

Cabinet – 8 September 2021

To restart payment by plan for Adult Social Care providers during COVID-19 pandemic

Portfolio: Councillor Rose Martin

Related portfolios: All

Service: Adult Social Care

Wards: All

Key decision: Yes

Forward plan: Yes

1. Aim

1.1. This report:

- I Seeks approval for the Council to reintroduce flexible arrangements for Adult Social Care Home Care providers in order to ensure continuity of care for existing service users and to ensure improved capacity for new packages of care during the period from 31 August 2021 until the end of the current financial year.
- II Asks that delegated authority be given to the Adult Social Care (ASC) Portfolio Holder, in consultation with the Executive Director for Adults, Public Health & Hub, and the Council's Section 151 Officer to cease or extend arrangements based upon demand levels over the winter 2021-2022.

2. Summary

- 2.1. During previous periods of high demand (2020-21) Walsall Council implemented changes to how home care providers were paid and the flexibility they had to arrange care visits directly with people receiving care, their families and carers. The purpose of this was to allow home care providers to manage their workforce capacity flexibly on a day-to-day basis in order to ensure that existing care arrangements could be maintained, and that there was capacity to meet new demand.
- 2.2. An Adult Social Care provider payment plan was put in place by the Executive Director of Adult Social Care on 20 March 2020, which meant domiciliary care providers were paid in accordance with financial values contained within service users' support plans ('payment by plan') rather than paid for actual care delivery in accordance with the existing payment arrangements.

- 2.3. Our experience of these arrangements first time round saw the number of people waiting for care in Walsall reduce with both community packages and discharges from hospital commencing in a timely manner.

Current position

- 2.4. Over recent weeks there has been significant increase in demand for home care for both people in the community and for people being discharged from hospital.
- 2.5. The home care market does not currently have the workforce capacity to meet the increasing demand levels which is resulting in either people having to wait to receive care, or them having to be admitted into a care home bed as opposed to returning to their own home.
- 2.6. Commissioners are working with home care providers in order to address the workforce issues, which is a national issue, however the increased opportunities for employment outside of the care sector following the relaxation of covid restrictions and the impending mandatory requirement for covid vaccination is creating significant further challenge.
- 2.7. In accordance with the Council's Constitution, this is a Key Decision for the following reasons:
- The decision may 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 of delivering care flexibly is a change to the way in which service is delivered.

3. Recommendations

- 3.1. That Cabinet approves the restart of financial relief for contracted and non-contracted Adult Social Care domiciliary care providers of 'payment by plan' arrangements (except where there is no evidence of care having taken place) for domiciliary care services until the 31 March 2022 with an estimated total additional cost of £28,000 per week for 2021/22.
- 3.2. That Cabinet delegates authority to the Adult Social Care (ASC) Portfolio Holder, in consultation with the Executive Director for Adults, Public Health & Hub, and the Council's Section 151 Officer to cease or extend arrangements based upon demand levels over the winter 2021-2022, and subsequently authorise the sealing or signing of any associated contracts, deeds, variations and other related documents.

4. Report detail

Know

- 4.1. Over the last month the number of people medically fit for discharge from hospital has increased by 250%.

- 4.2. The number of people awaiting a package of care in the community and hospital settings has increased by 400%.
- 4.3. During 2021 we have seen a decline in the mortality rate for people receiving care, meaning that they are requiring care packages longer than before the pandemic. This has also been noted nationally by the British Medical Journal who have reported a 45% reduction in the mortality rate for people aged 85+ in certain care settings.
- 4.4. Providers have previously responded well to the support provided by the Council and this contributed to continuity of care for our residents with no provider failure.
- 4.5. Providers continue to face an unpredictable future as the pandemic continues. Mandatory vaccination, isolation and difficulties with recruitment and retention continue to impact on the management of staffing levels and excessive financial increases across a number of areas including insurance premiums, recruitment and personal protective equipment (PPE).
- 4.6. Adult Social Care Providers continue to indicate to the Council 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 can work flexibly, innovatively and prioritise their resources to meet service users' needs, which in turn better manages existing demand and creates additional capacity.
- 4.7. The option of payment by plan and a number of alternative payment options were considered by Cabinet on 19 May 2021. The model of paying providers on a payment by plan basis rather than paying providers for actual care delivery, which was the pre-pandemic payment arrangement, was approved.
- 4.8. Whilst payment by plan 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 and was previously agreed by Cabinet on 19 May 2020.
- 4.9. Adult Social Care have duties under the Care Act, 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;
 - 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;
- 4.10. The Walsall Adult Social Care Market is a fragile market in ordinary times; our Adult Social Care Commissioners have now assessed all such provision as a significant risk and seen providers implement business continuity plans and refuse new business.
- 4.11. Care providers are no longer able to meet demand with existing staff resources without the flexibility and reintroduction of payment by plan.

Council Corporate Plan priorities

- 4.12. 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.
- 4.13. The Care Act embodies a principled, person-centred and values-based approach to all aspects of the provision of social care. It is essential that these principles and values are maintained during this period and that the Council adheres to the 'Responding to COVID-19: the ethical framework for adult social care' which aligns to the councils priorities.

Risk management

- 4.14. The monitoring of the expenditure will be overseen by the Adult Social Care directorate, in conjunction with finance colleagues.
- 4.15. It is acknowledged that there is a risk that service users' 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 Adult Social Care officer for a wellbeing check.

Financial Implications

- 4.16. It is estimated that the return to payment by plan will incur additional financial pressure for the council of circa £27,000 per week. Officers will be looking at how to minimise this through continual work to support the market and options to allocate the spend against appropriate funding sources eg BCF winter pressures etc.

Legal Implications

- 4.17. Legal Services have previously been engaged about exploring and mitigating implications in relation to the action taken to date; consideration has been given to:
- a The practicalities for how any contractual variations in respect of continued supplier relief on implied terms will be documented including consideration and appropriate mitigation to minimise the risk of procurement and best value challenges (with reference to the contractual provisions that allow variations);
 - b The Council's exit routes, e.g., time limiting any variations with a minimum of one months' notice to the market to revert back and making them conditional of contractual provisions;
 - c Mitigating any risks of providers or other care providers challenging decisions taken in relation to payment arrangements;

- 4.18. Legal advice and support will be sought if any further variation of contracts are required.

Procurement Implications/Social Value

- 4.19. The temporary arrangements introduced by the Council in 2020 has already entered into constituted contract variations in line with the guidance provided in the Procurement Policy Notes up to specific dates.
- 4.20. Specific procurement and legal advice will be sought by the directorate in relation to any variation which may be required for increasing the frequency of payment to providers in receipt of Scheduled Payments, however, as previously advised it is likely that these would not be seen as 'material changes'.
- 4.21. As regards with reintroducing a variation for payment by plan for Domiciliary Care providers on the CBS framework, this framework agreement has been varied several times since it was originally procured.
- 4.22. However, when balancing this with the duty to continue to support the provider market as a result of the pandemic and other national considerations detailed above, continuing with these arrangements as variations can be seen as the option which poses the least risk to the Council. This requirement could not have been foreseen when these contracts went to competitive tender.
- 4.23. Procurement and Legal Services have recommended that such variations should only be in place for the shortest amount of time required in order to respond to the pandemic, and appreciate that the timescale for this is unknown at this time so will be subject to careful and thorough management by Adult Social Care.
- 4.24. Procurement have recommended that these variations are put in place alongside relevant controls for transparency and in relation to electronic call monitoring, to ensure that the Council has visibility of exactly what care is being delivered.
- 4.25. Procurement have also recommended that the ideal course of action as the Council transitions from responding to the pandemic to reset plans is to re-procure these services, as this will enable new arrangements to align with the Council's strategic direction in relation to care, and ensure that the risks posed by multiple contract variations is removed. The work to address this has commenced and will be fed back to cabinet in due course.

Health and wellbeing implications

- 4.26. It is in the health and well-being interests of those supported by Adult Social Care services that the market continues to be 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.
- 4.27. The principles and actions contained within this report are in full accordance with the Marmot objectives because service users will have increased independence, improved health and can positively contribute to their communities in a safe and healthy way.

Staffing implications

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

Reducing Inequalities

- 4.29. An Equality Impact Assessment (EqIA) was completed in May and reviewed in December 2020; further review has taken place and updated for this report.
- 4.30. Continuity of care is now significantly impacted and if we do not consider all interventions including the reintroduction of payment by plan providers will not have the autonomy to risk assess and deliver care flexibly. The impact on service users is that whilst there may be changes to how and when their needs are met, their priority needs will continue to be met. Provider flexibility also creates capacity to take on new care packages or continue to deliver existing packages safely within reduced resources.
- 4.31. Adult Social Care have also considered the impact of payment by plan on families and carers of service users. Families and carers may experience anxiety about care being reduced. However, by providers delivering care flexibly they should also find some reassurance that their priority needs are being met. The Department of Health and Social Care's guidance *Responding to COVID-19: the ethical framework for adult social care* (published 19 March 2020) continues to inform all of Adult Social Care's decision making about the subject matter of this report.

Climate Change

- 4.32. Restart of payment by plan will support our approach in promoting independence and a strength-based approach of our residents and offer the opportunity for providers to deliver care flexibly. This could include negotiating transfer of packages to providers whose primary business is in an areas where they deliver ad-hoc packages therefore reducing travel and our carbon footprint.

Consultation

- 4.33. All Adult Social Care providers across Walsall and the Council's Health and Care partners continue to be engaged in regular tele-conferences, by email, through a dedicated 'provider hotline' and through an Adult Social Care provider information and advice internet page.
- 4.34. 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.

5 Decide

The option of payment by plan and a number of alternative payment options were considered by Cabinet on 19 May 2020 where the preferred approach of a payment by plan was approved, rather than paying providers for actual care delivery, and our recommendation is to reintroduce these arrangements

6 Respond

Subject to Cabinet approval the arrangements for payment by plan will be restarted.

7 Review

Adult Social Care will consider national guidance as issued and our local intelligence to inform our ongoing approach.

Background papers

19 May 2020 Cabinet report (Appendix 1)
9 December 2020 Cabinet report (Appendix 2)

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Date: 1 September 2021



Councillor Rose Martin
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Adult Social Care

Date: 1 September 2021