

Report title: Funding for Adult Social Care: COVID 19 Response	
Report to: Councillor Kevin Bentley, Leader of the Council	
Report author: Nick Presmeg, Executive Director for Adult Social Care	
Date: 28 July 2021	For: Decision
Enquiries to: Patrick Higgs, Director of ASC Essex Operations (Deputy to the DASS)	
County Divisions affected: All Essex	

1. Purpose of report

- 1.1 This paper seeks agreement to an exceptional drawn-down from reserves of £2.5m to support the viability of our domiciliary care providers during current periods of exceptional pressure. As such, it supports the wellbeing of residents relying on such services.

2. Recommendation

- 2.1 That £2.5m be drawn down from the Covid Equalisation Reserve to cover the cost of
- (a) the loss of income arising from a decision to pay a provider for domiciliary care visits not provided as a result of people having to self-isolate
 - (b) paying for interim care for direct payment recipients to cope with the impact of their carers having to self-isolate.

in the period to 31 March 2022.

- 2.2 Agree that the money drawn down may only be spent on the above purposes and if the full amount of funding is not required it will be returned to the reserve at the end of the financial year.
- 2.3 Agree that payments under this scheme will only be made where providers notify the Council that they have been unable to provide care and that the Director of ASC Essex Operations (Deputy to the DASS) must make arrangements to receive and validate claims for any entitlement to payment for care which has not been provided.
- 2.4 Agree that the Section 151 officer will record the payments made to providers under this easement and arrange for them to be published on the central government website.

3. Summary of issue

Context

- 3.1 The Covid-19 pandemic continues to put considerable pressure on services across Essex. Following the recent relaxation and subsequent removal of most of the restrictions, Essex, along with the rest of England, has experienced a surge in the number of positive test results and levels of community transmission remain very high. Although the numbers of Covid positive cases have reduced in recent days the ongoing pandemic is still impacting the local hospitals and greater numbers of people are being discharged into the community with increased acuity, which is putting pressure on providers. This recent surge in Covid cases, combined with increased numbers of carers being advised to self-isolate as a result of being 'pinged' by the NHS Covid-19 app, has led to providers becoming concerned about their ability to fulfil all care and support commitments.
- 3.2 Ordinarily, care providers are not paid if they do not deliver care and, because we do not plan for failure, there is no incentive for them to prioritise between care users. Clearly, the current situation means that there is a high risk of care providers not providing care for reasons beyond their control which puts them at risk of failure if the Council does not pay them. Whilst the Council has done much to support the care market, it remains fragile
- 3.3 It is proposed that one of the measures of support to the market which was previously provided during waves one and two of the pandemic should be partially reintroduced in order to provide support to the market during the current situation.
- 3.4 It is proposed that this should apply to 31 March 2022. The Leader is therefore asked to make £2.5m funding available to
 - Ensure that providers can cut low priority homecare visits where these cannot be met as a result of staff shortages. Whilst the Council is already budgeting for the cost of this provision, it has also budgeted to receive payment from service users who have the means to pay. Clearly the Council cannot charge services users for services not delivered.
 - Provide care and support to people on direct payments where they need to change provider as a result of the illness or unavailability of their provider.
- 3.5 The requested amount of £2.5m is an estimate based on costs incurred during phase 1 of the pandemic when providers carried out a similar exercise.
- 3.6 Providers will carry out individual risk assessments for all people receiving care and support by their organisation. This will allow them to prioritise their work, complemented by alternative support solutions which they will co-ordinate to ensure that each person remains safe.
- 3.7 Therefore, if care visits are missed, the system should ensure that the welfare of the resident is not compromised, though they will, of course, be discomforted or concerned by the cancellation. The primary aim of adult social care will always be to minimise the number of visit cancellations.

4 Reason for making an urgent decision

- 4.1 The Council may see challenging conditions throughout the coming months as a result of potential impacts on workforce availability. This is in addition to a sector that is already challenged with workforce recruitment and retention.
- 4.2 Some of the key providers in the market have in the last fortnight approached Essex to raise concerns about their capacity to fulfil their care obligations. Adult Social Care's response to this was to raise their escalation framework (Local Authority Pressure Escalation Level) to LAPEL 3 which signifies that market capacity is significantly compromised across Essex.
- 4.3 If providers fail to provide care then, without the easement proposed in this report, they will experience financial losses.
- 4.4 Accordingly, officers would like to make this easement now in order to give comfort to struggling providers that they will not suffer losses if they cannot provide care for self-isolation reasons which are beyond their control.

5. Financial implications

- 5.1 The Adult Social Care domiciliary care budget and current forecast assumes that the care commissioned will be provided and therefore there is not an expenditure budget pressure arising from this element of the decision. Providers increased costs associated with overtime, for example, are claimable from the existing Covid Resilience Fund or they may be able to badge to the Infection Protection and Testing Fund allocation they will have received for the period to 30 September 2021.
- 5.2 There will be a loss of income to ECC from client contributions if providers cut low priority visits; the estimate of this based on the impact seen in Wave 1 and 2 during the financial year 2020/21 is £2m for the remainder of this financial year.
- 5.3 If Direct Payment recipients need to commission additional support because their carer is self-isolating or ill, it is estimated based on the impact seen in Wave 1 and 2 that this could equate to an additional cost of £0.5m for the remainder of this financial year.
- 5.4 The actual financial impact of this approach will be tracked, and Covid equalisation reserve funding is sought to cover the pressure in this financial year.
- 5.5 There is a risk that providers may look to profiteer from these arrangements, and this will be mitigated through auditing, requiring evidence and taking appropriate action against any identified fraudulent activity.

6 Legal implications

- 6.1 It is not proposed to vary contracts for this decision. Instead, contractors will continue to be required to provide care and will be liable if they fail to do so. However, during this period the Council will operate this easement, enabling providers still to be paid provided that money is notified and claimed.
- 6.2 Any such payment will therefore be a gratuitous payment and potentially a subsidy. The European Union (Future Relationship) Act 2020 places the Council in a very similar position to that in which it would have been had the Council remained in the EU. However, subsidies to offset the harm done by a global pandemic are likely to be lawful under the subsidy control regime.
- 6.3 The subsidies awarded will need to be recorded on the BEIS website.

7. Equality and Diversity implications

- 7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
 - (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 7.3 The recommendations in this report are designed to ensure that the Council meets the need of social care users, most of whom are disabled. In view of the urgency of this decision a full equality impact assessment has not been undertaken but we do not believe that there will be a significant adverse impact on any people with a protected characteristic.

8. List of Appendices

None

9. List of background papers

None

I approve the above recommendations set out above for the reasons set out in the report.	Date
Councillor Kevin Bentley, Leader of the Council	09.08.21

In consultation with:

Role	Date
Councillor John Spence, Cabinet Member Adult Social Care and Health	30.07.21
Nick Presmeg Executive Director of Adult Social Care	28.07.21
Executive Director for Corporate Services (S151 Officer)	27.07.21
Stephanie Mitchener on behalf of Nicole Wood	
Director, Legal and Assurance (Monitoring Officer)	29 July 2021
Paul Turner	

Exemption from call in

I agree that it is in the best interests of the Council for this decision to be implemented urgently and therefore this decision is not subject to call in (paragraph 20.15(xix) of the constitution applies).

Councillor Chris Pond – Chairman of the Corporate Policy and Scrutiny Committee – 2nd August 2021