

Interim Executive Director of Adults and Health	Ref No: OKD24 (20/21)
August 2020	Key Decision: Yes
Financial support to the care sector	Part I
Report by Head of Commissioning Adults Services and Health	Electoral Divisions: All

Summary

Following [the allocation of funding to commissioned care provision in April 2020](#) to support with Covid-19 related costs, and the Infection Control Grant allocated and disseminated to the wider market in [June](#) and [July 2020](#), it is now proposed that contracted rates paid to care providers be increased temporarily by 5% in recognition of additional costs related to provision of services during the pandemic.

It is proposed that a simple across the board approach is taken rather than one tailored to the needs of individual suppliers in order to achieve a timely response and to avoid administrative burdens. It is also proposed that the arrangements are limited to three months from 1 July – 30 September 2020 and subject to a continuation of conditions included in the original allocation. Any longer-term proposals will be considered and reviewed during the 3-month period and subject to further decision.

This decision is urgent as at the point of relevant consultation, engagement and planning the need to make the financial commitment to the market has become pressing as the recipients need to have assurance about future funding. Therefore this decision has been taken under the urgent action procedure (Regulation 11) by the Director of Law and Assurance, in consultation with the Interim Executive Director Adults and Health and the Chairman of the Health and Adults Social Care Scrutiny Committee (Standing Order 5.23(b) Part 4, Section 5, of the County Council's constitution).

West Sussex Plan: Policy Impact and Context

The proposals are aimed at ensuring continued market resilience at a critical time for the sector which is central to the achievement of the County Council's objectives for those in later life or with long term needs.

Financial Impact

The cost of the proposal will be approximately £2.75m, of which around £0.35m will fall to the West Sussex Clinical Commissioning Group through pooled budgets in learning disabilities and working age mental health. The County Council's share will be charged against Covid-19 funding.

Recommendation

That approval is given for a cross-market uplift of 5% in payments to commissioned care providers for a period of three months from the 1 July 2020 - 30 September 2020 as detailed in paragraph 2 of the report.

Proposal

1. Background and Context

- 1.1 In April 2020, the Government recognised the financial pressures related to the Covid-19 pandemic by announcing £3.2bn of additional funding for local authorities. As part of its [action plan for social care](#), published on 15 April, it subsequently emphasised: “We expect local authorities to get the funding they have received quickly to the front line (and) adjust fees to meet new costs”.
- 1.2 The County Council responded by taking a decision in April 2020 ([reference UA AH02](#)) to support the adult social care market contracted with the County Council to provide an uplift to support with additional costs incurred as a result of the pandemic. This decision provided 10% uplifts to residential and nursing care, extra care, supported living and shared lives services and a 20% uplift to domiciliary care providers. Both of these were agreed for the first quarter of the 2020/21 financial year at an estimated cost of £6.4m.
- 1.3 Subsequently two further decisions have been taken in respect of the government directed Infection Control Grant (ref. [OKD17 20/21](#) and [OKD23 20/21](#)). The County Council’s allocation is £13.363m, of which 75% was required to be distributed to residential care providers. 25% of the fund for which the County Council had discretion to allocate in relation to need, has been allocated to providers delivering domiciliary care, supported living and supported accommodation, extra care and shared lives services. The balance of any remaining grant is being distributed to residential care and nursing homes to support with additional PPE costs. All payments are being made market-wide, not just for provision that the County Council contracts.
- 1.4 The Infection Control Grant has specific requirements and restrictions on how the grant can be used and the timeframe for use. The funding allocated to commissioned provision related to decision ref UAAH02 was intended to support with Covid-19 related costs for a three-month period starting from the end of March 2020, which has now passed.
- 1.5 Whilst these measures have supported the care market during the initial stages of the pandemic, the market continues to be impacted by Covid-19 and remains required to follow Public Health England and Department of Health and Social Care guidance on the delivery of services to reduce the spread of infection and support the safety of employees and customers. Maintaining the additional measures has continued cost implications for providers, and these costs would not have been foreseen upon entering into contracts with the County Council. Therefore, a review of further measures to provide additional support for commissioned provision has been undertaken.
- 1.6 The resilience of the care market in West Sussex continues to be at risk, as providers will be bearing additional costs and reduced service utilisation with higher vacancy rates than usual and in some cases fewer new referrals or admissions. Continuing to support the market is anticipated to mitigate the impact of market failure which will minimise potential financial risks for the adult social care budget if the market were to contract in size. Particularly in areas where provision is limited.

2. Proposal Details

- 2.1 Whilst initially a different allocation was identified for different parts of the care market, it has emerged that all care providers have been impacted, albeit in potentially different ways. Whilst a blanket approach has some limitations it is considered that as the impact appears to have been universally felt, the associated financial support should recognise the impact equally and therefore a 5% uplift on all of the following service areas, where commissioned providers are delivering registered care, is recommended:
- Residential Care
 - Residential Nursing Care
 - Supported Living
 - Extra Care
 - Shared Lives Scheme
 - Domiciliary Care
- 2.2 The uplift will be paid by way of a single lump-sum as an increase on existing rates for the three-month period from 1 July 2020 to 30 September 2020, at which point the position will be subject to further review. This payment will be based on customers 'in pay' on 30 June 2020, and for domiciliary care, it would be based on provider returns for the four-week period ending 27 June 2020. Although it is a lower increase than for the first quarter, once the Infection Control Grant is taken into account the amount of funding being made available to providers during the second quarter is higher.
- 2.3 As the impact is felt in different ways for different organisations, it is not proposed that restrictions be placed on how the money is spent nor will the County Council seek to recover any of the payments based on a return detailing actual expenditure. However, records of expenditure will be required to be kept to inform future review of rates or financial support.
- 2.4 These payments will be made only for services supporting customers that are funded by the County Council, not the whole market. Whilst it follows that the increase in income for providers with few placements will be relatively small, to do otherwise and support the whole market would be unaffordable given the resources available to the County Council. In addition, all of the afore mentioned services will have been able to access the Infection Control Grant regardless of whether services are contracted with the County Council or not.
- 2.5 No support will be paid for services that are closed, unless staff have been redeployed in ways that are beneficial to the County Council's service requirements. Also excluded from scope are direct payments and non-registered care services.
- 2.6 In the initial allocation identified in April 2020 there was an expectation associated with the funding which will continue to be the case for the proposed additional funding. This includes that all care providers subject to the recommendations in this paper, where it is safe to do so, will:
- Work with the County Council to support 8am to 8pm working, across the whole week, including weekends.
 - Accept admissions as a result of hospital discharge where it is safe to do so, irrespective of Covid-19 status.

- Be responsive to national guidance and willing to adopt a flexible approach with the County Council.
- Keep records of expenditure to inform future consideration of rates or further financial support beyond this period (1 July – 30 September 2020).

Factors taken into account

3. Consultation

The recommendations have been influenced by provider representations and the approaches, either implemented or under consideration, of other local authorities in the South East.

4. Financial (revenue and capital) and Resource Implications

- 4.1 The estimated cost of the proposal is £2.75m, of which £0.35m will be met by the West Sussex Clinical Commissioning Group through the pooled budgets in learning disabilities and working age mental health.
- 4.2 The County Council's share will be charged against its allocation of the specific Covid-19 funding that Government has made available to local authorities.

5. Legal Implications

- 5.1 The County Council does not have a duty to make these payments but would need to explain why it failed to do so in response to Government guidance. The County Council's statutory duty to support and safeguard the local care market is a critical factor in the decision to make the proposals.
- 5.2 Although the proposal is described as a temporary fee uplift, there is a risk that it could be seen as a grant to those providers and therefore the question of whether the funding amounted to state aid would be relevant. A state aid evaluation would require analysis, of amongst other things; whether the aid was selective and whether it was tested in the market. The Council is however of the view that this proposal is a true fee uplift as a result of additional services provided to the Council by its care providers as a result of the Covid-19 pandemic.
- 5.3 It is considered that the modification to the contract is permitted within the scope of Public Contract Regulation 72(c) in that the modification is (i) brought about by circumstances which a diligent contracting authority could not have foreseen; (ii) does not alter the overall nature of the contract and (iii) the increase in price does not exceed 50% of the value of the original contract.
- 5.4 To ensure that the conditions outlined in paragraph 2.6 of this report are complied with and to be compliant with Council Standing Orders on

Procurement and Contract, the fee uplift will be subject to a written contract variation.

6. Risk Implications and Mitigations

- 6.1 In applying a blanket approach across the market there is a risk that individual providers are impacted to a greater or lesser extent than the funding identified to them allows. Service Providers are urged to contact the County Council with any risks to financial stability as a result of costs being in excess of the funding provided in order that this can be reviewed on an individual basis to consider any actual additional Covid-19 related spending. Providers will be asked to ensure that they maintain clear expenditure records to evidence this as part of the communication of this decision, which will also enable the County Council to indicate that any offer of continuing support may be conditional on the recipient agreeing to open-book accounting.
- 6.2 Covid-19 continues to have implications for providers, and with potential impact of further local or national outbreaks, there is a risk that the term of this funding support may be insufficient to manage the ongoing and longer-term impacts. This however must be balanced with affordability for the County Council and the funding provided by national Government which can be utilised. Hence the funding will be reviewed again during this proposed term of funding to identify further financial implications and potential for support.

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

- 7.1 Consideration has been given to varying the amounts to parts of the care market in line with initial decisions in April 2020. However, feedback from providers on the impact on residential provision in particular has suggested that whilst the impacts are different, there is limited justification for allocating a higher uplift to domiciliary care at the current time, and hence the proposal to uplift with a universal percentage.
- 7.2 Consideration to allocate funding based on individual providers costs and needs would place an unachievable resource burden on County Council officers that would detract from other County Council priorities. It would also significantly extend the length of the process, so delaying payments to providers at a time when cashflow is of particular importance.
- 7.3 Requiring providers to account for the use of funds would also present administrative impacts for both the County Council and providers that would again deflect from priorities to focus on the provision of safe and sustainable services.

8. Equality and Human Rights Assessment

Whilst the approach is blanket across the provider market it is not expected that there will be any disproportionate impact upon providers which meet the needs of persons in groups with protected characteristics. This will be considered in further detail should longer term support using a more tailored response be required.

9. Social Value and Sustainability Assessment

The proposals are in response to local market needs, local provider representations and are directly aimed at maintaining local provider resilience.

10. Crime and Disorder Reduction Assessment

None.

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Appendices: None

Background papers None