

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: 4 May 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 ensure adequate capacity in the care market to meet the anticipated additional demand in the sector.
- 1.2 To support care providers in Essex by making additional funds available, up to £12m, to help with the increased financial pressures faced during the current COVID-19 crisis.

2. Recommendation

- 2.1 That up to £7m be earmarked from general balances to reimburse some of the additional costs due to COVID-19 incurred by residential and nursing care providers during the 16-week period from 19 March 2020 – 8 July 2020.
- 2.2 That £5m of funding from decision FP-564-03-20 be used to reimburse some of the additional costs incurred due to COVID-19 by homecare and supported living providers during the sixteen-week period from 19 March 2020 – 8 July 2020.
- 2.3 That the Council enables the above providers to be reimbursed for additional costs incurred up to a cap of 10% of their usual monthly payment through a claims process on an evidenced basis.
- 2.4 Agree that the Executive Director, Adult Social Care may decide to extend the 16-week period beyond 8 July 2020 if this can be done using the existing budget and he is satisfied that additional costs are still being incurred by providers.
- 2.5 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 crisis Essex County Council has worked hard to ensure the viability and capacity of the care sector.
- 3.2 Early urgent decisions were made to provide extra support to the domiciliary care sector and to block-book beds in residential and nursing care homes.
- 3.3 It is clear that heavy demand will continue, owing both to patients coming from hospital who are recovering from the virus, the reduced capacity of some informal carers to continue to act, and the expectation of a pent up demand for care from people with other types of condition who are not currently requesting care.
- 3.4 Meanwhile care home operators and homecare providers are reporting increasing difficulties with extra costs involved from staffing and changing advice from Public Health England with respect to the use of Personal Protective Equipment (PPE), which sees an increasing cost to providers
- 3.5 The issue set out in this report is emphasised by the Secretary of State for Housing, Communities and Local Government, in his letter to local authorities dated 30 April, specifically raising the need for additional temporary funding to be passed on to providers to support them during this period.
- 3.6 The Council has spoken with other authorities in the Eastern region and most have already acted to make additional payments to their social care providers beyond those reliefs already agreed by ECC. 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.
- 3.7 Therefore, this paper requests the council to release up to £7m in additional funds, in addition to widening the scope of the £5m made available under a previous decision relating to FP-564-03-20 - securing £12m in total to make further payments to providers.
- 3.8 It is proposed that this additional money would 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. The mechanism for this would be by a claims process with providers required to submit evidence. Additional support may be required to administer this, but it is believed that this could be managed through redeploying staff.
- 3.9 It is recommended that we allow costs incurred after 19 March 2020, which the Government advice considers to be the start of this COVID-19 emergency period. It is reasonable to assume that additional covid-related costs would have been incurred by many providers from this date and that there is an

expectation that the deployment of additional funding received should run from that date.

- 3.10 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.
- 3.11 We will aim to provide a simple, efficient and speedy process for dealing with claims. It is proposed that there should be a target of processing any application within five working days.

4 Reason for Using Urgency Powers

- 4.1 The Council has already taken decisions to incur additional costs adding to a higher value than the initial £37.4m received. The government wrote to councils again on 18 April setting out a further £1.6bn of funding to be received, of which ECC's allocation is £26.2m. Given the urgency of the need to support social care providers, the Council cannot wait for this allocation to be received. In the interim the costs will be covered by the Council's General Balance.
- 4.2 On 30 April, the government wrote again relaying concerns that funds are not flowing through to social care providers quickly enough and that some councils are taking too long to agree covid-related increases in funding to providers, and that this is putting increased pressures on providers. There is the expectation that one of the measures councils take to ensure funds flow freely should be through temporary additional funding of up to 10% where this is necessary.

5. Options

5.1 Option 1: Do Nothing

If the Council does not provide funding to support our care market with their additional costs at this time 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.

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.

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.

5.2 **Option 2: Provide a blanket market uplift to all providers**

If the Council provides a blanket uplift to all providers, the service feels it will be hard to cease that again when the 16-week period is over. 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; and some have received PPE directly from the Council where we have had supplies and providers have had imminent and urgent needs. A blanket uplift would not make best use of limited resources.

5.3 **Option 3: Provide reimbursement for additional costs incurred, normally up to a maximum of 10% of usual monthly payment (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 aren't do not receive additional funds. This option is also specifically reiterated in the letter to councils from MHCLG on 30 April as one of the expected measures in order to ensure that funds are flowing freely to providers that are incurring covid related costs.

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 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

It is proposed that the Council 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 claims, notably to ensure that employees in the supply chain are not paid less than the national living wage (NLW).

6. Financial Implications

- 6.1 Within the decisions taken to date there was provision within FP-564-03-20 in relation to Home Care, Supported Living and Direct Payments for additional costs associated with overtime/additional staff costs, and a figure of £5m was requested. This decision sets out to extend the use of that £5m funding to include other costs as well, such as PPE. This funding will be encompassed in the decision set out in this paper which extends the support offer to residential and nursing providers. The £5m equates to 10% of this market's payments for a 16-week period for this part of the market.
- 6.2 If the Council were to cap additional costs at 10% and all providers claimed up to this cap (with evidence) for 16 weeks across Home Care, Supported Living, Direct Payments, Residential and Nursing provision the total cost would be £12m. However, previous decisions have led to residential and nursing beds being block purchased within care homes. Where these beds are not being occupied there is income being received without all of the additional cost (Homes were required to staff up to the level of need so that they can accept discharges from ward within a three hour period) and therefore in line with the principles above these providers would need to make claims net of this additional income to them.
- 6.3 As stated previously the total potential cost is £12m. £5m of this is for Homecare, Supported Living and direct payments and was included within decision FP-564-03-20. £7m of this is for Residential and Nursing provision and is sought as funding within this decision.
- 6.4 Government have indicated, through funding guidance, that the start of this COVID-19 period was 19 March and therefore it is reasonable to set the 16-week period of this decision as the same date and allow the first claim from providers to include back-dating to this date. A key risk, however, is that suppliers could continue to incur additional costs beyond 8 July 2020 and there is no additional government funding guaranteed.
- 6.5 There will be the need for some additional staff resource to monitor and agree these claims during this period under an open book accounting principle, which will be met through the redeployment of the Council's staff rather than through incurring additional costs. If the appropriate capacity and skills cannot be secured through redeployment there may need to be additional capacity sourced to support administration of the scheme.

- 6.6 The Council has already been purchasing PPE where central supply has not been received. Some providers in the most critical need have already been recipients to this PPE and therefore there is a risk that, by allowing a maximum of 10% for all providers, we inadvertently disadvantage those that have not already received some PPE from us. Claims will be considered against the record of where current PPE stocks have gone to aim to mitigate this risk.
- 6.7 There is an opportunity that the agreement of this decision gives confidence to providers to order more of their own PPE stocks and therefore could mean that the Council do not need to order the full £2m of PPE agreed in decision FP-679-04-20. This will be monitored alongside these claims and market reaction. The Council will continue to identify sustainable supply lines which can be shared with the care market.
- 6.8 It should be noted that the current market prices for PPE are varied and are likely to continue to fluctuate during the 16-week period. Modelling of assumed demand has been based on the latest published national guidance, while actual volumes used may be different. Therefore, while the expectation is that these additional costs will be contained within the value of the decision, it will be necessary to reassess the impact as new information becomes available for actual prices and usage.
- 6.9 There could be a risk of open-endedness to this decision if we are not out of the COVID-19 period in the next 16 weeks and expectation has been set that these costs are recovered. The decision proposes a 10% cap on claims so that the exposure to risk is limited in that respect. The principles set out in section 5 aim to reduce risk and set expectation of the market. In terms of length of time this will need to be monitored and communicated to the market that at this stage there is only funding to support for the period of 16 weeks.
- 6.10 It is essential that ECC makes emergency funds available pending receiving the additional funding from MHCLG and hereby the call on General Balance is recommended. 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. It is clear that there is a shortfall in funding overall from Government compared to total costs being incurred. The Council continues to look to ensure we receive fair funding for COVID costs incurred but any shortfall will need to be met from either reserves or revenue savings and income.
- 6.11 Guidance on funding streams suggests that this cost is to be supported by the £1.6bn received from MHCLG rather than the £1.3bn received via CCGs from NHS England on a claims basis.

7 Legal Implications

- 7.1 This involves making additional payments to suppliers based on claims. These are voluntary payments to suppliers in order to defray additional expenditure they incur.
- 7.2 Such payments would normally be state aid but in this proposal they are available to all suppliers to make good the damage caused by natural disasters or exceptional occurrence. This type of aid is therefore likely to be lawful under article 107(2)(b) of the Treaty on the Functioning of the European Union which still applies under the withdrawal agreement between the EU and the UK.
- 7.3 As 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.

8 Equality and Diversity Implications

- 8.1 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.
- 8.2 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).
- 8.3 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.

9 List of Appendices

None

10 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	5 May 2020

In consultation with:

Role	Date
Cabinet Member Health & Adult Social Care	
Councillor John Spence	4 May 2020
Executive Director of Adult Social Care	
Nick Presmeg	4 May 2020
Executive Director for Finance and Technology (S151 Officer)	
Nicole Wood	4 May 2020
Director, Legal and Assurance (Monitoring Officer)	
Paul Turner	4 May 2020

Exemption from call in

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: 5 May 2020