entirety when the Care Act came into force in 2015, it was only partially implemented to the effect that s.18(3) did not impose a duty on the local authority to meet needs by providing or arranging care home accommodation for a self-funder. This part of the duty was to be deferred along with the cap on care costs (as referred to in s.15 of the Care Act). However, where the needs of a self-funder can be met other than by the provision of care home accommodation, the local authority must currently meet those needs.

2.11 Analysis undertaken by the County Councils Network (including North Yorkshire), and other partners, suggests that the activation of section 18(3) could place significant unfunded pressures on councils and/or providers in an already-distressed market as many self-funders currently pay more for their care than council rates. Whilst the aim of a level-playing field is an important one, councils have highlighted the need for this change to be fully funded.

2.12 These concerns have been fed back to DHSC through a series of routes and, in turn, DHSC has proposed that:

*"In May/ June 2022, the Department will finalise operational guidance for charging reform; including taking account of any transitional arrangements for commencement of s.18 (3). At this point, Trailblazers are invited to adopt the approach for commencing s.18 (3) that the Department will confirm nationally. By this point, the Recipient will be able to discuss what the s.18 (3) approach will mean for their authority and make a decision about how they continue participating in the Trailblazer initiative"*

2.13 In addition, each participating council will undertake a formal review point in August 2022 (prior to early assessments starting) and November 2022 (prior to legislation) to ascertain

progress and whether they will continue with the programme and move towards early implementation in January 2023.

2.14 Current Position – subject to Executive Approval

Following discussions with DHSC and taking account of the revised proposals for handling section 18(3) and formal review points, North Yorkshire has provisionally signed up to be one of 5 Trailblazers, subject to due consideration by NYCC Executive on 19 April. DHSC has also agreed an additional review point for North Yorkshire in May 2022, following Executive and the May council elections.

2.15 NYCC has signed a Memorandum of Understanding on this basis - subject to Executive consideration – see Appendix A, and the DHSC has provided a letter of comfort for a review in May. On this basis, DHSC announced the Trailblazers sites as per the following link: [Local Authorities announced as trailblazers for social care charging reform - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/local-authorities-announced-as-trailblazers-for-social-care-charging-reform)

2.16 Review Points

In May/June 2022, the Department will finalise operational guidance for charging reform; including taking account of any transitional arrangements for commencement of s.18(3). At this point, , the Council will be able to discuss what the s.18(3) approach will mean for their authority and make a decision about how they continue participating in the Trailblazer initiative.

2.16 In August 2022, Trailblazer authorities will have another review point with DHSC before they begin conducting early assessments in September 2022..

2.17 In November 2022 there will be the final review point before Section 15 of the Care Act 2014, along with other associated provisions, are commenced naming the Council and other Trailblazer authorities. This will be the final point at which the Council can withdraw before legislation is enacted. At this point, the DHSC will have provided the Council with the figures for their final funding allocations for the means test extension and additional funding to move towards a fair rate of care from January 2023. By then, it is intended that the participating will have a better idea of the main cost pressures associated with conducting early assessments, along with a more informed position on the numbers of additional people in their authority that fall within the new means test.

2.18 This November review point will be too late for the Trailblazer to be removed from the affirmative regulations that will name their authority – however, the Trailblazer will be removed from the commencement order for section 15 in the Care Act, meaning the regulations will have no effect.

2.19 Reasons for signing up to the Trailblazer Programme

The County Council has, for a long time, stated that adult social care should be reformed, underpinned by a comprehensive long-term funding settlement, on the basis of tackling two key issues:

- Creating certainty for individuals, families, councils and care providers on the costs of care (including lifetime personal contributions)
- Care market reform and stabilisation, to secure supply

2.20 The Government’s adult social care charging reforms are a serious attempt to address the first issue, albeit with considerable detail, and risk, to be worked through.

2.21 The key considerations relating to participation are as follows::

- If the programme works well and current concerns can be addressed, then early implementation will bring benefits to some North Yorkshire residents and care providers
- Most of the Trailblazer sites are urban councils (Blackpool, Newham, Wolverhampton) with relatively small numbers of care providers and, in some cases, smaller numbers of people who self-fund their care than North Yorkshire – only Cheshire East (with 60% self-funders and a 380k population) is comparable with North Yorkshire – and therefore, it is important to try and help shape the policy and funding allocations at an early stage from rural and diverse economy/housing/care market perspectives
- Labour market competitiveness/workforce challenges are likely to be as critical, if not worse, in October 2023 as they are in January 2023, so there might be an advantage in going early rather than waiting to compete in the market with 145 other councils later in 2023
- The proposed section 18(3) “opt-in” and Trailblazer review points give scope to leave the programme if the risks are clearly outweighing the benefits of ongoing participation

2.22 The Lead Officers for the Trailblazer programme will be the Corporate Directors for Health and Adult Services and for Strategic Resources, as this programme has significant council-wide, as well as directorate, implications. An officer group has already met to begin scoping the potential capacity, resource and delivery factors around Trailblazer status.

### **3.0 Financial Implications**

- 3.1 Trailblazers will receive funding for the additional costs that the council will incur as set out below:
- i. the direct costs of charging reform (assessments, means test changes, cap);
  - ii. to help the Recipient move toward a fair cost for care earlier to reflect the required timeframes;
  - iii. recruitment and IT system change; and
  - iv. Trailblazer-specific funding to cover burdens of accelerated implementation.
- 3.2 The Department will share further information about funding allocations to the Council as soon as it is able, but these are not yet confirmed at the time of writing. Due to the unpredictability of take-up and not yet knowing the individual needs and financial circumstances of those people who will be part of the Trailblazer costs, the overall financial envelope cannot be costed accurately at this stage.
- 3.3 The Council will be required to prepare regular Statements of Funding Usage which will be signed off by the Chief Finance Officer and this will be the basis on which additional funds are paid to NYCC.
- 3.4 By the same process the Council will be reassured that the risks of participation are outweighing the benefits, and/or if DHSC decides against early implementation in North Yorkshire, then NYCC has the option to cease participation in the programme.
- 3.5 Being part of the Trailblazer does bring some financial risk which will be carefully monitored. However, it will also provide an opportunity for the Council to calculate additional

costs at an earlier stage and enable us to use that to shape the process locally and as part of the national rollout of the charging reforms by October 2023.

#### **4.0 Equality Impact Assessment**

- 4.1 The Department has published its own Impact Assessment and this can be found at: [Adult social care charging reform: public sector equalities duty impact assessment - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/107221/adult-social-care-charging-reform-public-sector-equalities-duty-impact-assessment.pdf)
- 4.2 The Council's own EIA is attached at Appendix B.

#### **5.0 Legal Implications**

- 5.1 The Council has entered into a Memorandum of Understanding (MOU) with the DHSC. This MOU has no legal status under UK Law or any other law and cannot be construed as a contract or grant agreement in the sense of a legally binding agreement between the Department and the Recipient which is enforceable in the courts. Nevertheless, both Participants intend to comply with its provisions.
- 5.2 Neither party will be authorised to act in the name of, or on behalf of, or otherwise bind the other Participant, save as expressly permitted by the provisions of this arrangement. The MOU is not intended to be legally binding and no legal obligations or legal rights shall arise between the Parties from the provisions of the MOU. The Parties enter into the MOU intending to honour all their obligations.
- 5.3 NYCC and the DHSC agree to use their respective best efforts to resolve any dispute that may arise regarding the Trailblazer initiative through informal negotiations. If the dispute cannot be resolved, the Council and the DHSC can terminate the agreement in this MOU before the final review point in November 2022.
- 5.4 It should be noted that by signing this document or by participating in Trailblazer initiative, the participants are not committing to legally binding obligations. It is intended that the participants remain independent of each other and that their collaboration and use of the term 'participant' does not constitute the creation of a legal entity, nor authorise the entry into a commitment for or on behalf of each other.

#### **6.0 Recommendations**

- 6.1 The Executive is recommended to:
- i. Approve North Yorkshire County Council's participation in the Trailblazer Programme. and
  - ii. Delegate authority to the Corporate Director for Health & Adult Services in consultation with Corporate Director Strategic Resources and Executive Members for Health & Adult Services & Finance to consider and exercise any opting out at the appropriate stages should it be deemed appropriate.

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7 April 2022

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**Background Papers:**

[Build back-better: our plan for health and social care](#)

(<https://www.gov.uk/government/publications/people-at-the-heart-of-care-adult-social-care-reform-white-paper>)

**Appendices:**

Appendix A – Draft Memorandum of Understanding

Appendix B – Equality Impact Assessment