

Forward Plan reference number: FP/402/05/22

Report title: Adult Social Care Workforce and Market Support Scheme	
Report to: Councillor John Spence, Cabinet Member for Adult Social Care and Health	
Report author: Moira McGrath, Director of Commissioning – Adult Social Care	
Date: 29 th June 2022	For: Decision
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County Divisions affected: All	

1. Everyone's Essex

- 1.1 Everyone's Essex, our new organisation strategy, sets out a strategic aim of health, wellbeing and independence for all ages. Within that aim is a commitment to helping vulnerable people to live independently and free from abuse and neglect, by enabling an effective care market and strong domiciliary support.
- 1.2 The Adult Social Care sector in Essex is currently experiencing unprecedented pressure. The long-term trend towards care in the home has accelerated at a speed which has been hard for the market to absorb, and this has been compounded by the Discharge to Assess approach from the acute hospitals. At the same time the impacts of the COVID pandemic are still being felt and wider economic factors are exacerbating matters. While we are seeing short-term increases in residential home occupancy due to capacity constraints in domiciliary care, overall occupancy is well below the historic norm.
- 1.3 The sector currently has access to a range of support from both central government and Essex County Council (ECC). Feedback from the market confirms that additional short-term support will allow it to better meet current immediate challenges. This will help to ensure we can continue to support the most vulnerable members of our community.
- 1.4 The proposals in this paper do not create any additional climate impacts, which is consistent with our net zero climate commitments set out in Everyone's Essex.

2 Recommendations

- 2.1 Agree to create a Workforce and Testing Claims Subsidy Scheme of three million pounds (£3m) for a period of six months with effect from 1st April 2022.

3 Background and Proposal

- 3.1 ECC commissions around £600m of adult social services from the market each year through a broad range of contracts. These allow people to live in their homes, to access support in their community and to live in care settings as appropriate.
- 3.2 Across all care settings, a number have made contact to request assistance with the provision of short-term staffing to enable them to deliver the care commissioned by ECC and ensure they are complying with the terms of their CQC registration.
- 3.3 There has been additional support made available to the sector during the Covid-19 pandemic through Essex County Council's Covid Relief Fund, the National Infection Control and Testing Fund, ECC's Workforce Support Fund and the National Workforce Recruitment and Retention Fund. These have been well received by the provider market; however, all of these initiatives have now ceased, and the market is still experiencing significant pressures: in particular, the retention and recruitment of carers, including paying for staff sickness, recruitment of agency carers to cover sickness and encouraging providers to increase capacity within their workforce to meet our increasing demand for domiciliary services in Essex. There is also an additional pressure in relation to the costs of Personal Protective Equipment (PPE)
- 3.4 Government guidance requires residential care providers to ensure that they have appropriate PPE for carers, adults and visitors to try to stop the spread of coronavirus and other infections. The ongoing need for the use of PPE and supporting protocols to ensure adults are safe and any risk of infection is minimised is an ongoing additional cost.
- 3.5 To support our market to meet our increasing demand, providers are continually trying to recruit new carers into the market. With unemployment at an all-time low of 3.7 %, there are currently more vacancies than unemployed people nationally. In Essex we have approximately 2900 vacancies in our carer market. Our existing workforce is paid around minimal wage, while locally across Essex there is an increase in shopping outlets offering slightly above minimum wage and therefore our existing workforce may decide to move to jobs in the retail sector.
- 3.6 As a result, our providers have a pressing need to retain their existing workforce and support financially, where previously this was not an issue. To keep existing carers, providers are paying full pay for sickness, whilst incurring agency staff costs; they are having to allow for flexibility, as some carers have worked tirelessly over the pandemic, and are therefore entitled to annual leave while existing rounds and visits have to be covered. Providers are also trying to increase their workforce to meet with demand. Providing support to providers will alleviate the financial strain our providers are experiencing in trying to deliver their service to vulnerable adults across Essex. The markets in scope for support under this scheme are:

- Residential Care
- Domiciliary Care
- Supported Living
- Extra Care.

- 3.7 It is proposed to set up a subsidy scheme of £3 million for six months, commencing on 1st April 2022 and ending on 30th September 2022, to assist providers with workforce retention and the cost of testing. This scheme is to be targeted, proportionate and effective in order to remedy the impact. This report outlines the set of principles to adopt a targeted approach and ensure a sustainable approach is set up for providers, to support them and to minimise the impact of ongoing staff retention issues and costs relating to testing
- 3.8 Based on the level of funding available and our assumption of the take-up of the market claims, it is expected this funding will last 6 months; therefore, the scheme is time limited to 30th September 2022, subject to the outcome of the review by the Executive Director, Adult Social Care at the end of August 2022. ECC will keep under review any developments regarding the Covid-19 Pandemic, Government guidance and support relating to the requirements to test staff and those receiving services, along with any support provided directly by Central Government to support providers in these markets for additional costs in these areas. The proposed scheme will be reviewed at the end of August 2022 to ensure that any continuation of relief is warranted is and withdrawn if guidance changes, or the costs are no longer being incurred by providers.
- 3.9 The Executive Director, Adult Social Care may review the efficacy of the Workforce and Testing Claims Subsidy Scheme after five months to ascertain whether additional workforce and testing related costs are still being incurred by providers.

Overarching Principles

- 3.10 Only providers that meet the eligibility criteria set out below will be eligible to receive support. Where providers have claimed relief, but evidence shows they do not meet the criteria for relief, ECC reserves the right to claim the money back from the supplier.
- 3.11 The table below sets out the costs that can be claimed and the evidence required from providers to authorise any claim and payment of subsidy:

Eligible Cost	Description	Evidence Required
Payment of full pay to staff whilst they are off sick	Providers will be able to claim the additional costs incurred between SSP and full pay to enable them to pay their staff the full amount they would have received had they been able to work.	Copies of payslips setting out the amount paid and showing the SSP element.

Costs associated with covering an employee who is off sick	Providers will incur additional costs as a result of a person being off sick. They may choose to utilise an agency for providing this cover or pay overtime to other staff. Claims for this will also need to be submitted alongside the payment they are claiming for reimbursement of the difference between SSP and full pay for the employee	Copies of agency invoices or copies of payslips showing the overtime paid.
Incentives for existing staff to take on additional hours	Examples include paying for childcare and enhanced rates to encourage staff to work during school holidays and on public holidays.	Payslips showing the amount paid
Local recruitment initiatives	Providers can claim the costs of undertaking recruitment initiatives to increase their workforce.	Copies of invoices
Training costs for new recruits or to increase productivity of existing staff	Providers can claim the costs of training for new recruits or to increase the productivity of their current staff	Copies of invoices
Incentives to encourage flexible working patterns	Providers may offer enhanced rates to encourage their staff to work flexibly.	Payslips showing the before and after rates
Payment in lieu of annual leave	Providers may choose to buy back annual leave from an employee and to pay them for this time instead.	Payslips evidencing that the annual leave has been brought back
Payment of a retention bonus	Providers may claim back the costs associated with the payment of a retention bonus to encourage their employees to stay with the organisation. This will be capped at £100 per permanent employee.	Copies of their payroll showing that they have paid this, the number of employees and the total amount paid.
Testing	Providers can claim up to £6 per occupied bed per week to cover the costs of testing.	Copies of invoices

3.12 The scheme for claiming relief within the markets detailed in paragraph 3.7 is proposed to be administered as follows:

- Qualifying providers can claim by providing the evidence detailed in the table found at paragraph 3.8.
- Relief claims will only be considered from 1st April 2022 to 30th September 2022 (subject to the outcome of the review at the end of August 2022).

- Audits of claims will be undertaken with retrospective action taken where appropriate.
 - The proposal is an application process by providers, subject to agreed criteria.
- 3.13 The total amount that can be claimed by an individual provider will be capped as follows:
- 3.13.1 4.7% of ECC's 2021/22 total spend for residential care settings that support ECC-funded residents and are located within the administrative area of ECC.
 - 3.13.2 3% of ECC's 2021/22 total spend for CQC-regulated domiciliary care providers that are either part of the Live at Home Framework or have an office base within the administrative area of ECC and support ECC funded adults.
 - 3.13.3 3% of ECC's 2021/22 total spend for CQC-regulated community care providers who deliver care in Supported Living or Extra Care settings within the administrative area of ECC and have ECC-funded residents within the scheme.
- 3.14 ECC is engaging with the market as we explore ways in which to achieve long-term stability, with the goal of ensuring that there is quality, choice and viability in each part of the county. This includes a review of the cost of care and support services and the prices paid by ECC for the services detailed in paragraph 3.6.
- 3.15 However, ECC is keen to respond to the market's pleas for urgent, short-term action. The work required to review the cost of care and prices paid by ECC for these services will require engagement with providers and time to collate information in the landscape of the cost-of-living crisis. Therefore, without the introduction of the Workforce and Testing subsidy scheme, providers face a period without support and potentially working at financial risk. Particular concerns are being expressed around staffing pressures and for the residential care sector around the on-going requirements of testing of residents.
- 3.16 Officers have reviewed the spending by providers against the proposed measures in this paper from either DHSC or ECC monies in 2021-22, and uptake of our own internal claims fund was 25% of eligible providers. Since DHSC funding has now ended, we are of the opinion that the proportion of providers likely to claim will be closer to 50%.
- 3.17 The payments being proposed in this paper are modest, but will give operators the flexibility to address these short-term issues.

4 Links to our Strategic Ambitions

- 4.1 This report links to the following aims in the Essex Vision
- Enjoy life into old age
 - Develop our County sustainably

- Share prosperity with everyone

4.2 Approving the recommendations in this report will have a neutral impact on the Council's ambition to be net carbon neutral by 2030. We are working on wider improvements as part of our longer-term market shaping strategy which will have an impact on this ambition.

4.3 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':

- A strong, inclusive and sustainable economy
- Health wellbeing and independence for all ages

5 Options

5.1 Option 1. Do nothing (not recommended)

ECC could choose not to offer any additional support to the local market. This would mean that ECC would be unable to fulfil its statutory duties under the Care Act, because providers will fold and there will not be enough capacity to deal with demand.

5.2 Option 2. Introduce a Workforce and Testing Subsidy Scheme (recommended)

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 are not incurring such costs do not receive additional funds.

It is proposed that this is done through a claims form 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 could be claimed. The service proposes five principles to work within:

1. A prioritisation approach that targets suppliers who support ECC-funded adults.
2. Transparency, integrity, good faith and scrutiny.
3. No supplier should be better off than they would have been if the pandemic had not occurred.
4. Supporting suppliers to meet their financial liabilities as they fall due.
5. A fair approach to supply-chain employees.

6 Issues for Consideration

6.1 Financial implications

6.1.1 The £3m funding available to support the recommendation of this report was approved as a carry forward of budget from 2021/22 into this financial year in the third quarter report to Cabinet (FP/013/03/21).

- 6.1.2 Based on how providers had reported they had utilised the DHSC funding for workforce and testing in 2021/22, and having reviewed the COVID claims fund to establish the proportion of eligible providers who claimed from this fund, it is estimated that the £3m will cover costs for a 6-month period. The degree to which providers are still incurring costs and will wish to submit a claim is not known at this point and therefore the funding available may be able to support providers for a longer or shorter period than 6 months.
- 6.1.3 The fund will be capped at £3m so there is not a risk that this decision creates a pressure within the service. However, it is anticipated that a further decision seeking to apply additional funding will be required to sustain this process for the remainder of the year, should it be found to be successful.

6.2 Legal implications

- 6.2.1 ECC has a statutory obligation to meet assessed eligible care needs. In determining whether to award funds to providers, ECC must consider compliance with subsidy control rules.
- 6.2.2 A subsidy is a measure which:
- is given by a public authority
 - gives an enterprise (including charities) an economic advantage that is not available on market terms (such as a grant) and
 - affects international trade (harm to international trade is not required).
- 6.2.3 Where a measure is given to a truly local enterprise, the measure is unlikely to affect international trade. Where the providers are purely local (i.e., not operating in other locales or with other objectives), then the grants are unlikely to be considered a subsidy.
- 6.2.4 Where any of the providers are not purely local, ECC must consider whether the measures could constitute a subsidy in violation of any trade agreement principles or requiring prior approval. There are exemptions for small amounts of financial assistance, which are subject to financial limits and are a permitted subsidy. Generally, a social care service would be a service of public economic interest (SPEI). The relevant exemption for small amounts of financial assistance for the recommendations set out in this report is the subsidy threshold of approximately £790,000 (equivalent to 750,000 Special Drawing Rights) over a 3-year period. So long as each provider has not received over the threshold for SPEI (cumulative across all government sources) over a 3-year period, then the proposed grant will likely be considered lawful.

- 6.2.5 Relevant enquiries should be made so that ECC is assured that a) the funds will be used for the purpose intended and b) the grant would not put the provider in excess of the SPEI small amounts of financial assistance threshold

7 Equality and Diversity Considerations

7.2 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- 7.2.5 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.
- 7.2.6 Advance equality of opportunity between people who share a protected characteristic and those who do not.
- 7.2.7 Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

7.3 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).

7.4 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 John Spence, Cabinet Member for Adult Social Care and Health	12.07.22

In consultation with:

Role	Date
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Executive Director of Adult Social Care	07.07.22
Nick Presmeg	
Director for Finance, Corporate Services (Deputy S151 Officer)	30.06.22
Stephanie Mitchener on behalf of Nicole Wood	
Director, Legal and Assurance (Monitoring Officer)	29.06.22
Laura Edwards on behalf of Paul Turner	