

Paying for Community Based Commissioned Care Services During the COVID-19 Period

Portfolio: Councillor Rose Martin

Related portfolios: All

Service: Adult Social Care

Wards: All

Key decision: Yes

Forward plan: No

1. Aim

- 1.1 This report seeks Cabinet's approval for the Council financially support or provide financial relief to Adult Social Care providers and ensure continuity of care for service users, to do this the Council will make payments outside of usual contracted arrangements, during the period of COVID-19. Thus, meaning an additional expenditure of approximately £319k for a period of 14 weeks (23 March 2020 – 28 June 2020).
- 1.2 This report also highlights the potential risk of additional expenditure if demand, complexity or staff absence changes at short notice and highlights the ongoing work to support the residential care market.

2. Summary

- 2.1. In line with Government guidance and as part of the Adult Social Care's response to COVID-19, a number of measures have been adopted, to enable providers of commissioned care services to be paid in a way that supports their cash flow and sustainability.
- 2.2. An Adult Social Care provider payment option was agreed by the Executive Director of Adult Social Care on 20/03/20, which meant domiciliary care providers are paid in accordance with financial values contained within individual service users' support plans rather than paid on actual care delivery as per the existing payment arrangement.
- 2.3. Since these measures were introduced, the number of people waiting for care has reduced from 90 to 15. The number of people who were awaiting discharge from Walsall Manor has reduced from 90 to 24 (with only 3 of these awaiting care). Care providers have absorbed high numbers of staff absence and there has been no provider failure.

- 2.4. The arrangements put in place to date are currently expected to cost an additional approx. £319k for a period of 14 weeks (23 March 2020 – 28 June 2020). This calculation is based on available data for the four week Covid-19 period from 23 March, which highlighted a significant reduction in overall care calls. There is a risk that costs will increase as families return to work and care is reinstated.
- 2.5. Adult Social Care commissioners are considering additional financial relief arrangements to support other commissioned services and have requested feedback from the Adult Social Care market as to the nature of additional expenditure at this time. Any additional arrangements will be subject to approved governance, via the Supplier Action Payment Group and approval sought from Silver or Gold, dependent on the financial implication, and approval of Cabinet if the arrangements being considered total more than £250k. Arrangements will only be introduced on receipt of this approval.
- 2.6. In accordance with the Councils Constitution, this is a Key Decision for the following reasons:
- The decision will incur 'significant' expenditure of greater than £250,000
 - The decision is likely to have a significant impact on two or more wards of the borough as the proposed alternative model is a change to the way in which service is delivered

3. Recommendations

That Cabinet:

- 3.1. Notes the revised Adult Social Care provider payments arrangements put in place on 23 March as set out in this report.
- 3.2. Approves the continuation of the ASC recommended provider payment option of payment by plan (except where there is no evidence of care having taken place) at an estimated cost of £119,000, noting that this may increase significantly and at short notice if demand, complexity or staff absence changes.
- 3.3. Approves funding of £200,000 for additional supplier relief to contracted and non-contracted Adult Social Care providers following a task and finish analysis of provider Covid-19 related additional expenditure. This will be subject to agreed governance, as set out in this report.
- 3.4. Approves delegated authority to the Executive Director of Adult Social Care in consultation with the Portfolio Holder of Adult Social Care to enter into any necessary contractual variations to enact these recommendations.
- 3.5. Notes the plans to address the financial sustainability of the Care Home market through a task and finish project of open book accounting.

4. Report detail

Know

- 4.1. On the 13th March 2020 with the emergence of the magnitude of Covid-19 pandemic the Local Government Association (LGA) and the Association for the Directors of Adults Social Services (ADASS) released local authority commissioner guidance to summarise pressures on social care providers arising from COVID-19, and to put forward ways in which commissioners can alleviate these pressures¹. The guidance listed a range of pressures and actions that commissioners may take to address them it described these actions as what commissioners “can” do: our shared expectation is that commissioners actively consider all these issues and possible mitigating measures and do what is necessary to support their local providers.
- 4.2. The guidance note, advised consideration of payment on plan as a way to reduce delays in usual invoice processing time lines to support provider cash flow. The priority being to ensure providers of care in the community have access to a cash flow in order to sustain service delivery during this period.
- 4.3. On the 18th March, the Coronavirus Bill was introduced, which set out the intention of the Government to make changes to the Care Act 2014 to enable local authorities to prioritise the services they offer in order to ensure the most urgent and serious care needs are met, even if this means not meeting everyone’s assessed needs in full or delaying some assessments².
- 4.4. Additionally, on the 18th March, the Department of Health and Social Care issued the COVID-19 Hospital Discharge Service Requirements³, which set out how health and care systems and providers should change their discharging arrangements and the provision of community support during the coronavirus situation and that implementing these Service Requirements was expected to free up to at least 15,000 beds by Friday 27th March 2020, with discharge flows maintained after that. This guidance was accompanied by a letter addressed to Directors of Adult Social Care, which detailed that *“one of the most important tasks will be to ensure we have the capacity to support people who have acute healthcare needs in our hospitals. To do this we need to organise the safe and rapid discharge of those people who no longer need to be in a hospital bed. The new default will be discharge home today”*.
- 4.5. On the 20th March, a letter received from the Department of Housing, Communities and Local Government (DHCLG), set out the funds that would be made available to Councils to amongst many other essential council services *“Meet the increased demand for adult social care and enable councils to provide additional support to social care providers”*. A copy of this letter is attached at **Appendix 1**.
- 4.6. In the week of the 18th March, Adult Social Care (ASC) providers were reporting staffing issues in relation to isolation/illness through Covid 19, anecdotally; up to 20% of the care workforce were absent. This was creating issues in maintaining the capacity required to meet the existing Adult Social Care demand. In addition, there were 90 packages of care in the community waiting to be picked up by ASC

¹ <https://www.local.gov.uk/coronavirus-information-councils/social-care-provider-resilience-during-covid-19-guidance-commissioners>

² <https://www.gov.uk/government/publications/coronavirus-bill-what-it-will-do/what-the-coronavirus-bill-will-do>

³ <https://www.gov.uk/government/publications/coronavirus-covid-19-hospital-discharge-service-requirements>

providers and 90 people in hospital that were deemed medically fit for discharge, most of whom would require care to facilitate discharge.

- 4.7. On the 19th March the Department for Health and Social Care released the Ethical Framework for Adult Social Care⁴ during COVID-19 and emphasises decision making should be principled on reasonableness; minimising harm; inclusiveness; respect; flexibility; accountability; proportionality and community. It states that, *“Recognising increasing pressures and expected demand, it might become necessary to make challenging decisions on how to redirect resources where they are most needed and to prioritise individual care needs. This framework intends to serve as a guide for these types of decisions and reinforce that consideration of any potential harm that might be suffered, and the needs of all individuals, are always central to decision-making”*

Decide

- 4.8. In order to respond to the immediate capacity issues and the challenge, as set out in the DHSC guidance, the Council engaged with ASC providers to develop a plan to maintain the essential care and support to existing adult social care eligible service users and to respond to anticipated increased demand.
- 4.9. ASC Providers indicated that by enabling them to utilise their local knowledge and insight of our vulnerable adults (based on their day to day contact), during this unprecedented period, that they would be able to work flexibly, innovatively and prioritise their resources to meet clients’ needs, which in turn would better manage existing demand and create additional capacity.
- 4.10. The option of payment by plan and a number of alternative payment options were considered on their merits, and on 20th March 2020, the Executive Director of Adult Social Care agreed the new model of paying providers on a ‘payment on plan’ basis rather than paying providers on actual care delivery, which was the existing payment arrangement. For illustration, if Provider x currently supports 50 service users each with 10 hours of care, this would equate to a guaranteed payment of 500 hours being paid. We would then ask providers to meet the needs of those individuals flexibly within those 500 hours, and in doing so utilising those resources more effectively, thereby releasing additional capacity.
- 4.11. The other options that considered were:
1. Do nothing, pay against actual care delivery
 2. Payment against support plan value
 3. 3. Payment against the support plan value (except where there is evidence that no care has been delivered) – **Preferred**
 4. Payment by actual care delivery + 10%

Whilst the preferred option does not have the lowest cost, it is considered to be the most cost effective and has the strongest rationale in terms of maintaining service delivery and protecting the market. The rationale for choosing option three

⁴ <https://www.gov.uk/government/publications/covid-19-ethical-framework-for-adult-social-care/responding-to-covid-19-the-ethical-framework-for-adult-social-care#reasonableness>

is that options two and three are the only options where additional capacity could be expected, which is a critical factor. All of the other options are reliant on care providers continuing to deliver care, as they were previously to safeguard themselves from a drop in income, there is no incentive for a provider to deliver care and meet assessed need in a more innovative way in a shorter duration if they are penalised for this financially. The rationale for choosing option three over option two is that, unfortunately, providers have not demonstrated full compliance with notifying the local authority of reasons for 'no care delivery' and therefore in order to safeguard against fraudulent behavior it is prudent to assume that care delivery has not been attempted or is not required where there is no evidence of care being delivered. Providers have the facility to evidence where there are other reasons why a care call has not been recorded and on receipt of this evidence, the council can make payment for this activity.

A further rationale for selecting Option three is that seven of our nearest neighbouring local authorities have adopted a 'payment by plan' payment option and the risk if Walsall adopted a less favourable option is that care providers would choose to deploy their resources in other Local Authority areas with more favourable payment terms.

Respond

- 4.12. The above actions were implemented on 23rd March 2020 and was followed by formal notification to the market, on the 9th April, alongside assurance around financial payments, to support their immediate cash flow pressures during this time.
- 4.13. Internal systems were also reconfigured to enable all of the above to be actioned; this included changes to payment processing schedules and the removal of business as usual validation processes. Providers were issued with extensive details on how the interim arrangements were to be mobilised and the requirements of them during this period.
- 4.14. The recommendation of the Cabinet Office procurement note (PPN 02/20)⁵ issued on the 20th March was that any provider relief should remain in place until the 30th June 2020. The projected financial implication for the 'payment on plan' for a 14-week period would amount to **£119k**; however could be substantially more; this is detailed more fully at 7.3 and 7.4. in the finance section of this report.
- 4.15. As an interim measure, whilst Cabinet approval is being sought Providers have been paid ahead of schedule for actual care delivered, and an 'on account' payment to bridge the difference between actuals and plan. This has allowed the Council to ensure continuous cash flow across the provider market. This arrangement does not fully fulfil the Council commitment to the Market and therefore there is a risk of reduced confidence in the Council to support the ASC market.
- 4.16. Adult Social Care have duties under the Care Act 2014, which include market management and market shaping, specifically:
 - local market shaping to encourage quality, choice and sufficiency of provision;
 - local contingency planning in case of provider failures;

⁵ <https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19>

- ensure care is maintained where provider fails financially and services cease – for everyone, including self-funders, to ensure people’s needs continue to be met;

With the above in mind, a wider issue exists across the non-contracted community and voluntary sector market, specifically day care and social clubs, who have reported that due to enforced temporary closures, this is causing financial sustainability issues. This sector do directly support a number of our vulnerable adults across the community and will be required to resume this role post COVID-19.

- 4.17. It is for this reason that Cabinet agreement is also sought for a further financial commitment of **£200k** in order to swiftly respond to the wider ASC market as set out in 4.13. This is notwithstanding, an ongoing task and finish initiative, where we are considering the wider Covid 19 financial support available to providers through provider relief mechanisms, such as business grants, the furlough scheme etc.
- 4.18. Approval of any additional arrangements will be subject to approved governance, via the Supplier Action Payment Group and approval sought from Silver or Gold, dependent on the financial implication, and approval of Cabinet if the arrangements being considered total more than £250k. Arrangements will only be introduced on receipt of this approval
- 4.19. The Residential and Nursing market is experiencing a particular set of challenges in relation to COVID-19, some of these are similar to the wider market in that they have high numbers of absent staff, but some are different in that the new demand has decreased, but an enhanced response by the homes is required to deal with infection outbreaks and the tragic increased number of resident deaths.
- 4.20. In Walsall, the Quality in Care Team is working in partnership with health and public health teams to provide care homes with comprehensive support to meet some of these challenges. However, given the unexpected high number of vacancies that have now developed in care homes, there are also plans in formation to work with care home providers in relation to their financial sustainability and viability. This includes specifically, a refresh of the detailed residential and nursing market open book accounting exercise, which was undertaken 12 months ago. This individualised exercise may result in additional financial support required for this market.
- 4.21. The Walsall Adult Social Care Market is a fragile market in ordinary times; our Adult Social Care Commissioners have now flagged all provision as a significant risk and this has been escalated to the Council’s cross directorate Supplier Payment Group (set up in response to COVID-19 to provide governance role in relation to the additional monies issued from Government to support organisations to respond to COVID-19 increased financial burdens, administered by the Council).

Review

- 4.22. Since the 20th March 2020, a plethora of guidance has been produced nationally in relation to localised responses to COVID-19, including guidance on how social

care providers should be supported and paid during this period. Latest available information provided by the ADASS and the LGA highlights an approach to apply a percentage based uplift to existing unit costs, for care delivered. However, the approach being adopted by local authorities across the country varies and a number have adopted the approach, which was recommended by ASC commissioners in Walsall, including many of Walsall's neighbouring authorities. This in part was a significant factor, as many of our providers work across the Black Country region.

- 4.23. Association of Directors of Adult Social Services and the Local Government Association, published a briefing note early April 2020 on *Temporary Funding for Adult Social Care providers during the Covid-19 Crisis*⁶. This paper included a range of considerations that Local Authorities could and were exploring in relation to easing provider cash flow on an interim basis. There are references to approaches including payment to providers on plan, alongside other considerations including percentage base uplifts to contracted rates. The main thrust of this guidance was to shine a light the need to temporarily support providers to deliver care across communities in a way, which is not hindered by cash flow issues.
- 4.24. There has been a detailed analysis of how the Council could have considered paying providers who deliver community based care by ASC Commissioners. An options appraisal was developed on 9th April in relation to domiciliary care providers payments – this concluded a recommended approach was payment by support plan. Further options subsequently considered have been payment by support plan versus payment by actuals plus 10% as referenced in the *Temporary Funding for Adult Social Care providers during the Covid-19 Crisis* briefing note of April 2020. On consideration of these further options as set out at 4.9, ASC Commissioners continue to seek approval for payment by support plan values, with a minor variation, which includes, except where there has been no evidence that care has been delivered and a corresponding variation form has not been submitted.
- 4.25. The continuous analysis since implementation has also enabled ASC Commissioners to review the demand and capacity of the market. The analysis has lead Commissioners to recommend the return to previous payment arrangements for supported living and complex care providers from the 10th May as it was determined that capacity in this particular part of the market is no longer required and staff absence is improving as staff testing is becoming more prevalent.
- 4.26. Since these measures were introduced, the number of people waiting for care has reduced from 90 to 15. The number of people who were awaiting discharge from Walsall Manor has reduced from 90 to 24 (with only 3 of these awaiting care). Care providers have managed to absorb high numbers of staff absence and there has been no provider failure.

5. Council Corporate Plan priorities

⁶ <https://local.gov.uk/sites/default/files/documents/Provider%20fees%20-%20summary%20of%20the%20approach%20proposed%20by%20local%20%20government%20-%20ASC%20final.pdf>

- 5.1. This proposal links to the Council's corporate priority 'Communities are prospering and resilient. The most vulnerable are protected from avoidable harm, including treating and caring for people in a safe environment through working within the local community. It enhances quality of life for people with care and support needs and those with long term conditions; out of hospital, community based provision provides a safe and more appropriate environment for individuals recovering from ill health and/or injury or requiring long term care.
- 5.2. More specifically this proposal seeks to align to the Care Act Duty of Market Oversight.

6. Risk management

- 6.1. The monitoring of the expenditure will be overseen by the Adult Social Care directorate and the Supplier Relief Payment Group in conjunction with finance colleagues. This agenda is also discussed as part of the COVID-19 chain of control groups (BRONZE; SILVER and GOLD), which has representatives of all internal and external Stakeholders responsible for delivering safe outcomes as a result of COVID-19.
- 6.2. It is acknowledged that there is a risk that service user's individual needs may not be met because of providers' flexible approach and therefore additional operational safeguards have been implemented so that anyone who receives significantly less care than that detailed in their support plan is contacted by an ASC officer for a well-being check.
- 6.3. It should be noted that should care hours return to the levels provided pre-Covid-19, then this option would represent an enhancement to the level of payment which providers would have normally received of £47.3k per week. Over the remaining 7-week period this additional cost would be c£284k, resulting in potential total costs of £603k over the 14-week period, as opposed to the estimated £319k. Demand and capacity will continue to be monitored and mitigated where possible by Adult Social Care commissioners.
- 6.4. There is potential challenge in relation to the equity of impact/benefit of the preferred option on providers. This is understood and will be managed and mitigated as necessary.

7. Financial implications

- 7.1. The financial implication of this proposal is £0.319m. The impact of the proposal on providers financial sustainability, in creating capacity and ensuring good value for money will continue to be reviewed, by Adult Social Care commissioners. Dialogue across the region will also continue in relation to spend levels across a commissioned market where many providers deliver services across the region as well as in Walsall.
- 7.2. Cabinet are asked to approve the continuation of the ASC recommended provider payment option of payment by plan (except where there is no evidence of care having taken place) at an estimated cost of £119k, noting that this may increase for the reasons set out in section 7.3. It is expected that these additional costs will

be met through the additional Covid -19 grant. The financial implications of this course of action are set out in the tables below.

Table 1

Interim Payments Made To Date Across Adult Social Care Community Based Provision (complex care)		
Care Type	Period	Additional Costs
		£000's
Day Care	7 weeks commencing 23 March	31.5
Supported Living	7 weeks commencing 23 March	230.3
Total		261.8

Table 2

Interim Payments Across Adult Social Care Community Based Provision		
Care Type	Period	Additional Costs
		£000's
Extra Care	14 weeks (from 23 rd March subject to review)	30.7
Domiciliary Care	14 weeks (from 23 rd March subject to review)	(173.6)
Total		(142.9)

Table 3

Additional Expenditure Across the Voluntary and Community non-contracted ASC providers	
Period	Additional Costs
	£000's
14 weeks	200

- 7.3 For domiciliary care the proposed option is based upon payment of providers based upon service users' care plans with a deduction where no care has been delivered, based on evidence which has been submitted by providers for the four week period from 23 March 2020. It has been estimated this will cost £12.4k per week less than the average cost paid prior to Covid. For the 14-week period this is an overall reduction of £173.6k. However, this reduction is due largely to a significant reduction in care provided since the 'lockdown' as for example, family members have taken on responsibility of care for many service users. It should be noted that as family members return to work there is likely to be an increase in care required. This position will be closely monitored.
- 7.4 It should be noted that should care hours return to the levels provided pre-Covid-19, then this option would represent an enhancement to the level of payment which providers would have normally received of £47.3k per week as the payment is based on total planned care rather than actual care delivered. Over the remaining 7-week period since payment on plan was implemented, this additional cost would be c£284k, resulting in potential total costs of £603k over the 14-week period, as opposed to the estimated £319k.

8. Procurement Implications/Social Value

- 8.1. Payment terms and conditions are clearly set out within the existing contractual Agreements for the services referred to in this report, all of which have been awarded in accordance with Public Contract Regulations 2015. Decisions made prior to and as a result of Cabinet approval of recommendations made in this report constitute variations to existing contracts. In order to protect the interests of Service Users, the Council and ensure compliant variation of contracts in relation to any decisions that Cabinet may wish to make, ASC will seek Procurement and Legal advice and support in order to execute any associated contractual variations, in a lawful and compliant manner.
- 8.2. Cabinet Office procurement note (PPN 02/20)⁷ issued on the 20th March and updated on the 17th April states Local Authorities should: seek to support supplier cash flow through a pragmatic approach; no provider should seek to profiteer from COVID-19; there should be a particular focus on supporting providers who are considered at risk during this time in relation to cash flow; providers need to operate transparent book keeping in relation to their financial accounts during this period; any payment by results approaches should be considered in relation to temporary deferment and payments approaches considered which are based on payment over the past 3 months and that interim payment arrangements should be in place until June 2020.

9. Legal Implications

- 9.1. Legal engagement has commenced in exploring and mitigating implications in relation to the action taken to date. These include:
 - 9.1.1. The practicalities for how any unilateral contractual changes will be documented (with reference to the contractual provisions that allow variations);
 - 9.1.2. The Council's exit routes, e.g. time limiting any variations, making them conditional etc.
 - 9.1.3. Mitigating any risks of providers challenging decisions taken in relation to payment arrangements;
 - 9.1.4. Mitigating any risk of challenge in other ways, if that unilateral change falls outside of - or has not considered - the possibilities allowed by: (i) the procurement regulations; or (ii) Cabinet Office supplier payment relief guidance.
- 9.2. Legal advice and support will be sought if any further variation of contracts are required.

10.0. Health and wellbeing implications

- 10.1 It is in the health and well-being interests of those supported by ASC services that the ASC market is supported to be financially sustainable and to flex its capacity so that it can continue to meet the assessed care needs of those who require them.

11.0. Staffing implications

- 11.1. There are no staffing implications arising out of this report.

12.0. Reducing Inequalities

⁷ <https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19>

12.1. An Equality Impact Assessment (EqIA) has been completed and is appended to this report.

13.0 Consultation

13.1. All Social Care providers across Walsall and the Councils Health and Care partners are engaged in regular tele-conferences, by email, through a dedicated 'provider hotline' and through an ASC provider information and advice internet page.

13.2. Leaflets have been produced for providers to issue to service users when having discussions about their care delivery which sets out the 'new way of working' and addresses frequently asked questions. The leaflet also advises who to contact should they be unhappy with their new arrangements.

Background papers

20th March letter received from the Department of Housing, Communities and Local Government (DHCLG) setting out the funds that would be made available to Councils

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Councillor Rose Martin
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