

Cabinet – 10 February 2021

Update 2 on Supplier Relief Payments to Contracted and Non-contracted Adult Social Care Providers

Portfolio: Councillor Rose Martin: Adult Social Care

Related portfolios: All

Service: Adult Social Care

Wards: All

Key decision: Yes

Forward plan: No

1. Aim

To continue to 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 continue to make payments outside of usual contracted arrangements (as detailed in the procurement section of this report), as COVID-19 continues to have an impact on the cost of service provision, thus incurring further additional expenditure of up to £900,000 (based on previous applications and modelling until the end of March 2021).

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. In May 2020, Cabinet approved 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.
- 2.3. In August 2020, as a first update to Cabinet, a further amount of £500,000 was approved for additional supplier relief with the same conditions as the £200,000 approved in May 2020.
- 2.4. Since May last year, the Council has received over £1,099,119 worth of claims from 52 providers and paid £691,068 funded from the approved £700,000 supplier relief, the Infection, Prevention and Control Grant funding and the

recovery of unspent direct payments. The remaining approximately £400,000 worth of claims are requiring processing and payment, subject to cabinet approval.

- 2.5. The £700,000 previously approved additional supplier relief budget has now been exhausted; however the pandemic is continuing to have a significant impact on providers and Adult Social Care commissioners do not foresee an end to the additional cost in the near future.
- 2.6. In accordance with the Council's 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

- 3.1. That Cabinet approves funding of up to a further £900,000 for additional supplier relief to contracted and non-contracted Adult Social Care providers. This will be subject to agreed governance, as set out in this report. This additional supplier relief is projected to meet the demand from the adult social care market until 31st March 2021.
- 3.2. That Cabinet approves delegated authority to the Executive Director of Adult Social Care in consultation with the Portfolio Holder of Adult Social Care to enact these recommendations and subsequently authorise the sealing or signing of any associated contracts, deeds, variations and other related documents.
- 3.3. That Cabinet approves delegated authority to the Executive Director of Adult Social Care in consultation with the Portfolio Holder of Adult Social Care and the S151 officer to extend the flexible arrangements, within the approved budget envelope and in accordance with the Council's Constitution.

4. Report detail

Know

- 4.1. Adult Social Care have approximately 200 providers who deliver domiciliary care, residential and nursing care, supported living, day centres and social clubs. Domiciliary, supported living, residential and nursing care providers have contractual agreements in place with the Council for the provision of care services.
- 4.2. Additional specific funding has also been provided for Infection Prevention Control totalling £4,632,000 funding from the Government. However ongoing support from the Council for providers continues to be required for additional

expenditure as a result of COVID-19. In May 2020 Cabinet approved funding of £200,000 and a further £500,000 in August 2020 for additional supplier relief to contracted and non-contracted Adult Social Care providers, which has been allocated to providers through an open-book process overseen by the Supplier Payment Action Group (SPAG).

- 4.3. As the pandemic continues to impact the way in which providers can operate, the associated cost and inflated price of essential supplies including personal protective equipment (PPE) remains a significant financial pressure.
- 4.4. In addition and in line with our Care Act 2014 responsibilities, and as agreed in the Cabinet report on Provider Payments in May 2020, the Council has undertaken an open-book accounting exercise to review the financial impact of voids on individual Care Home providers and this has been cross-referenced against the previous open-book accounting exercise conducted with these providers. This initial review has not highlighted any significant concerns about provider financial viability prior to the pandemic.
- 4.5. Although there have been a limited number of provider representations there have been no requests for emergency payments from providers.
- 4.6. Providers have received financial support in the form of the Infection Prevention Grant and Additional Expenses claims. The Additional Expenses claim is the process where providers submit evidence to support the reimbursement of COVID-19 related cost which forms the basis of the Council's supplier relief to this market.
- 4.7. For consistency, it is proposed that the Council continue to utilise the Additional Expenses claim process in order to ensure provider stability whilst retaining appropriate assurance. The tools that the Council utilise for the Additional Expenses process will be adapted to take into account any regional developments or initiatives, particularly in relation to managing supplier risk.

Council Corporate Plan priorities

- 4.8. 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.
- 4.9. More specifically this proposal seeks to align to the Care Act 2014 Duty of Market Oversight.

Risk management

- 4.10. The monitoring of the expenditure will be overseen by the Adult Social Care directorate in conjunction with finance colleagues. This agenda is also discussed as required 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.
- 4.11. There is potential challenge in relation to the equity of impact/benefit of the preferred option on providers. This is understood and is managed via the Additional Expenses process to ensure consistency, equity and transparency in how this is enacted as well as the decision making process.
- 4.12. The Walsall Adult Social Care Market is a fragile market in ordinary times; our Adult Social Care Commissioners continue to flag that sustainability of Adult Social Care provision is a significant risk.
- 4.13. In addition to the financial relief implemented, as a result of the pandemic commissioners have regular engagement and provide practical support and guidance to mitigate the risk of provider failure

Financial implications

- 4.14. As a result of the continuing pandemic it is now forecasted that total expenditure of £2,100,000 will be required for Additional Expenses for 2020-21. Of this sum £110,000 for PPE expenditure has been funded by Walsall CCG and it is also projected that £390,000 will be funded by the discretionary element of the Infection Prevention Control grant 2 (IPC2). This leaves a balance of £1,600,000 of which cabinet have previously approved £700,000.
- 4.15. Approval is therefore required for an additional £900,000. The table below sets out this position.

	£
Total forecast expenditure 2020-21	2,100,000
PPE expenditure recharged to CCG	(110,000)
Forecast use of IPC2 grant discretionary element	(390,000)
	1,600,000
Additional expenses already approved budget	(700,000)
Additional funding requirement	900,000

- 4.16. This additional funding requirement will be met from Covid funding from Government. In December 2020 the requirement of an additional £800,000 was included in the monitoring return to Ministry of Housing Communities and Local Government. The additional forecasted £100,000 will be included in the next return in January 2020.
- 4.17. 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.

Legal Implications

- 4.18. The legal implications of making payments to providers outside of usual contracted arrangements have already been considered and highlighted in the earlier reports to Cabinet last May and August and are further dealt with in the *Procurement implications* section, below.
- 4.19. Legal advice and support has been and will continue to be sought as required as regards to the contractual and regulatory requirements of making additional non-contracted payments to providers.

Procurement Implications/Social Value

- 4.20. Decisions made prior to and as a result of Cabinet's approval of the recommendations made in this report may constitute variations to existing contracts. In order to protect the interests of service users, the Council will ensure compliant variation of contracts in relation to any decisions that Cabinet may wish to make, Adult Social Care will seek advice and support from Procurement and Legal Services, in order to execute any associated contractual variations or other contractual arrangements, in a lawful and compliant manner.
- 4.21. Contractual variations that were implemented in relation to the previous Cabinet approvals in May and August 2020 were implemented in accordance with the Cabinet Office Procurement Policy Notes PPN 02/20 and PPN 04/20
- 4.22. PPN04/20 had an end date of 31 October 2020, so any future contractual variations cannot rely on a mandate from these policy notes for future provision. Procurement and legal advice will therefore be required in order to ensure that the recommendations made in this report are executed in a compliant manner via the most appropriate contractual method. This will include provisions for open book accounting and requirements to ensure that providers cannot 'profiteer' from supplier relief.
- 4.23. Procurement advice will be proportionate and seek to reduce unnecessary administrative burden in so far as the Council is able to ensure that it is not counterproductive to the Council's aim of supporting the market at this time.
- 4.24. Any variation of contracts must be in accordance with the Public Contract Regulations 2015, Regulation 72 ('Modification of contracts during their term'). Variations must not be 'material', ie alter the overall nature of the contract, whether or not they were included for in the initial procurement and their value.
- 4.25. To date Adult Social Care has implemented the following contract variations to support market as a response to the COVID-19 pandemic:
 - (i) Increasing the frequency of payment to providers in receipt of Scheduled Payments, namely the Residential and Nursing contracts and the Community Based Services (CBS) framework;

- (ii) 'Payment on Plan' for Domiciliary Care providers on the Community Based Services framework.
 - (iii) Payment of 'Additional Expenses' as supplier relief for costs that are attributable to the COVID-19 pandemic.
- 4.26. Cabinet has previously made a decision to continue with the variations detailed (i) and (ii) above in December 2020.
- 4.27. In view of the continued variation of contracts referred to in this report and the expiry of provisions set out in PPN02/20 and PPN04/20, continued variation of these contracts has to be carefully considered and managed in order to avoid risks associated with breach of the Public Contract Regulations 2015. Consideration of this risk should also be balanced against the duty to continue to support the provider market during the COVID-19 pandemic.
- 4.28. Contractual variations were initially put in place following guidance published in Cabinet Office Procurement Policy Notes, in response to the pandemic. In addition the requirements referred to in this report could not have been foreseen when these contracts were originally subject to competitive tender.
- 4.29. On this basis continuing with these arrangements, through a continuation of contractual variations, is considered to be the option which poses the least risk to the Council.
- 4.30. It is recommended that any contract variations relating to this matter are only in place for the shortest amount of time required in order to respond to the COVID-19 pandemic, whilst recognising that the timescale for this is unknown at this time, so will therefore be subject to management by the Adult Social Care Directorate.
- 4.31. In order to secure a longer-term sustainable contractual solution it is recommended a procurement process should be prioritised and completed at the earliest opportunity to enable the establishment of fit for purpose contracting arrangement that appropriately meet the needs and reduce the risks associated with current contractual arrangements.
- 4.32. Relevant controls should be retained within the Adult Social Care directorate to ensure consistency and transparency in terms of both the implementation of this proposal and decision making. This will assist in providing assurance to the Council that that providers are not 'profiteering' from any support measures and are being administered appropriately. Procurement will continue to support Adult Social Care in the implementation of any supplier relief.

Property Implications

- 4.33. There are no property implications.

Health and wellbeing implications

- 4.34. It is in the health and well-being interests of those supported by Adult Social Care services that the Adult Social Care 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.

Staffing implications

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

Reducing Inequalities

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

Consultation

- 4.37. All Social Care providers across Walsall and the Council's Health and Carepartners are engaged in regular tele-conferences, by email, through a dedicated 'provider hotline' and through an ASC provider information and advice internet page to address issues as they arise to ensure provider stability and continuity of service.

5 Decide

- 5.1. Adult Social Care have considered the following options for continuing to offer additional financial support to providers:
- Option 1 – Do nothing, cease additional expense payments. The Council is not obliged to fund the additional COVID-19 related expenditure faced by providers. However, failure to do so could see an already limited local market stretched to the point where operation becomes financially unviable for some providers and they may not be in operation post-pandemic.
 - Option 2 (**Preferred**) - To continue to make payments through an open-book process up to a fixed value. The current approach places the onus on providers who need financial assistance to submit a claim to the Council. The claim can then be scrutinised through the open book accounting process and appropriate payments to cover additional costs arising directly from the pandemic can be made.
 - Option 3 – Pay a flat uplift to ASC providers. Whilst this option would be simpler to transact and would offer greater clarity on projected costs, this approach does not target the funding on those providers in greatest need and most at risk of provider failure and is likely to cost significantly more. Nor is this option in line with the decisions taken by Cabinet in May 2020 and August 2020.

- 5.2. Option 2 is considered to be the most cost effective and has the strongest rationale in terms of transparency and providing consistent support to the market during the pandemic and preventing provider failure.

6 Respond

- 6.1. Following the Cabinet approval in May 2020 providers were invited to submit claims for additional COVID-19 related expenditure along with supporting evidence.
- 6.2. Previous claims have been considered by a panel of representatives from Adult Social Care commissioning, procurement and finance who have subsequently made recommendations regarding payment based on their collective knowledge of the sector. Where additional information or clarification is required, Adult Social Care commissioners have contacted the provider directly to ensure that the claim can be reconsidered at the next panel meeting. Panel meetings have taken place twice weekly to ensure the timely processing of payments.
- 6.3. The approach to date has been welcomed by providers and the structure remains in place to continue to review and process provider claims subject to the availability of funding.
- 6.4. Our offer of support ranges from day care and social clubs who have been required to close requesting support with meeting their fixed costs to avoid provider failure compared to our residential and nursing homes and community based service providers such as domiciliary care, extra care and supported living who have requested support with costs over and above what they would normally spend and can't be claimed anywhere else.
- 6.5. Additional supplier relief to contracted and non-contracted Adult Social Care providers will continue to be monitored and allocated to providers through an open-book process overseen by the Additional Expenses Group, which includes officers from finance and commissioning.

7 Review

- 7.1 These arrangements will be continually reviewed in line with any new guidance or as a result of the pandemic ending and/or budget implications.

Background papers

Cabinet Paper – Paying for Community Based Commissioned Care Services During the COVID-19 Period - 19May 2020

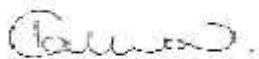
Cabinet Paper - Update on Supplier Relief Payments to Contracted and Non-contracted Adult Social Care Providers – 12 Aug 2020

Cabinet Paper - To approve extension to flexible arrangements for Adult Social Care providers during COVID-19 pandemic – 9 December 2020

Author

Tracy Simcox

□Tracy.Simcox@walsall.gov.uk



Kerrie Allward
Executive Director Adult Social Care

Date: 1 February 2021



Councillor Rose Martin
Portfolio holder – Adult Social Care

Date: 1 February 2021