

Report title: Covid – Support to the Market (ASC)	
Report to: Councillor David Finch, Leader of the Council	
Report author: Nick Presmeg - Executive Director for Adult Social Care	
Date: 5 March 2021	For: Decision
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County Divisions affected: All Essex	

1. Purpose of Report

- 1.1 In 2020, in response to the Covid pandemic, Essex County Council made available funds totalling £12m to support the sustainability of the care provider market as it faced demand issues and staffing challenges, and increased financial pressures. This funding is known as the Covid Resilience Fund.
- 1.2 To-date approximately £5m of this funding has been claimed by care providers and with the pandemic likely to continue throughout 2021 these pressures are likely to continue.
- 1.3 It is proposed that the balance of funding is re-profiled, with agreement to continue this support to the care market, until 31 March 2022.

2. Recommendation

- 2.1 Agree that any unspent balance of the £12m supplementary funding allocated for the Covid Resilience Fund as at 31 March in 2020/21 is approved to be carried forward into 2021/22 at the end of the financial year. The final balance will be presented in the 2020/21 Provisional Outturn report to Cabinet.
- 2.2 Agree that the Covid Resilience Fund can continue to be used to reimburse some of the additional costs incurred due to Covid by providers of care and support, and people in receipt of direct payments during the period from 1 April 2021 to 31 March 2022 provided that the reimbursement does not amount to a breach of subsidy control rules and provided that the costs are not reimbursable via any other programme of covid related support.
- 2.3 Agree that that the Council can reimburse providers for additional costs incurred up to a cap of 10% of their usual monthly payment through an evidence-based claims process.
- 2.4 Agree that the Executive Director, Adult Social Care may, after consulting the Executive Director, Finance and Technology, agree to additional reimbursements above the 10% cap if he considers the circumstances of that provider to be wholly exceptional.

3. Summary of Issue

Context

- 3.1 Since the start of the Covid pandemic Essex County Council has worked hard to ensure the viability and capacity of the care sector.
- 3.2 Various decisions made during 2020 secured £12m in total as a Covid Resilience Fund, enabling payments to the care market providing extra support to the domiciliary care sector and to block-book beds in residential and nursing care homes.
- 3.3 It is apparent that there will be further waves of Covid throughout 2021 and although the impact might be less due to the roll-out of the vaccination programme, there are still likely to be increased pressures due to patients coming from hospital who are recovering from the virus, the unknown impact of long Covid, the reduced capacity of some informal carers to continue to act, as well as unknown pent-up demand for care from people not currently requesting care with other types of condition.
- 3.4 Care home operators and homecare providers continue to experience increasing difficulties with managing extra costs caused by the impact of Covid including staff costs and the loss of income due to the need to retain empty beds and manage infection control.
- 3.5 The Council has spoken with other authorities in the Eastern region and they are, like us, considering what support they will continue to offer to the market for ongoing Covid pressures. Some of these providers operate across the region or across county boundaries. Some Councils are giving a 6 - 10% resilience payment to all care providers for a short period, some are working on a claims basis as proposed here and some are doing both.
- 3.6 Approximately £7m of the £12m Covid Resilience Fund remains unspent and it is proposed that this is carried forward and made available throughout the 2021-22 financial year to enable continued support to providers to ensure the market is fully supported.
- 3.7 The Government's Infection Control Fund supported the market with additional costs incurred for PPE and other infection control measures. This funding is due to end on 31 March 2021 and there is currently no indication that any further provision will be made.
- 3.8 While no additional funding is requested at this stage it is proposed to review the position at the end of the first quarter of 2021-22 by which time there will be clarity regarding ongoing Government funding. If no additional Government funding is forthcoming it is likely that ECC's Covid Resilience Fund will need to be increased, although this depends on the situation prevailing during the pandemic which is fast-changing.
- 3.9 In line with previous decisions, this Fund would continue to be used to allow Residential, Nursing, Home Care and Supported Living providers to claim for

additional costs up to a cap of 10% of their usual monthly payment for exceptional costs which they would not have incurred had the current emergency not arisen.

- 3.10 To administer the fund we will continue the process that has been in place for the Covid Resilience Fund throughout this financial year which requires providers to submit an evidence-based claim. The cost of the additional support that has been recruited to administer the claims process will need to be met from this fund going forward. Work is ongoing to encourage providers to claim funds where applicable to ensure they are fully supported.
- 3.11 It is recognised that there may be a small number of providers who have, exceptionally, incurred additional costs in excess of 10% of their normal invoice. It is recommended that the Executive Director will be given authority to exceed the 10% for particular suppliers who can demonstrate that this is the case

4. Options

4.1 Option 1: Do Nothing

- 4.1.1 Without additional financial support the service believes that many providers in that market will not be able to sustain their increased cost base and will subsequently exit the market. If multiple providers in multiple settings exit the market this creates additional demand and sourcing pressures on the Council and there is a high risk that service users will be left without care at least in the medium term while this capacity recovers and grows again.
- 4.2.2 There is an expectation from MHCLG that given councils' existing role in sustaining the local market for social care provision, it is vital that councils use funding where necessary to provide immediate support to providers who need help with covid-related costs.
- 4.2.3 There is also reputational risk to the Council if we do nothing when the Council has been allocated government funding which, in part, is to support the care market.

4.2 Option 2: Provide a blanket market uplift to all providers

- 4.2.1 If the Council provides a blanket uplift to all providers, the service feels it will be hard to cease that again when the funding period ends. The service also strongly believes that pressures are not consistently being felt across the market – some providers are incurring higher additional costs than others: some are already receiving additional income through other decisions. A blanket uplift would not make best use of limited resources.

4.3 Option 3: Provide reimbursement for additional costs incurred, normally up to a maximum of 10% of usual monthly payment (recommended)

- 4.3.1 Officers advise that this is the fairest and most equitable option as it means those incurring real additional costs can claim them back, and those that aren't

do not receive additional funds. This option is also specifically reiterated in the letter to councils from MHCLG on 30 April 2020 as one of the expected measures in order to ensure that funds are flowing freely to providers that are incurring covid related costs.

4.3.2 It is proposed that this is done through a claims process that can be audited and checked by the Council. The claim will be monthly and submitted separately to the usual invoice so as not to hold up the payment for services. Only costs incurred over and above those already supported by the Council may be claimed. The service proposes seven principles to work within:

1. A prioritisation approach that targets key suppliers.
A supplier is deemed key if they are:
 - Directly involved in the front-line response to COVID-19
 - An Essex registered Small Medium Enterprise
 - Defined as key supplier by the Executive Director
2. Transparency, integrity, good faith and scrutiny
3. Suppliers must demonstrate their own take-up of financial support packages from government
4. No supplier should be better off than they would have been if the emergency had not occurred
5. Supporting suppliers to meet their financial liabilities as they fall due
6. Payment for continuity and retention in return for redeployment
7. A fair approach to supply-chain employees

4.3.3 It is proposed that the Executive Director may choose to consider exceptional circumstances upon which we could consider a contribution (alongside supplier) to a top up over and above the 10% cap on claimed.

5. Financial Implications

5.1 The Covid Resilience Fund of £12m was created in 2020/21, using Covid Emergency funds from MHCLG. After the creation of the fund there were subsequent specific government funding announcements made: two tranches of Infection Control Fund, Rapid Testing Fund and Workforce Capacity Fund, as well as provision of PPE for providers via a government portal. This government funding has meant that providers have not needed to claim as much of their excess cost from the Covid Resilience Fund as originally estimated, however in 2021/22 these sources of government funding are unlikely to be available.

5.2 Claims paid as at the end of January 2021 amounted to circa £4.5m, with some 700 claims made to date. Claims have been capped at 10% of annual provider

payment. The expectation is that the additional costs for providers arising from Covid will continue into 2021/22. It is proposed to review the position at the end of the first quarter of 2021/22 (whilst maintaining dialogue with providers during this period), by which time there will be clarity regarding ongoing Government funding, in addition to evidence of provider claims.

- 5.3 If no additional Government funding is forthcoming it is likely that a further decision will be sought for the Covid Resilience Fund to be increased. It should be noted that a number of other funding streams that give support to the market are not expected to be available during 2021/22, the full impact of this range of funding ceasing is not yet known. These funding streams are the Infection Control Fund, Workforce Capacity Grant, Rapid Testing Fund and the PPE portal (currently available to the end of June)
- 5.4 A team of additional staff was created in 2020/21 to monitor and agree the provider claims. This team will need to continue to fulfil this function in 2021/22 (contracts are in place until May 2022) and the cost of the team is estimated to be £270,000 per year. The cost of the team will be met from within the Covid Resilience Fund carry forward.
- 5.5 The decision proposes to retain the 10% cap on claims that has been in place throughout 2020/21. If there are exceptional costs for a provider there is an escalation process where the Executive Director, Adult Social Care may, after consulting the Executive Director, Finance and Technology, agree to additional reimbursements above the 10% cap if he considers the circumstances of that provider to be wholly exceptional.

6. Legal Implications

- 6.1 This involves making additional payments to suppliers based on claims. These are voluntary payments to suppliers in order to defray additional expenditure they incur.
- 6.2 Such payments would normally be an unlawful state contrary to the European Union (Future Relationship) Act 2020 but this proposal is available to all suppliers in Essex and does no more than compensate suppliers for covid related costs. On that basis it is likely to be lawful although it will need to be published on a website to be provided by the Department of Business, Innovation and Industrial Strategy.

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. An equality impact assessment has been undertaken and we do not believe that there will be a significant adverse impact on any people with a protected characteristic.

8. List of Appendices

Equality impact assessment

9. List of Background Papers

None

I approve the recommendations set out above for the reasons set out in the report.	Date
Councillor David Finch, Leader of the Council	04.03.21

In consultation with:

Role	Date
Cabinet Member Health & Adult Social Care	
Councillor John Spence	03.03.21
Executive Director of Adult Social Care	
Nick Presmeg	1 March 2021
Stephanie Mitchener, on behalf of Executive Director for Finance and Technology (S151 Officer)	1 March 2021
Nicole Wood	
Director, Legal and Assurance (Monitoring Officer)	
Paul Turner	1 March 2021

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