

<b>Report title: Coronavirus Outbreak – payments to operators for Adult Social Care Externally Contracted Services</b>	
<b>Report to:</b> Councillor John Spence – Cabinet Member for Health and Adult Social Care	
<b>Report author:</b> Moira McGrath - Director of Commissioning (Adult Social Care)	
<b>Date:</b> 15 May 2020	<b>For:</b> Decision
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<b>County Divisions affected:</b> All Essex	

## 1. Purpose of Report

- 1.1. The Coronavirus outbreak is a major public health emergency. The Government's current advice is for the population of the United Kingdom to stay at home and travel only when it is essential to do so.
- 1.2. In line with this advice, many providers of day services who support Adult Social Care client groups, have suspended their buildings based support activities, in order to comply with the guidance and to protect service users, many of whom fall within the specified vulnerable groups, and their staff. ECC have already put in place financial provisions to support these providers through the pandemic period.
- 1.3. This report now asks the cabinet member to decide on the level of payment to be made to transport operators, who normally provide transport services to those attending day centres, during the pandemic period April to July and who are at risk of financial distress due to COVID-19 related service disruptions. This is required to secure continuity and retention of these services over the medium to long term for Adult Social Care clients.

## 2. Recommendations

- 2.1 That the following payment approach is adopted in relation to externally contracted transport providers:
  - 2.1.1 Subject to providers entering into a legally binding commitment which requires them to accept the principles set out in this report, ECC will pay
    - a) 100% of contractual payments with respect to transport services which are being provided or are available to a care provision establishment that is open, and
    - b) 80% of contractual payments with respect to transport services which are not being provided due to a care provision establishment being closed.
  - 2.1.2 The value of the contractual payment, referred to in paragraph 2.1.1 will be based on the actual invoice for that route for January 2020.

- 2.1.3 ECC will deduct from any invoices any saving to the contractor to represent the reduced costs of delivering services as a result of the pandemic or funding secured through other means, including but not limited to support from central Government's Coronavirus financial support schemes.
- 2.1.4 This decision will apply initially from 1 April 2020 – 31 July 2020 and the Executive Director for Adult Social Care is authorised to extend this until 30 September 2020 if he considers this necessary. Any decision to extend beyond 30 September 2020 will be a further decision to be taken by the Cabinet Member.

### **3. Summary of Issue**

- 3.1 The decision to move to 'lockdown' status has had an immediate and significant adverse impact on passenger transport businesses. For ECC this includes operators who provide statutory and non-statutory services on behalf of ECC to transport Adult Social Care service users as part of their agreed support plan. Social Care transport providers are generally transport businesses and are experiencing similar issues, with significant fixed costs such as the provision of vehicles.
- 3.2 In the light of the potential for widespread market disruption, DfT wrote to local authorities asking for continued support for the passenger transport industry at pre-COVID19 outbreak funding levels. The DfT is clear that in their view this support should be applied to transport operators and give consideration to value for money requirements including securing continuity, redeployment and retention in the medium to long term. While the guidance is not legally binding, nor is it statutory guidance, it is a relevant consideration in decision-making, as is the Crown Commercial Service guidance PPN 02/2020 with which the Department for Transport Guidance is expressed to be consistent.
- 3.3 The Council has taken a decision to make this support available to most passenger transport operators it pays, but this decision did not cover contracts for transporting adult social care service users.
- 3.4 ECC now needs to make a decision on how it will treat payments to operators for these contracted adult social care transport services. This report proposes to apply a similar policy as we have for other passenger transport services from April 2020 until the end of July 2020, subject to review for any necessary extension, up to a maximum of 6 months, or an earlier end to the current COVID-19 situation.
- 3.5 It is proposed that, to qualify for any payments from ECC, suppliers must agree to act on an open book basis and make cost data, relating to the pandemic period, available to the contracting authority.
- 3.6 Suppliers should not expect to make profits on elements of a contract that are undelivered during this period and all suppliers are expected to operate with integrity.

- 3.7 Wherever possible, ECC will seek to re-deploy the capacity of those suppliers, engaged in servicing closed day centres, to other areas of need.

#### **4. Options**

##### **Option 1: Make payments to operators in line with existing contractual commitments and government guidance (recommended)**

- 4.1 The Adult Social Care transport contracts include provision to recognise unavoidable costs where neither party is at fault (normally applied for snow days). In these circumstances ECC pays for commissioned services, except where an establishment is closed where ECC pays 80%.
- 4.2 The proposal is that ECC adopt this approach for the duration of the pandemic period meaning ECC would continue to pay providers on the following basis:
- a) 100% of pre-COVID19 contractual payments for January 2020, where a care provision establishment is open, and
  - b) 80% of contractual payments for January 2020, where transport is not being provided due to a care provision establishment being closed.

The value of the contractual payment is based on the actual invoice per route for January 2020, less any adjustment for reduced costs of delivering services as a result of the pandemic or funding secured through other means, including but not limited to support from central Government's Coronavirus financial support schemes.

- 4.3 The payments described in paragraph 4.2 would apply, initially from April – July 2020, with scope to extend for a further two months should this be required.
- 4.4 If this decision is agreed, then ECC could expect most operators to remain solvent throughout this period which they otherwise may not.
- 4.5 A decision, applying the same approach detailed in paragraph 4.2, has already been taken in relation to Home to School transport contracts, many of the providers of which also provide transport services to Adult Social Care service users. This option will deliver a consistent approach.
- 4.6 The financial impact of this option is shown in the financial implications section.

##### **Option 2: Do nothing.**

- 4.7 If the ECC decides not to make payments to operators during this period of disruption a number of operators could experience financial difficulties given the extent of fixed costs, resulting in a potentially reduced market to support ASC transport needs in the period following the crisis and if, as a result of providers dropping out of the market, routes had to be recommissioned this would likely result in higher costs.
- 4.8 The financial impact of option 1 would not occur if ECC did nothing.

### **Option 3: Reduction in provider payments (greater than in option 1)**

- 4.9 If the ECC decides to increase the reduction in payments to operators over that set out in Option 1 there would be likely be significantly more service withdrawals as a result of provider failures than under option 1 although fewer than under option 2.

## **5. Conditions of Payment**

- 5.1 It is proposed that payments as set out in paragraph 4.1 will be on similar conditions as set for Home to School transport:

- all service changes across the scheduled timetable/services, not just existing supported services, must approved by ECC
- reliability across the agreed routes is good and meets pre-agreed performance measures
- operators are working hard to maintain provision and do not arbitrarily withdraw services without prior agreement of ECC;
- taxpayer support is not used to fund any profit element arising from services which are not being delivered
- operators sign up to contractual changes requiring them to provide evidence about costs/income etc;
- operators do not 'double claim' support from taxpayer sources e.g. central Government;
- operators will seek to claim any central Government financial support to which they are entitled and adjust invoices to ECC accordingly to take account of funding from other sources
- operators do not furlough staff without our agreement and any furloughing of staff will reduce the amount paid by ECC
- operators meet the full value of their commitments to their sub-contractors, taking account of the need to exclude profit, and failure to do so will affect the amount paid by ECC
- they agree to offer 'mutual aid' if they are able to, at ECC's request

## **6. Financial implications (option 1 only)**

- 6.1 The existing budget allocation for all Adult Social Care Transport in the 2020/21 budget totals £4.6m.

- 6.1.1 Adult Social Care transport is provided by either ECC's in-house transport provider or via contracts with commercial passenger transport providers. The proportion of the 2019/20 actual expenditure spend on the above is provided in the table below:

	2019/20 Annual Expenditure £m	% of Annual Expenditure	2020/21 Budget £m
In-house Transport	2.286	50.6%	2.328
External Transport	2.228	49.4%	2.269
<b>Total</b>	<b>4.514</b>		<b>4.597</b>

6.1.2 It has been assumed that 100% of the in-house transport provider costs, usually recharged to Adult Social Care, will continue to be incurred as a result of the redeployment of staff and vehicles to support the COVID-19 response. As such the assumption made is that 100% of this budget will be required by ECC, albeit this may not be within Adult Social Care.

6.2 This decision relates only to the External Transport element of the budget and as such the financial impact outlined below relates only to the recommended payment option (Option 1), for the of the external transport provision.

6.2.1 The cost of transport provision for the period April to July is expected to be in the range of £607,000 (all establishments closed) - £758,000 (all establishments open). The potential financial impact is expected to be contained within the existing 2020/21 budget. Modelling indicates that the impact could be up to a £147,000 saving based on all external providers being paid at 80% for the period April to July.

6.2.2 The extent of the reduction in costs may vary if provider costs are demonstrated to have fallen below the payments made.

6.2.3 Any pressures, for example as a result of having to provide transport to alternative provision, will be mitigated by any reductions set out above.

### 6.3 Key Financial Assumptions

6.3.1 The contractual payment is based on the actual invoice per route for January 2020.

6.3.2 Calculations are based on numbers of working days within the period and exclude bank holidays.

## 7. Legal implications.

7.1 The Government guidance referenced in this report does not have the status of law or of statutory guidance. While the guidance does set out Government's preference for how ECC will approach the current COVID-19 situation when working with its suppliers and contractors, the guidance is a relevant consideration rather than a direction or law that must be followed. In implementing these recommendations, ECC must do so lawfully in accordance with the existing legal frameworks.

- 7.2 PPN 02/20 links much of its guidance to the Public Contracts Regulations 2015 (the Regulations). In accordance with PPN 02/20 and the Regulations, any necessary contractual variations initially will be reviewed in line with existing contractual provisions. Where possible, variations will be implemented in accordance with existing contract mechanisms. Where this is not suitable or possible, any variation will be made with due regard to the variation provisions set out in regulation 72 of the Regulations.
- 7.3 Any relief granted in these circumstances must also be implemented in line with State Aid rules. On 20 March 2020, the European Commission (EC) announced a temporary State Aid framework for measures to support economies during the COVID-19 public health emergency (EC 2020/C 91 I/01). In that Communication, the EC recognised liquidity concerns arising from the containment measures and also recognised the particular impact on the transport sector. All relief will be reviewed in line with existing State Aid principles as well as any temporary framework or umbrella provisions that have been implemented by the European Commission and central Government.
- 7.4 ECC, in coming to this decision, has considered the current health emergency as well as the financial impacts in line with the guidance, the Regulations, and State Aid frameworks and considers that the proposed response is proportionate to the situation and will be limited to those measures strictly necessary to respond to this emergency.

## **8. Equality and Diversity implications.**

- 8.1 In making this decision ECC must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act 2010, i.e. have due regard to the need to: A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act. 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, race, religion or belief, sex and sexual orientation.
- 8.3 The PSED is a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149, is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 8.4 An equality impact assessment has been undertaken. The protected groups impacted by this decision are older people, younger people and people with disabilities as they are disproportionately users of these services. The impact of the decision is positive for these groups as it will support the continuation of bus services both over this period and in the future.

## **9. List of Background papers.**

Appendix A - Letter from the Department for Transport  
Appendix B – Equality Impact Assessment

<b>I approve the above recommendations set out above for the reasons set out in the report.</b>	<b>Date</b>
<b>Councillor John Spence, Cabinet Member for Health and Adult Social Care</b>	<b>26 June 2020</b>

**In consultation with:**

<b>Role</b>	<b>Date</b>
<b>Moirá McGrath, Director of Commissioning (Adult Social Care)</b>	19 May 2020
<b>Stephanie Mitchener on behalf of Nicole Wood, Executive Director for Finance and Technology (S151 Officer)</b>	19 May 2020
<b>Director, Legal and Assurance (Monitoring Officer)</b>	19 May 2020
<b>Paul Turner</b>	