

**Report to Interim Executive Director Adults and Health**

**Date: October 2020**

**Allocation of Infection Control Grant (Round 2) Funding from Central Government**

**Report by Head of Commissioning, Adults and Health**

**Electoral division(s): All**

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**Summary**

On 17<sup>th</sup> September 2020 the government announced a second support package for adult social care providers backed by a further £546m [infection control fund](#). The specified purpose of the grant is to provide continued 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 £10.958m. The expectation from government is that 80% of the money is passported directly to registered care home providers and other CQC regulated community care providers. The remaining 20% is allocated to the care sector, to support COVID infection control measures, based on local discretion.

The Council is required to comply with a number of conditions set out in the grant circular distributed by Government.

**Recommendations**

The Interim Executive Director of Adults and Health is asked to approve that;

- (1) 80% of the Infection Control Grant Funding is paid to care home and other CQC regulated community care providers, in line with Government Guidance, subject to the government grant conditions, and the providers' acceptance of the terms and conditions of the Council's grant agreement with them; and
  - (2) that the allocation of the remaining 20% of the Infection Control Funding be subject to a further decision by the Executive Director of Adults and Health, to support the care sector, in the county, to put in place other COVID infection control measures, based on the Council's discretion and made subject to appropriate grant conditions.
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## **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 15<sup>th</sup> May 2020. This fund focused on how to prevent and control the spread of COVID-19 in all registered care homes and help improve infection control measures.
- 1.2 On 17<sup>th</sup> September 2020, the government announced a further infection control fund of £546m as a continuation of the support to social care providers to prevent, reduce and control Covid-19 infections.
- 1.3 The government has ring-fenced 80% of the allocation to be passed to care homes and other CQC regulated community providers directly, and the remaining 20% be determined locally in improving infection control measures. To be eligible for the money all recipients must agree to regular input into respective reporting mechanisms as per the grant conditions outlined.
- 1.4 There are specific aspects of infection control that the money can be spent on as set out in guidance published 1<sup>st</sup> October 2020. Adult Social Care Infection Fund: round 2 must be fully spent by the 31<sup>st</sup> March 2021.
- 1.5 The money cannot be spent retrospectively.
- 1.6 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 The Council's allocation is as follows:

LA name	Total Allocation (A)	Allocation to Care Homes (B)	Allocation to community care providers (C)	Allocation for other care settings and IPC measures (D)	Number registered care home beds, Sept 2020 (E)	Number of community care users, Sept 2020 (F)
West Sussex	£10,958,387	£6,889,109	£1,877,600	£2,191,678	10,260	5,517 This figure may be subject to change

- 2.2 To satisfy the expectation for the 80% element of the fund, £671.45 per CQC registered bed will be paid to care home providers. For community care, the amount implied by the allocation is £340.33 per user, but this remains subject to on-going clarification with the Department of Health and Social Care because many local authorities are reporting a difference between the numbers that have been quoted and local records. Once this is confirmed, the unit rate may require adjustment to ensure that the total which the Council distributes is the same as the funding it has received. All payments to providers will be paid in two equal instalments in line with the guidance. The care home beds are registered as supporting older people, physical disability, learning disabilities or mental health so all client groups are included in these payments. The CQC regulated community care providers include supported living, domiciliary care and extra care across client groups.
- 2.3 The calculations of amounts to providers for the 80% are based on the most recent CQC provided data. Due to the expectation of payments to the 80% being made within 20 working days the Council has no choice but to use the data provided, subject to clarification of the position with community care users. If other providers are identified or numbers of beds greater than users is not reflective of activity, then this can potentially be addressed within the 20% element of the fund.
- 2.4 The remaining 20%, approximately £2.192m, is left to the Council to distribute based on local discretion. An options appraisal is underway to determine how this money is distributed, towards the same objectives of infection control.
- 2.5 If any providers in the 80% cohort refuse the funding or do not agree to the reporting requirements listed in the guidance, this can be added to the 20% funding and distributed by the Council as part of that pot of money.
- 2.6 To receive an allocation from either the 80% or 20% 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.
- 2.7 The grant circular sets out that allocation of the 80% should take no longer than 20 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 within those timescales whilst also ensuring the s.31 grant conditions are met and the Council is protected from any risk.
- 2.8 It is the Government's expectation that the grant will be fully spent by care providers on infection control measures of the specified kinds by the 31<sup>st</sup> March 2021. If there is any underspend or the Department of Health and Social Care is not satisfied that it has been 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.

### **3 Other options considered (and reasons for not proposing)**

- 3.1 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.

- 3.2 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.

#### **4 Consultation, engagement and advice**

- 4.1 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 20% is underway.
- 4.2 Internally legal, finance and procurement teams have been consulted and are supporting the process for payment.

#### **5 Finance**

- 5.1 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.
- 5.2 Funding allocations were made to local authorities based on registered bed numbers contained within published CQC data and numbers of CQC regulated community care users reported through the CQC homecare survey. Where potential anomalies in CQC data (column F in the table above) are identified locally, these can be changed with notification to the Department but does not change the overall allocation.
- 5.3 The allocation is paid to the Council in two equal instalments, the first having been received on 1st October 2020. The second instalment is due in December, subject to grant conditions being met.
- 5.4 The council is expected to pass through 80% of the resource to registered care homes and other CQC regulated community care providers in each instalment, subject to grant conditions.

#### **6 Risk implications and mitigations**

<b>Risk</b>	<b>Mitigating Action (in place or planned)</b>
Risk to the Council of increased resource requirement to administrate, distribute, monitor and potentially recoup unspent money	No funding has been provided for additional administrative costs. The workload that the process entails will occur at the expense of other priorities.

<b>Risk</b>	<b>Mitigating Action (in place or planned)</b>
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.
The data for the allocation to community providers is lacking, which may lead to a delay in the release of this portion of funding.	SE ADASS are reviewing and following up with CQC and DHSC. The Council will continue with as much preparation as possible so it is in the optimum position to proceed once anomalies addressed.

## 7 Policy alignment and compliance

- 7.1 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.
- 7.2 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.
- 7.3 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.

- 7.4 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.
- 7.5 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.

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**Appendices** None

**Background papers** None