

## **London Borough of Hammersmith & Fulham**

**Report to:** Chief Executive (under Covid -19 arrangements)

**Date:** 29 May 2020

**Subject:** Support to providers of social care

**Report of:** Lisa Redfern, strategic director social care

**Report author:** Joanna McCormick, assistant director health and social care

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### **Summary**

Urgent agreement is sought to provide financial support to providers of social care services in the context of Covid-19 and in line with national guidance. The report highlights the core principles applied to categories of commissioned social care services and estimated cost. It is vital that we urgently support providers at this very challenging time.

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### **Recommendations**

1. That Appendix 1 is not for publication on the basis that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) as set out in paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended), be agreed.
2. To make an urgent decision under the H&F governance arrangements for Covid-19 to ensure business continuity of social care providers and continued delivery of care for H&F residents.
3. To agree the budgetary provision of Covid-19 additional support to providers of social care services at a total cost of £738,642, for April – June 2020, to be funded from COVID-19 emergency local government grant funding
4. To authorise the payment to all providers of residential and nursing care placements of an above-budget inflationary increase as an increase of 5% on agreed weekly rates for a period of 3 months, without the need to make a business case for an inflationary increase (where this applies), and for individual care contracts to be varied accordingly.
5. To note that support for other categories of commissioned care provision is being considered on a case by case basis and this support can include benefits in kind.
6. To authorise the strategic director of social care to determine the distribution to providers of the remaining budget at paragraph 3 above (after expenditure

against paragraph 4), as necessary, following consideration of the circumstances surrounding each service and to recommend the appropriate Covid-19 measure(s) to be implemented by providers accordingly.

- Note and ratify that an urgent payment of £35,526.87 has been made to Chiswick Nursing Centre and an urgent payment of £46,382.17 has been made to Nazareth to support the homes in their response to Covid-19 pandemic pursuant to paragraphs 4 and 6 above. The payment was made from the budget of £738,642 sought above.

**Wards Affected:** All

### H&F Priorities

<b>Our Priorities</b>	<b>Summary of how this report aligns to the H&amp;F Priorities</b>
Building shared prosperity	Recognises the role of social care providers to H&F residents during this national emergency
Creating a compassionate council	Ensures delivery of social care in context of Covid-19
Doing things with local residents, not to them	
Being ruthlessly financially efficient	
Taking pride in H&F	

### Financial Impact

The total cost of the additional Covid-19 support and above budgeted inflation is £738,642, for 3 months. This is to be funded from the emergency funding provided by the Government to Local Authorities for Covid-19 including provider sustainability. If the additional support is needed beyond 3 months a further report seeking authority to spend will be drafted.

The need to ensure critical services can be delivered for the health, safety and general welfare of the residents of the borough in response to the Covid-19 pandemic is resulting in the Council facing a number of additional financial pressures. The overall financial impact is difficult to assess accurately at this stage but is likely to be significant and there is national uncertainty regarding how these financial pressures will eventually be funded.

The Council is recording all additional spend decisions and will monitor lost income to make full use of any government funding. To date a national COVID-19 emergency local government funding package of £3.6 billion has been announced of which the Hammersmith and Fulham share is £11.5m. The grant is un-ringfenced but grant correspondence includes the expectation that some of these funds should be used to support the social care market.

The confirmed allocations to date are insufficient to cover the expected costs and lost income as a result of the pandemic. Should government funding be insufficient, and no further grant be awarded, then costs will fall to be met:

- from savings in other Council budgets
- use of contingency sums, the 2020/21 unallocated contingency is £3m
- by use of reserves and balances.

This potential impact on the Council's future financial resilience will continue to be monitored and will inform future financial planning.

The table below sets out the details of implementing the specific measures of paying placement, supported living and commissioned day care providers an extra 5% for 3 months, above the annual inflation uplift. The actual cost will be confirmed following evaluation of simple templates from providers.

Home care providers are being paid fortnightly based on commissioned hours as opposed to monthly based on actuals which equated to an estimated additional cost of 10% for the three block contracted providers and their two subcontractors.

<b>Service Area</b>	<b>2019/20 Expenditure</b>	<b>3 Months Expenditure</b>	<b>Additional Costs</b>
	£	£	£
Placements & Supported Living	27,676,993	6,919,248	345,962
Home Care (Block commissioned expenditure, payment based on planned not actual costs, increase 10% )	13,754,623	3,438,663	343,866
Commissioned Day Care	823,157	205,789	10,289
<b>Total</b>	<b>42,254,773</b>	<b>10,563,700</b>	<b>700,117</b>

It should be noted that the annual inflation uplifts for 2020/21 not related to Covid-19 are in line with the budgeted inflation and are therefore cost neutral. The homecare and direct payment increases are already being paid to providers (from 9th March) and residents (from 1st April). In addition to the £700,117 additional costs, the recommendation also seeks an increased budget of £38,525 for unbudgeted inflationary uplifts for LD Supported Accommodation to bring the total requirement to £738,642.

### **Legal Implications**

The Council has various legal duties under the Care Act 2014 not only to provide care for individuals, but also, pursuant to section 5, a duty to promote the efficient and effective operation of a market in services for meeting care and support needs. Local authorities also have duties to provide temporary support for residents of

residential care settings in its area where the provider is unable to continue due to business failure, and this applies equally to residents placed by another local authority and those who are not eligible for local authority-funded care. Therefore, financial support for the residential care sector can be said to be ancillary to these Care Act duties.

It should also be noted that the Coronavirus Act 2020 does allow local authorities to treat themselves as temporarily discharged from their social care duties (sometimes described as easements), however, this is not being exercised in Hammersmith & Fulham, and indeed those authorities using these powers are more likely to be using them to defer annual assessments of care needs and similar issues, rather than any wholesale departure from duties to provide care.

Procurement Policy note 2 of 2020 (PPN 2/20) provides guidance from the government to public bodies about providing support to what are described as “suppliers at risk” in order to prevent their failure as result of the impact of Covid-19. Much of PPN 2/20 is aimed at suppliers who are not be able to fulfil their contractual obligations due to the pandemic, as opposed to those which can deliver but consequently incur increased costs.

There is recognition that this will be sector-specific and also dependant on existing provisions in the relevant contract, though there is an expectation that there will be careful monitoring of costs on an “open book” basis to ensure that public bodies are not funding for costs already supported through other schemes such as furlough and business rates support.

The various placements that sit with the suppliers identified for support will have individual terms and conditions. These may or may not provide for an inflationary increase to the weekly rates for care services, and those contracts that do may provide that this is only granted if the provider makes a business case, demonstrating how its costs have increased.

Therefore, for some providers, payment of an above-inflation increase for 3 months will be in accordance with the contract, while for others it will be in accordance with the contract but waiving the requirement to submit a business case, and for a third category the contract is being varied significantly to allow any increase. Consequently, the recommendation concerning this element of financial support recognises the extent to which the different terms and conditions are being varied.

It is possible that some of these variations, where there is no provision for increase, are caught by regulation 72 of the Public Contracts Regulations 2015 about when modifications to public contracts are permissible, however this will require individual review of the different terms and conditions, which is outside the scope of the general nature of this report. However, for a 3-month increase of 5% on weekly rates on an individual care package, it is likely that the *de minimis* exemption will apply.

In relation to financial support outside above the 5% increase to weekly rates, it is proposed that this will be payable as a grant in order to meet additional increased costs on a more ad hoc basis. In order to fit in with the guidance in PPN 2/20, this should be applied on the basis of demonstrated costs using an “open book”

approach, as reflected in paragraph 6 of the Recommendations, whereby individual circumstances are reviewed by the decision-maker before discretion is exercised.

**Will the assistance given qualify as State Aid?** State Aid limits the subsidies and other forms of financial assistance that member states (including local authorities) can award, to avoid distortion of competition. Varying any individual contract (in accordance with its terms) where it was put in place under an umbrella or block arrangement tendered under the EU procurement rules will not constitute state aid.

However, for other types of assistance, there is a very strong argument that the assistance does not fall within the multi-limbed test for it to qualify as State Aid in the first place. One of the limbs of that test is that the assistance has to have an impact on trade between member states. The Commission has published a list of sectors which it is generally recognised that assistance will not have the effect of impacting on intra-Community trade. These include hotel services, health and social work, other community social and personal service activities, and social services. It can therefore be expected that all the proposed financial assistance covered by this report falls into one of these categories and is therefore not State Aid.

However, in the event that this does not apply, it may be prudent to ensure that where possible, the assistance provided to each provider falls under one of the exemptions available. Firstly, the de minimis exemption has been available for some years

(i.e. pre-COVID) and means ensuring that all the support that each provider receives over any three-year period from any state source does not exceed €200,000 (around £180,000) in total. There is also a very recent intervention in that in April 2020, the EU Commission put in place a temporary framework on State Aid, under which EU member states (which still includes the UK) could apply for approval for COVID-19 related state aid exemption schemes.

The UK subsequently obtained approval for an umbrella £50bn State Aid Temporary Framework scheme to support the economy, which is available to all tiers of government including local authorities. One of the things this allows is direct support in the form of grants, selective tax advantages and advance payments up to a figure of €800,000 per undertaking. This applies across all assistance by all tiers of public authority, in total.

Therefore, it will be necessary for the Council to assess what assistance falls outside straightforward operation of the contract terms, and to ensure, particularly for larger organisation with multi-site operations in particular, that the figure of €800,000 is not exceeded in aggregate across all types of COVID assistance. However, given that this exercise is being conducted very quickly, and the difficulty of an organisation at this time making the required assessment of the total value of all assistance, it may not be practical to rely on this exemption.

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### **Legal comments**

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### **Background Papers Used in Preparing This Report**

None

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## **DETAILED ANALYSIS**

### **Proposals and Analysis of Options**

#### **Background**

- 1.1 A number of financial support measures have already been put in place for ASC commissioned services and additional measures are recommended in line with national Local Government Association, Association of Directors of Adult Social Services and government guidance. In addition, MHCLG has written to H&F setting out the expectation that local authorities support providers at this time.
- 1.2 The COVID-19 Pandemic places significant pressure on social care services and particularly community-based service such as homecare that are dependent on a mobile workforce going into people's homes. Additional cost pressures are also being experienced by residential, nursing and supported living providers.
- 1.3 Government has made available additional funding to support local authorities in their Care Act duties around maintaining market stability and for Hammersmith and Fulham Council's adult social care services provision, £738,642 additional funding for Covid-19 is required based on local assessment.

- 1.4 In line with the LGA and ADASS guidance we recommend an approach for annual uplifts and the approach for additional time limited COVID-19 financial support to social care providers in the following categories:
- Homecare
  - Residential/Nursing placements
  - Extra Care
  - Supported Housing (MH/LD)
  - Day opportunities and support provision

#### **Existing measures already implemented - homecare services**

- 2.1 Block commissioned homecare providers have received
- A increase from 9 March 2020 as a result of the annual review of prices
  - A change to paying on commissioned hours from 19th March 2020 which equates to further increase
  - Increased payment frequency with payments made every two weeks in arrears as opposed to monthly in arrears
- 2.2 Spot commissioned homecare providers have received:
- An increase in the standard hourly rate
  - A per hour incentive for new packages

#### **Existing measure already implemented - day opportunities and support provision**

- 2.3 The current lockdown measures mean that externally commissioned days services provided by Nubian Life, Alzheimer's, Notting Hill Housing Trust are all temporarily closed and where possible are working to an outreach model.
- 2.4 In addition, employment and mentoring services provided by Bishop Creighton House are closed and where possible support is on an outreach/virtual basis.
- 2.5 Funding arrangements at 2019/2020 levels have been rolled over into 2020/2021 to ensure providers are financially supported. Alongside this these organisations are deploying their staff differently to provide outreach support or making use of the government Furlough scheme.

#### **Recommended measures to be implemented**

- 3.1 The council has set out a clear Covid-19 response. The letter from MHCLG to local authorities sets out the expectation that Councils will provide temporary support to Social Care providers at this time.
- 3.2 The proposed COVID-19 financial support measures focus on the time limited additional costs which providers may legitimately be incurring, for example around PPE or staffing.
- 3.3 For residential/nursing placements only, time limited increases to weekly placement fees with a 5% increase are recommended in the first instance.
- 3.4 In addition it is recommended that the following simple to implement steps are taken to provide time limited additional support to commissioned social care

provision (this includes residential/nursing placements, homecare, extracare, day opportunities, supported housing and support services:

- Increased frequency of payment
- Provision of PPE
- Guaranteed levels of income for activity-based contracts
- Contribution to core running costs if services must be suspended/temporarily closed in line with social distancing requirements (e.g. Day Centres)

- 3.5 The council's offer to providers could be just one or a combination of the measures at 3.4.
- 3.6 A time limited increase in weekly fees is designed to address the increase in cost that providers may have incurred around staffing (agency) and PPE and other consumables that have been subject to price increases.
- 3.7 It is recommended that a simple evidence template is used, requesting that providers – in line with government guidance – provide Open Book evidence of additional costs incurred and government support received. Accordingly, the relevant measure(s) that will be implemented and the financial support that will be issued to each provider will be documented in a formal letter. The letter will be placed on the Council's capital e-sourcing system under the relevant contract with the provider, to ensure an adequate audit trail and to comply with transparency legislation requirements. The template letter will be reviewed by the Council's legal advisors.
- 3.8 After scrutiny of the evidence provided a decision can then be made around putting into place any additional payments and whether there is a case to go beyond the recommended 5% increase for three months for residential and nursing placements.

#### **2020/21 Annual Uplifts (non Covid-19 related)**

- 3.9 Annual uplifts also support providers. Residential and nursing placements (spot) will progress as business as usual however given the context we are suspending the more labour-intensive business case per provider approach and limiting increases to the corporate inflationary provision instead. Note this forfeits any potential efficiencies from the process at this time.
- 3.10 Uplifts for contracted nursing placements (block – Care UK), extra care services, mental health supported accommodation contracts and learning disabilities supported accommodation (Yarrow ISF) will be progressed within existing contractual parameters.

#### **Reasons for Decision**

- 4.1 To provide financial support to providers of social care in line with national guidance and the local response to Covid-19.



### **Equality Implications**

- 5.1 There are no negative equality implications for groups with protected characteristics, under the Equality Act 2010, by the approval of these proposals.

The report covers all categories of provision benefitting those in our community who receive care including those who are older, disabled and those who have mental health concerns. The approach to additional financial support is to enable the providers to continue to provide care in the context of Covid-19.

*Implications verified by: Fawad Bhatti, Policy & Strategy Officer, tel. 07500 103617.*

### **Risk Management Implications**

- 6.1 The risks to the Council are noted on the Covid-19 risk register. There is significant financial and demand pressure on social care services currently and particularly community-based, residential, nursing and supported living providers. Risks have been mitigated to as low as reasonably practicable by providing additional financial support to locally delivered services in a period of a national emergency. Additional, but limited, funding has been provided by HM Government to support Services in Councils further costs are yet unknown. Measures have been put into place to speed up cash flow to the sector alongside other practical measures outlined in 3.2 of the report. A review of the arrangements should be undertaken periodically to ensure that the risks to clients is minimised. A decision is being made in accordance with the authority of the Chief Executive to ensure business continuity during the crisis and in compliance with the Civil Contingencies Act.

*Implications verified completed by: Michael Sloniowski, Risk Manager, tel 020 8753 2587*

### **Other implications**

#### **Consultation**

- 7.1 The approach is in line with national guidance and in the context of Covid-19 has not been subject to formal consultation.

### **List of Appendices:**

Exempt Appendix 1 - Suppliers