

Forward Plan reference number: Not applicable

Report title: Funding for Adult Social Care: COVID 19 Response	
Report to: Councillor David Finch, Leader of the Council	
Report author: Nick Presmeg - Executive Director for Adult Social Care	
Date: 25 March 2020	For: Decision
Enquiries to: Laura Davis-Hughes, Head of Finance - Adult Social Care	
County Divisions affected: All Essex	

1. Purpose of Report

- 1.1 To agree additional funding for adult social care for the purposes of securing capacity for those currently using Day Care, in order to continue to support our most vulnerable service users, where centres are closing and to support sustainability of the market during the COVID-19 emergency.

2. Recommendation

- 2.1 That £5.6m be earmarked from General Balances as follows:

- (a) £250,000 in 2019/20; and
- (b) £5.3m in 2020/21

to support our most vulnerable service users whilst capacity for day care provision is limited or not there at all for a maximum period of six months.

- 2.2 Agree that the Director of Commissioning, Strategy and Policy for Childrens, Learning Disabilities and Autism may take the following actions
- enter into new contracts; and
 - vary current contracts with providers of day opportunities as set out in paragraph 3.10.

3. Summary of Issue

Context

- 3.1 The global outbreak of coronavirus (COVID-19) is affecting the UK. The number of cases has grown significantly since early March. The frail and elderly are the most vulnerable. The health and care sectors are significantly affected and face high demand and pressures on workforce due to COVID-19 related absences.
- 3.2 Urgent preparation, to ensure an effective response to 'COVID-19', is taking place across the council and with our providers. We need to ensure that we:

- Ensure the safety and wellbeing of people in Essex and our most vulnerable residents
- Support providers suffering financial hardship as a result of COVID-19
- Support providers within the social care market to remain sustainable at a time when they may be under significant pressure in order to ensure that care staff can continue to work and do not suffer financial hardship as a result of COVID-19
- Maintain statutory duties.

3.3 It will be vitally important during the period of the COVID-19 response to sustain providers of social care to make sure that they are able to continue in business in the face of demand and workforce pressures. The council is taking firm and swift action to protect the provider market and wishes to share the approach set out in this paper with day care providers to assure them during this period. This decision focuses on day care providers.

3.6 Due to staff and service user sickness and requirement to isolate over the last two weeks we have already seen 23, as at 24 March, of our 130 day centres close and had confirmation from a number more that they will be closing this week. Following the Government announcement on 23 March that they intend to make regulations to enforce strict social distancing rules, with immediate effect, the expectation is that most day centres will need to close. Some need to stay open where possible for the most vulnerable where there is no other community provision available and where they can safely do so. The Council has taken a risk stratification approach to identify the range of alternative support required for service users who most rely on our day centres.

3.9 Day Care sessions are currently purchased via a combination of framework, spot and block purchasing. Cabinet has already agreed that a new contract with Essex Cares Limited will be entered into with effect from 1 April 2020, which provide over half of the day opportunities provision commissioned by ECC, and will include supporting more people into employment.

3.10 To ensure we have that capacity accessible to us during this time and to ensure the financial stability of care providers, including ECL it is proposed that the Council will

- (a) Continue to pay ECL at the contractual value agreed by Cabinet, for six months from 1 April 2020 whilst noting the service received will be different over this time because ECL will be unable to maintain full provisions
- (b) Pay the other Day Care providers, on a rolling basis to a maximum of 6 months, based on the value of the commissioned sessions at February 2020, even if they provide fewer sessions
- (c) Pay for additional capacity where someone currently attending day care is unable to access their current provision and still requires alternative provision. This provision may be provided from elsewhere in the market, for day opportunities provision on an 'outreach' basis or via seeking 'mutual aid' from other authorities. The cost of this is requested within the report. Additional provision will only be sought if the existing capacity is unable to be used after exhausting the first two options.

- 3.11 It is intended that no new referrals will be made into this service during the next six months but clearly it is important that social care staff have the flexibility to make the best use of provision.
- 3.12 There will be a requirement that providers work within a mutual aid approach. During this time they will also be asked to support the market and service users in other ways, such as outreach.
- 3.13 There may be an impact on income where service users have been assessed as required to make a contribution towards the cost of the services received, because we may be paying for the provision but be unable to offer it.

4 Reason for Using Urgency Powers

- 4.1 The council is expecting extremely challenging conditions as Covid-19 takes effect. Adult Social Care needs to be able to take all necessary action to fulfil its duties during this period and reassure providers, service users, and partners in the NHS of its capacity to do so.
- 4.2 Following on from the Budget on 11 March, the Chancellor made another announcement on 17 March which reiterated the government's commitment to support with whatever resources the NHS needs, and we are taking this to include support from Local Authorities.
- 4.3 MHCLG wrote to councils on 20 March to confirm a funding allocation to help local authorities, with £37.4m to be received by Essex County Council. This funding is to help address all pressures faced by the Council during the response to the COVID-19 pandemic. The Secretary of State's letter states that local authorities are expected to place an appropriate portion of the funding they choose to dedicate to adult social care into a pooled budget with CCGs, to ensure that there is no risk of debates about boundary issues causing delay.
- 4.4 Given the urgency of the need to support social care providers, the Council cannot wait for that money to be received and placed into a pooled budget. In the interim it is proposed that the costs be covered by the Council's General Balance.

5. Financial Implications

- 5.1 Officers working on the response have been working with ECC's current providers in the day care market to risk stratify current day care service users whose service ECC manage. Those providers sourced directly by people who manage their own direct payments have also been asked to risk stratify service users.
- 5.2 As set out in table 1, the cost of underwriting the day care providers during this time is a maximum of £9.6m if it is required for the full 6 months. This will be securing the sessions, for the 1,593 service users currently placed by ECC in

the market, once the emergency period is over as well as support provider sustainability.

- 5.3 As the Council has already budgeted for the above provision the funding for this is not asked for within this report. The Council will make full use of repurposed capacity of day care providers and mutual aid arrangements before needing to draw on additional resource. However, it is foreseen that some additional costs to source alternative care for those most vulnerable (e.g. complex health needs, challenging behaviour) will still be required. It is not possible to precisely predict this cost as we do not know how the market capacity will change during the current situation. However, based on a review of service users, mutual aid expectations and capacity the current best estimate of additional cost is a range of £2.9m - £5.6m. Approval to commit expenditure and enter into new contracts up to the full £5.6m is sought within this report so that follow up decisions aren't required however, to note, this is only as a final resort and the Council intends to fully utilise other options before needing to draw on this money. The £5.6m is based on a maximum spend period of six months.
- 5.4 The actual spend associated with this decision will be frequently reviewed over the coming weeks and months.
- 5.5 Of this full cost estimate approximately £250,000 will fall in 2019/20 and £5.3m in 2020/21.
- 5.6 MHCLG have confirmed that £37.4m of the emergency money will be allocated to the Council but that a portion of this should be held in a pooled budget with local CCGs. It has not stipulated how much and the final formal grant guidance is awaited.
- 5.7 The expectation is that the General Balance will be replenished from the emergency funds made available by Government in the short term to ensure resilience for other areas.

Table 1

Item	Description	Estimated cost	Budget Requirement	Comments
ECL Day Opportunities	To pay the full amount of the block contract for a 6-month period	£5.4m	-	This cost is already included within the 2021 budget
Day Centres (non-ECL)	To pay the day centres based on committed sessions prior to the crisis.	£4.2m	-	This cost is already included within the 2021 budget
Alternative care provision for a maximum of six months	To pay estimated cost of sourcing alternative care after all mutual aid and outreach attempts have been explored.	£2.9m - £5.6m	£5.6m	<p>The Range assumes an estimated amount of out-reach support from day centres and mutual aid provision. The decision asks for the top value of this range but we will exhaust the first two options before resorting to this spend;</p> <ol style="list-style-type: none"> 1. Make use of day centre resources for outreach support 2. Mutual aid arrangements
			TOTAL £5.6M	

- 5.4 Providers may already have sufficient insurance to cover losses during the time of closure or may be able to access some government funding directly for furloughed staff. The Council does not expect providers to profiteer from the arrangements proposed within this decision. The Council will work with providers in relation to costs and funding streams over this period to ensure transparency and avoid any duplication of funding.
- 5.5 Officers are working to ensure maximum flexibility in payment arrangements where needed.

6 Legal Implications

- 6.1 The proposals in this report involves variation to contracts on a temporary basis. Such amendments will need to take place in a way in which we can recover payments if the provider has created extra capacity by cutting support in order to earn extra money. On that basis this decision complies with regulation 72(1)(c) of the Public Contracts Regulations 2015 because:
- (a) the need for modification has been brought about by circumstances which a diligent authority could not have foreseen;
 - (b) the modification does not alter the overall nature of the contract;
 - (c) any increase in price does not exceed 50% of the value of the original contract or framework agreement.
- 6.2 With respect to Essex Cares Limited, this is a company wholly owned by ECC. ECC is entitled to award and vary contracts to it because it falls within the criteria regulation 12 of the Public Contracts Regulations 2015, which is sometimes called the 'Teckal exemption'.
- 6.3 The proposals in this report may also involve entering into new contracts above the threshold of £615,278 applying to such contracts. These will not be able to be tendered given the urgency of the situation. This is allowed by regulation 32(2)(c) of the Public Contracts Regulations 2015 which allows the direct award of contracts when it is not possible to meet the time limits involved in a competitive tender because there is extreme urgency as a result of events unforeseeable by the contracting authority; words which suit the current situation rather well.
- 6.3 The constitutional basis for the decision is that the Chairman of the Corporate Policy and Scrutiny Committee has agreed that it is urgent and cannot reasonably be deferred, this decision will need to be reported to full Council for information.

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 recommendations set out above for the reasons set out in the report.	Date
Councillor David Finch, Leader of the Council	26 March 2020

In consultation with:

Role	Date
Cabinet Member Health & Adult Social Care Councillor John Spence	26 March 2020
Executive Director of Adult Social Care Nick Presmeg	26 March 2020
Director for Finance (deputy S151 Officer) Stephanie Mitchener	25 March 2020
Director, Legal and Assurance (Monitoring Officer) Paul Turner	25 March 2020

Exemption from call in and being included on the forward plan

I agree that this key decision is urgent and cannot reasonably be deferred and therefore that it may be taken without it being on the forward plan.

I also 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 Mike Mackrory – Chairman of the Corporate Policy and Scrutiny Committee

Dated: 26 March 2020