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| Interim Executive Director Adults and Health | Ref No: OKD17 20/21 |
| Date: June 2020 | Key Decision: Yes |
| Allocation of Infection Control Grant Funding from Central Government | Part I |
| Report by Head of Commissioning Adults and Health | Electoral Division(s): ALL |
| <p>Summary</p> <p>On 15 May 2020 the government announced a care home support package backed by a £600m infection control fund. The specified purpose of the grant is to provide support to adult social care providers, including those with whom the Council does not have a contract, to reduce the rate of COVID-19 transmission in and between care homes and support wider workforce resilience to enable improved infection control. The West Sussex allocation of this money is £13.363m. The expectation from government is that 75% of the money is passported directly to registered care home providers (including those the Council doesn't already contract with) and the remaining 25% is allocated based on local need.</p> <p>The Council is required to comply with a number of conditions set out in the grant circular distributed by Government.</p> | |
| <p>West Sussex Plan: Policy Impact and Context</p> <p>National guidance dated 15th May 2020, "Care home support package backed by £600 million to help reduce coronavirus infections" is a series of measures to prevent and control infections in care homes and the wider market that support the focus of the West Sussex Plan and the West Sussex Social Care Action Plan (as referenced in the letter returned to the Secretary of state for care as of 29th May).</p> | |
| <p>Financial Impact</p> <p>The allocation is paid to the Council in two instalments, the first having been received on 27th May 2020.</p> <p>The council is expected to pass through 75% of the resource to registered care homes in each instalment, subject to grant conditions.</p> | |
| <p>Recommendations</p> <p>The Interim Executive Director of Adults and Health is asked to approve that;</p> <ol style="list-style-type: none"> (1) 75% of the Infection Control Grant Funding is paid to providers, in line with Government Guidance and subject to the government grant conditions and providers' acceptance of the terms and conditions of the Council's grant agreement with them; and (2) allocation of the remaining 25% of the Infection Control Funding be subject to a further key decision based on need within the county and made subject to appropriate grant conditions. | |

Proposal

1. Background and Context

- 1.1 The COVID-19 pandemic has meant that many care providers are facing challenges, however care homes have been particularly susceptible to outbreaks of infection. As a result, the government announced the allocation of an infection control fund of £600m on the 15th May 2020. This fund focuses on how to prevent and control the spread of COVID-19 in all registered care homes and help improve infection control measures.
- 1.2 Allocation of the money to local authorities was determined predominantly by the number of CQC registered beds across all client groups with a formula of £975 per bed. The expectation is that 75% of the allocation be passported to care homes directly and the remaining 25% be determined by local need in improving infection control measures. To be eligible for the money, care homes must be registered on the NHS capacity tracker and show that they have completed the tracker at least once and commit to completing it on a consistent basis.
- 1.3 There are specific aspects of infection control that the money can be spent on as set out in guidance published 9th June 2020 'About the Adult Social Care Infection Fund' and it must be spent by the end of September 2020.
- 1.4 The money cannot be spent retrospectively.
- 1.5 The grant funding is provided to the Council pursuant to section 31 of the Local Government Act 2003 and as such is subject to specific conditions which are reflected in the grant agreement that will be entered into between the Council and the providers.

2. Proposal Details

- 2.1 To satisfy the expectation for the 75% element of the fund, £975 per CQC registered bed will be paid in two instalments to providers. The beds are registered as supporting older people, physical disability, learning disabilities or mental health so all client groups are included in these payments.
- 2.2 The remaining 25%, approximately £3.34m, is left to the Council to distribute based on local need. An options appraisal is underway to determine how this money is distributed, towards the same objectives of infection control.
- 2.3 To receive an allocation from either the 75% or 25% element of the grant, providers will be required to enter into a grant agreement with the Council. This will ensure compliance with the s.31 grant conditions imposed by Government.
- 2.4 The grant circular sets out "The funding should be prioritised for care homes and passed on as quickly as possible. We expect this to take no longer than ten working days upon receipt of the funding in a local authority". However, given the s.31 grant conditions and the need to put in place "arrangements" with providers to comply with these conditions (i.e. a grant agreement), this timescale is challenging. The Council will endeavour to make payment of the

funding to providers as soon as it reasonably can whilst also ensuring the s.31 grant conditions are met and the Council is protected from any risk.

- 2.5 It is the Government's expectation that the grant will be fully spent by local authorities on infection control measures of the specified kinds within 2 months of the Council receiving the second instalment. If there is any underspend or the Department of Health and Social Care is not satisfied the Council has spent the funding according to the grant conditions the Secretary of State may reduce, suspend or withhold grant payments or require the repayment of the whole or any part of the grant monies paid. This will be covered off within the grant agreement with providers to mitigate any risk the County Council.

Factors taken into account

3. Consultation

- 3.1 The defined timescales for the administration of these funds are extremely short. However, governance and legal elements of the payment processes are progressing at speed and an options appraisal regarding the distribution of the 25% is underway.
- 3.2 Internally legal, finance and procurement teams have been consulted and are supporting the process for payment.

4. Financial (revenue and capital) and Resource Implications

- 4.1 The County Council will administer the funding in line with the conditions that have been set by government. These conditions will be included in the Section 31 grant agreement that providers will need to agree prior to receiving any money. This will ensure that the County Council is able to recover any underspend from providers and so be able respond to any requirement to return funding to the Department of Health and Social Care without creating a liability for itself.
- 4.2 Funding allocations were made to local authorities based registered bed numbers contained within published CQC data. There are some anomalies in the registered bed numbers, the County Council will allocate funding based on confirming numbers with those providers and the CQC. This can still be met within the 75% allocation as a number of services within the calculation are either no longer operational or have temporarily ceased to operate e.g. holiday respite services, and so not meet the conditions for the funding.

5 Legal Implications

- 5.1 The S.31 grant circular sets out that this funding may constitute state aid and that Local Authorities must comply with relevant state aid legislation when making allocations of the grant. In line with the view of the Department of Health and Social Care, the Council considers that the COVID-19 infection control measures specified in the s.31 grant are covered by the Services of General Economic Interest Decision (SGEI) 2012/21/EU because the measures will help reduce the incidence and spread of COVID-19 and are over and above that which care providers would normally be expected to provide and are of particular importance to, and in the interest of, care home residents, workers and their families and the general public. Further, the measures/services are

not being provided by the market at the level or quality required by the market, and thus to secure their provision compensation needs to be provided to an undertaking or set of undertakings. In order to rely on the SGEI decision there are a number of conditions to be met which will be considered and reflected in the grant agreement between the Council and providers.

- 5.2 Reliance on the SGEI decision to give such aid does not require pre notification and approval, UK Government state aid guidance however states that member states are required to report on aid given under the SGEI decision every two years and therefore to advise the Department for Business, Innovation & Skills of use of the SGEI decision.
- 5.3 The section 31 grant contains a number of conditions which the Council is required to ensure compliance with, including completion by providers of the Care Homes Capacity Tracker, repayment of any funding not spent by 30 September 2020 or if spent on something other than the specific purpose set out in the s.31 grant. A grant agreement has been prepared by Legal Services to reflect these conditions and to ensure the Council, in making payment of the grant funding to the providers, is in compliance with the s.31 grant. All providers will be required to agree to the grant agreement to the Council before the funding is paid. In the event payment is made before the provider has formally signed and returned the grant agreement to the Council, the provider will be deemed to have accepted all of the grant agreement terms and conditions unless they have indicated to the Council, within set timescale, of receipt of the grant funding that they do not agree to the grant agreement conditions in which case the provider will need to refund the grant funding to the Council.
- 5.4 There will be one grant agreement per legal entity that is the owner/registered CQC care provider for the care home(s), if a provider has more than one care home, there will be one grant agreement to cover all care homes of that provider within West Sussex. The values of the grant agreements per individual provider (presuming both instalments are paid) will range from £2,925 to £731,250.
- 5.5 Payment of the second instalment of the grant funding is conditional on the provider complying with the grant agreement conditions and the first instalment being used for infection control measures and used in its entirety.

6. Risk Implications and Mitigations

| Risk | Mitigating Action (in place or planned) |
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| Risk to the Council of increased resource requirement to administrate, distribute, monitor and potentially recoup unspent money | |

| Risk | Mitigating Action (in place or planned) |
|---|---|
| Lack of clarity in the government guidance may lead to different interpretations of demands on providers | Grant agreement as detailed as possible and additional guidance being sought via LGA/ADASS |
| Risk the Council is required to repay the grant funding if the s.31 grant conditions are not complied with. | Providers will be required to sign a grant agreement with the Council which reflects the s.31 grant conditions. This will include repayment provisions if the provider does not comply with the conditions. |

7. Other Options Considered (and reasons for not proposing)

- 7.1 Not paying out the grant funding to providers and returning the money to central government: not considered as against Government direction and providers dealing with COVID-19 in care homes are worst hit and the Council wants to support the market.
- 7.2 Not to put in place grant agreements: this would be contrary to Section 31 grant conditions and put the Council at risk of claw back from central government with no contractual means to recover from providers if there was no grant agreement in place.

8. Equality and Human Rights Assessment

- 8.1 Not Applicable

9. Social Value and Sustainability Assessment

- 9.1 Not Applicable

10. Crime and Disorder Reduction Assessment

- 10.1 Not Applicable

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Appendices None

Background Papers None