

Report to CABINET

Additional expenditure in support of health and social care in response to Covid-19 emergency

Portfolio Holder: Councillor Chauhan, Cabinet Member for Health and Social Care

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7th July 2020

Reason for Decision

To support the care sector with the impact of Covid-19 from 1st July 2020 and for the remainder of the financial year.

Executive Summary

The report seeks to provide an update on the support provided thus far to the care sector through the Covid-19 pandemic, and agreement to extend some support measures until there is further clarity on the national position, particularly with regard to market sustainability.

The purpose of seeking to extend the period of time over which support is offered reflects the ongoing requirements around the use of personal protective equipment, the impact of regular testing on the workforce, the vacant care home beds in the market and the resultant financial implications.

Recommendations

It is recommended to extend a number of the proposals from 1st July 2020 until such time as any national guidance or funding is announced, namely:

- extend the 90% bed occupancy guarantee until the end of July, and delegate authority to the DASS to adjust this support from that point onwards up until the end of October, to respond to the prevailing market conditions, in order to meet Care Act duties to meet eligible care and support needs, and ensure sufficiency, sustainability and quality of supply of care services to meet those needs.
- that the Financial Support Panel continues until the end of October 2020 in line with Procurement Policy Note (PPN 04-2020), or until such time as there is further national guidance or funding in relation to the financial impact of covid-19 on the operational running costs of care services. It is further proposed that information and outcomes of the panel are reported to the Procurement Bronze Group and the Financial Assistance Board ensure oversight, connectivity and Governance.
- to continue to pay for commissioned rather than actual care delivered in the care at home sector until the end of October 2020 in line with Procurement Policy Note (PPN 04-2020), or until such time as there is further national guidance or funding in relation to the financial impact of covid-19 on the operational running costs of care services.
- that the 5% uplift continues to apply for the remainder of 2020/21, and by default becomes Oldham's uplift in social care fees for the current financial year. Consultation has already taken place with the care sector and feedback indicates that a 5% uplift would be accepted by providers. Ongoing dialogue with providers throughout the year will enable an assessment to take place of the extent to which this, along with the other measures proposed, is ensuring sufficiency, sustainability, quality and choice of provision.
- acknowledge that in relation to adaptations to properties being undertaken by framework contractors through the Disabled Facilities Grant, there are additional costs now associated with Covid-19 such as PPE, additional cleaning and the impact of social distancing that were not originally priced for as part of the tender undertaken in 2018, and to offer a uniform amount, as all other costs within the framework are set. This is suggested as £30.00 for PPE plus £120 for additional labour/cleaning costs per job.
- acknowledge that for more major construction requirements which are tendered on an individual basis through use of the Disabled Facilities Grant, (typically extensions) we will ask for additional costs associated with C-19 to be priced for within each individual tender.
- It is proposed to make provision by applying a 5% uplift on current activity that recognizes increased demand for carer respite and carer breakdown.

Cabinet

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1 Background

- 1.1 The report seeks agreement to extend a range of initiatives implemented early on in the Covid-19 pandemic, to support the care sector deal with the impact and in the absence of further central government guidance or directives at this time. The situation in the care sector has changed as a result of the impact of Covid-19 and short term sustainability of the sector is now the primary concern. The previous report is attached as Appendix 1.

2 Current Position

Care homes and vacancy rates

- 2.1 There are currently 42 independent sector care homes in Oldham with 1,746 registered beds, of which 265 were vacant as at 15th June 2020, a 15% vacancy rate which has been rising throughout the Covid-19 pandemic. In total, as at 15th June 2020, 106 deaths of care home residents since week ending 22nd March have had Covid-19 recorded on the death certificate, with 25 of these residents having died in hospital with Covid-19. The largest number of deaths believed to be Covid-19 related in a single home is 21.
- 2.2 The vacancy rate prior to Covid-19 was on average 4%, and had been at this position for some time. During the Covid-19 pandemic, the success of the “home first” approach of the hospital discharge team, the (assumed) lack of appetite amongst the self paying market to move into care homes, and the number of excess deaths have combined to increase the vacancy factor almost four fold. Attempts have been made to address short term risks to provider viability through supplements to fees, the block booking of available capacity, and more recently a 90% bed occupancy guarantee, paying “on plan” for commissioned care rather than care delivered in the care at home market, support with exceptional costs, and the continuation of funding to services, particularly day services, which have had to suspend operation during the lockdown. The table below sets out current occupancy levels across the Oldham care home market:

Occupancy levels	Total reg beds	Comments
<75%	576	10 homes with occupancy below 75%, this includes four nursing homes.
75-79%	237	4 homes in this category including 2 nursing homes.
80-89%	404	12 homes, including a number usually full with waiting lists, and who target the self funding market.
90-94%	202	5 homes
95-99%	107	3 homes
100%	219	8 homes
Total	1745	42 excludes MC and BG)

- 2.3 If, as currently seems likely, the effect of the pandemic is to leave many care homes for older people with a large number of vacancies, and possibly a reduced level of demand for an extended period, if older people and their families continue to see them as undesirable

places to live, and are not reassured by the early development of an effective vaccine, the Council may have a number of options (unless the issue is taken out of our hands by national directions). The main options are as follows:

- a) Do nothing, beyond meeting our statutory duty to ensure that residents in care homes which close are supported to find alternative accommodation. Whilst this might minimise spend on care homes, and contribute to our longer term objective of home first or care closer to home, it would potentially expose a large number of vulnerable older people to the anxiety and disruption caused by unexpected moves between care homes. It might also lead to an unpredictable geographical pattern of services, or gaps in key areas of strategic importance such as nursing and dementia nursing provision; and in the medium term, if confidence in care homes does recover, or if it proves to be impossible or unaffordable to meet additional demand for support at home, there might be too little capacity in the surviving care homes to meet needs.
- b) Extend paying subsidies to care homes while they have a high level of vacancies. In the short term, this may become a necessary step, to avoid premature closures before the overall picture becomes clearer. In the long run, it would clearly be necessary to avoid propping up indefinitely any care homes which did not appear to have a long-term future. Individual discussions would need to take place with all providers below pre-Covid 19 occupancy levels, to support the development of a longer term commissioning strategy and allow time for NW ADASS and LGA initiatives to mature, and for demand to adjust to the new operating environment to support a more informed assessment of the longer term impact.
- c) Seek to increase its influence over the pattern of services by becoming more directly involved via Miocare to operate care homes, or to purchase care premises and lease them to other operators while exercising some control over the model of care.

- 2.4 In the short to medium term it now seems almost inevitable that the council will need to consider extending some form of financial support for care homes with a financially unsustainable level of vacancies. Without support, this would be likely to trigger a wave of closures, without the opportunity to influence where those closures occur, or the type of provision for which there is over/under capacity under “normal” circumstances.
- 2.5 Even if the medium to long-term objective is to move to a system which makes less use of care homes, it would be obviously undesirable for there to be a series of care home closures during the period when Covid-19 is widespread. Moving residents between care homes would be logistically very difficult, and would create a serious risk of spreading infection.
- 2.6 However any sustained programme of subsidising vacancies in care homes would potentially have high and unpredictable costs. While there is currently encouraging evidence that the number of deaths in care homes is falling, the number of vacancies is continuing to rise, and we cannot yet be confident about when and at what level it will peak, or how quickly (if at all) demand will recover.
- 2.7 One option might be to introduce an arrangement which reduced the level of protection over time – perhaps gradually, so that there was no point at which a large number of care homes were simultaneously faced with a financial cliff edge. For instance, the level of funding for

each vacancy could gradually reduce, or the occupancy level below which no subsidies are paid could reduce.

- 2.8 Given the scale of the financial problems which care home operators are likely to have, and the fact that some providers are large national corporates, there is likely to be pressure for a national solution (which may or may not then turn out to influence wider decisions about the future funding of adult social care). However providers are already approaching us about the financial consequences of increasing vacancy levels beyond the end of June.

The workforce

- 2.9 There have been significant workforce issues for many care providers because of the impact of self isolation, shielding and Covid-19 itself on rates of staff absence. These have recovered with 91% of staff reported as being available to work and 3.1% self-isolating as of 15th June 2020. However, further outbreaks or the impact of test, track and trace may see a repeat of the staff absence witnessed at the peak of the crisis.
- 2.10 Efforts to recruit additional staff and volunteers to work in the independent sector have proved largely unsuccessful, despite high profile regional and local campaigns and significant levels of interest. In the longer term, a joint piece of work with the Get Oldham Working team is proposed.
- 2.11 In the medium to long term, there is considerable uncertainty about what the impact of the experience of the pandemic will be on the care workforce. On the one hand, it has been suggested that people currently working in the care sector will remember this as a time when they were required to carry out dangerous and distressing work while getting little of the same recognition as NHS staff, being a lower priority for PPE, and getting little of the additional financial recompense that staff in supermarkets and other key services have received. On the other hand, it is possible that care work could become more attractive as a reliable source of employment during what may be an extended period of national economic difficulty.

Support to the care sector

- 2.12 The support extended to the care sector has been wide ranging, and the detail is attached as Appendix 2.

Carers

- 2.13 The Carers Team have carried out 495 carers assessments and reassessments since 23rd March and have made welfare calls to over 1200 carers. Feedback from the team is that almost all of the carers have said that although they are doing extra caring they are coping and managing. Over 95% of the carers have, however, reported that they are really looking forward to having a break from caring as soon as they possibly can. Concern from the team is that a lot of the carers may feel the impact of the extra caring once the situation starts to ease and resilience shown by the carers cannot continue indefinitely. This will have an impact on the need for additional respite.

Financial Support

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- 2.14 To support the local authority to respond to the Covid-19 pandemic, funding of £7.6 million and £6.5 million has been received, plus access through the NHS to the £1.3 billion nationally where spend meets certain criteria. It is understood that the NHS route is available for eligible expenditure until at least 31st July 2020, pending further guidance which may extend this date.
- 2.15 In addition, Oldham's allocation of the Infection Control Fund is £2.3 million, of which 75% is allocated to care homes and 25% to other adult social care services, and has to be spent in line with very prescriptive conditions to implement particular infection control measures.
- 2.16 In relation to the Government's un-ringfenced grant support received by the Council of a total of £14.2m that was to address all pressures faced by the Council there was an early expectation that the majority of this funding would be used to support the provision of adult social care. Based on the Councils last financial data return to the Ministry of Health Communities and Local Government the Council anticipates that expenditure and loss of income will exceed the funding available by in excess of £20.7m, to this extent any allocation of funding is arbitrary.
- 2.17 In line with the report presented on 1st April 2020, and attached as Appendix 1, the following support has been provided to the sector so far:
- The provision of Personal Protective Equipment, both through the PPE Hub and via assistance with costs in excess of those which providers would ordinarily expect to meet
 - Financial Assistance Panel – this weekly panel considers requests from social care providers for support with Covid-19 related costs, including the need to backfill staff who are self-isolating, PPE costs, enhanced cleaning, increased staffing levels due to dependency of those with or recovering from Covid-19, transport for staff and additional uniforms to improve infection control and prevent transmission.
 - Securing 24 beds in the care home sector on block contract arrangements to ensure supply to support hospital discharge.
 - Supporting providers whose occupancy has fallen below 90%, through additional payments equivalent to 90% occupancy.
 - Paying on commissioned rather than actual care delivered
 - 5% uplift on all commissioned care rates. This reflected that the usual annual fee negotiation process could not be concluded in March 2020. The uplift percentage is in line with Local Government Association and ADASS guidance, and reflects feedback received by providers during the paused consultation process. This guidance is attached as Appendix 3.
- In addition to the above the Council has been charging the cost of packages directly linked to hospital discharges as a result of COVID, including step up and step down care to the £1.3bn NHSI and E funding accessible through Oldham CCG., To date £0.458m has been submitted on claims. This arrangement will continue to 31 July 2020 at the very least as outlined at 2.14 above.
- 2.18 A new financial pressure is now emerging in relation to construction companies undertaking adaptations to properties, such as low level access showers and extensions, funded through the Disabled Facilities Grant with the purpose of enabling people to remain
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in their own homes for as long as they are able. As these adaptations start to recommence, the need for enhanced levels of infection control measures, including the use of PPE and the need to clean down sites each day are adding to the costs of these adaptations.

Annual Adult Social Care Budget Survey

- 2.19 The results of the annual adult social care budget survey, conducted by ADASS have just been published. The report included specific questions related to Covid-19 as well as more generally in relation to the financial position associated with the delivery of adult social care services. North West ADASS have compiled a summary of the picture across the 23 localities, which provides useful context when considering the issues raised in this report:
- Recent investment in the form of the council tax precept, winter pressures funding and social care grants has been temporary in nature and has largely failed to address any previous underfunding. This has offered limited scope for investment in transformation towards sustainability, or the ability to address fragile care markets.
 - 70% of NW Councils reporting an overspend against their adult social care budgets in 2019/20. Some positions being supported by reserves or offset against underspends in other council services.
 - Over 2/3rds of demand growth budgeted in 2020/21 relating to adults of a working age.
 - Use of resources work highlighting an increasing issue regarding adult care debt, alongside poor resident experience of the charging system. Average debt represents c30% of annual charging.
- 2.20 Key in-year pressures within adult social care, compounded by the impact of the Covid-19 pandemic include:
- Care market support – increased care fees, cost reimbursement, support for under occupancy (including self funders), payments on planned support and PPE purchase.
 - Workforce investment – income protection for staff self isolating, increased pay and recognition.
 - Increased support and intervention – direct payments, additional 1-1 support etc
 - Reduced charging income i.e. within day support, home care etc. Increased bad debt risk.
 - Impact on savings and transformation delivery.
 - Significant in-year impact on council budgets without additional funding means reduced resilience to support existing pressures in adult social care or fund transformation investment from reserves.
 - Unprecedented uncertainty making it difficult to plan forward - duration of the pandemic, extent of economic impact on 21/22 council budgets, the Government's response etc
 - Ongoing requirement for PPE, market support etc unknown – with funding sources due to end.
 - Uncertainty that is exacerbated by the short-term nature of funding that already underpins a significant proportion of recurrent adult social care investment.
- 2.21 There was a lack of clarity as to what future demand will look like. It was recognised that there is some potential for temporary underspends in some budget areas due to a temporary reduction in demand and utilisation of interim funding i.e. the NHS hospital discharge £1.3bn (national resource), but caution about assuming the continuation of that funding stream into the future.

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- 2.22 The survey highlighted an evident requirement for additional Government funding – including consideration of the wider impact on NHS budgets. Adult Social Care is a pre-requisite to acute sustainability, both in terms of admission avoidance as well as discharge.

Recovery

- 2.23 A significant amount of work is underway across all aspects of the Community Health and Social Care service, and the wider health system, to work through what recovery and the “new normal” look like, understanding the short, medium and longer term implications on resources, staffing, service delivery and most importantly, the impact on individuals, their families and carers. The report attached as Appendix 4, Surviving the Pandemic: New Challenges for Adult Social Care and the Social Care Market, published by the Institute of Public Care, and written by Professor John Bolton, explores some of these issues, and a number of the proposals in this report reflect Professor Bolton’s recommendations.

3 Options/Alternatives

- 3.1 There are three options:

Option 1

Do nothing. Allow the support implemented up to the 30th June 2020 to end. This is not considered to be a viable option for the reasons set out in the current position above. In order to ensure that Care Act eligible care and support needs can be met, there needs to be sufficiency, sustainability, quality and choice of provision in the local care market (Care Act section 5 and Care Act Statutory Guidance section 4 relate). Whilst there may be a need to revise the commissioning plans in relation to care and support services to reflect a shift in future demand, any contraction or other changes in the market need to be undertaken in an informed and managed way.

Option 2

Do nothing and respond to national directives when these are published. Discussions are continuing at a national level between the Association of Directors of Adult Social Services, Department of Health and Social Care, the Ministry for Housing, Communities and Local Government and the Local Government Association, however there is no indication as to when any guidance might be published.

Option 3

Extend a number of the proposals now until such time as any national guidance or funding is announced, namely:

1. Extend the 90% bed occupancy guarantee until the end of July, and delegate authority to the DASS to adjust this support from that point onwards up until the end of October (subject to interim reviews), to respond to the prevailing market conditions, in order to meet Care Act duties to meet eligible care and support needs, and ensure sufficiency, sustainability and quality of supply of care services to meet those needs. Whilst it is difficult to predict the financial implications of this proposal in an ever changing picture, a worst case scenario of continuing to guarantee 90% bed occupancy to the end of October, based on the current vacant bed position would be £1.6m.
2. That the Financial Support Panel continues until the end of October 2020 (subject to interim reviews) in line with Procurement Policy Note (PPN 04-2020), or until such time as there is further national guidance or funding in relation to the financial

impact of covid-19 on the operational running costs of care services. It is further proposed that information and outcomes of the panel are shared with the Financial Assistance Board and Procurement Bronze Group to ensure oversight and connectivity. The number of claims that directly relate to measures within the infection control fund, should reduce. However, for care homes there may be ongoing or incidental costs that fall outside of the scope of the grant, and for other providers who will not benefit from a share of the non-care home element of the grant, there needs to be recognition of the increased costs. Using the past three months activity through the panel, and not factoring in the favourable impact of the infection control fund, an estimate until the end of October is £0.582m.

3. To continue to pay for commissioned rather than actual care delivered in the care at home sector until the end of October 2020 (subject to interim reviews) in line with Procurement Policy Note (PPN 04-2020), or until such time as there is further national guidance or funding in relation to the financial impact of covid-19 on the operational running costs of care services. This recognises the need for flexibility within the sector to be able to respond to fluctuating and irregular demand, the need to respond differently as lockdown easements are implemented, and the unknown impact on the workforce of test, track and trace, or further Covid-19 outbreaks in the community. Based on the last three months, and assuming no change in volume of activity, an estimate until the end of October is £0.4m.
4. That the 5% uplift continues to apply for the remainder of 2020/21, and by default becomes Oldham's uplift in social care fees for the current financial year. Prior to the Covid-19 pandemic, and in line with usual process, consultation commenced with the commissioned providers in the care sector regarding fee levels for the financial year 2020/21. The uplifts proposed to the market averaged at 3.5%. Feedback received (but not progressed through to decision) referenced, amongst other factors, the increase in the National Living Wage of 6.2%, and a view that commissioned rates should be increased accordingly. Ongoing dialogue with providers throughout the year will enable an assessment to take place of the extent to which this, along with the other measures proposed, is ensuring sufficiency, sustainability, quality and choice of provision.

During the pandemic, the Local Government Association and ADASS issued guidance for commissioners, which included a recommendation that fee increases should be uplifted by around 5% to take account of the National Living Wage, and that when taking account of additional Covid-19 related costs, increases of up to 10% in costs were being experienced by the sector. Individual discussions between LGA finance leads and council officers recognised that the 5% uplift, along with the wider financial support available, was in line with the published guidance.

Given the current circumstances and the volatile operating environment, which now makes it difficult to establish what typical cost pressures across the sector are, and how these might fluctuate over time, it is proposed that the 5% uplift continues to apply for the remainder of 2020/21, and by default becomes Oldham's uplift in social care fees for the current financial year. Dialogue will continue with providers during the course of the year with regard to cost pressures and financial viability.

Based on the current volume of activity, it is anticipated that the cost of the uplift for the remainder of the financial year is £2.37m.

It is worth noting that the CCG has agreement from Governing Body to extend the 5% uplift for care services until 31st July 2020, in line with NHS guidance, with a view to reviewing the position once further guidance is received.

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5. Acknowledge that in relation to adaptations to properties being undertaken by framework contractors through the Disabled Facilities Grant, there are additional costs now associated with Covid-19 such as PPE, additional cleaning and the impact of social distancing that were not originally priced for as part of the tender undertaken in 2018, and to offer a uniform amount, as all other costs within the framework are set. This is suggested as £30.00 for PPE plus £120 for additional labour/cleaning costs per job.
 6. Acknowledge that for more major construction requirements which are tendered on an individual basis through use of the Disabled Facilities Grant, (typically extensions) we will ask for additional costs associated with C-19 to be priced for within each individual tender.
 7. It is proposed to make provision by applying a 5% uplift on current activity that recognises the potential for increased demand for carer respite and carer breakdown.

4 Preferred Option

- 4.1 The preferred option is option 3 in the absence of any national guidance or directives regarding the impact of Covid-19 on the immediate and future sustainability of the care sector.
- 4.2 As reported at 2.6 above the Council is currently predicting a £20.7m combined overspend and loss of income over and above the specific COVID funding received to date. An announcement regarding a further round of funding is believed to be imminent, the amount of funding and the extent to which it will mitigate the Councils shortfall is not yet known. To this extent the allocation of the grant received (and due to be received) is an arbitrary exercise. It is more important that the Council takes whatever measures it feels necessary and appropriate to support the care sector as set out in option 3 (effective from 1 July 2020) and records them in such a way they can be identified as relating to the pandemic. In addition, the Council will continue to reclaim relevant costs from NHSE and I via the CCG, again the time period for this arrangement is uncertain and upon cessation it is anticipated there will be residual costs that will then fall to the Council.
- 4.3 The risks of not acting to extend the support proposed include the potential for multiple, unplanned exits from the care market, resulting in risks to the health and wellbeing of residents associated with moves to other provision, should that provision be available.
- 4.4 There are also risks in relation to continuing higher costs associated with care delivery as a consequence of increased operating costs and more stringent infection control measures, and whilst some of these can be mitigated by the Infection Control Fund, the restrictive nature of the grant conditions mean that some costs cannot be covered through this route.
- 4.4 There is risk of carer breakdown and the need to plan for this both financially and in terms of having respite options available either within people's own homes or in care settings.

5 Consultation

- 5.1 Consultation with the care sector has been ongoing throughout the Covid-19 pandemic. This has taken a number of forms, including daily situation reports, video calls both

individually and collectively and daily newsletters containing key information, guidance and updates.

- 5.2 In relation to fee negotiations prior to the outbreak of Covid-19, formal consultation commenced on 10th March 2020 until 31st March 2020, and proposed on average, a 3.5% uplift to care providers. Feedback was received from 15 providers, and overwhelmingly suggested that the proposed uplift was not sufficient to enable providers to meet their increased costs, and in particular, meet the cost of the uplift in the National Living Wage of 6.2%. The formal consultation process was paused on 1st April 2020.

6 Financial Implications

- 6.1 Extending the 90% bed occupancy guarantee based on current capacity levels until July 2020 will cost approximately £0.400m. The expectation is that the NHS funding route will be utilised as this is an extension to the market capacity strategy in response to supporting hospital discharge, and this has been agreed with the CCG. Were this not to be the allowed by NHS E the cost would revert to the Council and be a call against the resources received to fund the pandemic. It should be noted that this initiative largely, but not exclusively replaces the previously approved block booking of spare capacity within the market referred to in section 2.17.
- 6.2 There is a fair degree of complexity and uncertainty involved when attempting to quantify the cost implication of extending the Financial Support Panel until the end of October 2020. Many unknown impacts will likely be felt within the market over the next year including potential virus outbreaks, PPE supply chain issues, testing and changes to the discharge pathway (discharge to assess). The total sum the Council has approved responding to financial assistance requests from providers, from 1 April to 19 June is £0.437m. On this basis the Council could incur a further £0.582m up until October 2020.
- 6.3 At this stage, NHS England have not announced the funding regime or figures for CCGs. It is expected that this will come as separate “BAU” and “COVID” funding streams. The CCG will seek to obtain funding for this measure through one of these funding streams, but this is currently uncertain.
- 6.4 The allocation of the Infection Control Fund in addition to potentially reducing provider claims should also reduce the financial ask of the Council in terms of paying staff wages in full to those care workers who are isolating, additional staffing and recruitment costs and for steps to limit the use of public transport. The Council will continue to incur costs relating to PPE for care homes. To date PPE requests specifically approved by the finance panel has cost £0.198m with an expected cost of £0.264m to 31 October 2020. This has been agreed as a recharge to NHS E via the CCG until the end of July, but as noted above, CCG COVID funding post-July has not been confirmed, so the latter amount is subject to confirmation.
- 6.4 Opting to pay for commissioned activity rather than actual care delivered within the care at home sector until October 2020 will cost approximately £0.400m. Invoices will continue to be monitored on a monthly basis with an overall reconciliation at the end of the crisis period.
- 6.5 Adopting the 5% uplift within the base costs across all care sectors for the remainder of the year will cost circa £2.37m. From July, for every month the Council is able to continue accessing NHSE funding via the CCG, £0.264m can be offset against the NHS resources.
- 6.6 Taking into account the growing requests from contractors delivering DFG schemes, and basing an estimate on what has been approved so far at panel by applying a cost

premium for PPE and additional labour within future tender applications, the cost to support contractors will be around £0.065m up until 31 October 20.

- 6.7 Based on the 2019/20 cost of providing respite care and assuming a 5% increase is to be expected in the latter part of the year for increased demand and potential carer breakdown, the projected cost is £0.209m.
- 6.8 The total estimated cost from 1 July 20 until 31 October 20 should all recommendations be accepted/ retained is £3.642m as summarised in the table below. This does not include all of the costs and losses of income that the Portfolio expects to incur as a result of COVID19. This will be financed through a combination of Council resources (supported by Government grant subject to availability) and NHS resources. It is important to note that an announcement on further Government resources to support Councils is expected imminently. Any costs that cannot be financed via NHS funding, grants and contributions will have to be addressed by the Council.

	To Date £000	to 31 Jul 20 £000	to 31 Oct 20 £000	Total £000
90% Capacity	309	400	1,200	1,909
Panel Awards	437	145	582	1,164
General PPE	311	103	415	829
Commissioned Activity	300	100	400	800
5% Fee Uplift	731	264	995	1,990
DFG - Works	25	15	50	90
Total	2,113	1,027	3,642	6,782

(Andy Cooper Senior Finance Manager Oldham Council & Ben Galbraith Chief Finance Officer NHS Oldham CCG)

7 Legal Services Comments

- 7.1 Legal Services has worked with Adult Care Service to ensure that the government guidance in PPN02-2020 has been followed and to ensure compliance with the guidance notes surrounding State Aid issues. To date the Council has provided assistance and support to subsidise service providers under State Aid block exemptions, namely the Temporary Framework issued in respect of the COVID-19 emergency and Services of General Economic Interest. Recipients of funding have been invited to self-declare receipt of support from public bodies so that the Council can regularly inform the Department for Business, Energy & Industrial Strategy.
- 7.2 On 9th June 2020 the government issued a further Procurement Policy Note (PPN 04-2020) which sets out information and guidance for public bodies in relation to the recovery and transition from the COVID-19, outbreak. The guidance note is effective from 1 July to 31 October 2020. It updates and builds on the provisions contained in PPN02/20.

“Action

All contracting authorities should:

- Review their contract portfolio, including where they are providing any contractual relief due to COVID-19 and, if appropriate to maintain delivery of critical services, continue or commence measures in line with PPN 02/20.
- Work in partnership with their suppliers and develop transition plans to exit from any relief as soon as reasonably possible. This should include agreeing contract variations if operational requirements have changed significantly.

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- Work in partnership with their suppliers, openly and pragmatically, during this transition to ensure contracts are still relevant and sustainable and deliver value for money over the medium to long term.
 - Continue to pay suppliers as quickly as possible, on receipt of invoices or in accordance with pre-agreed milestone dates, to maintain cash flow and protect jobs.
- 7.3 The Council should be using the next four months to re-assess the interim relief provided to contracted suppliers with a view to assessing the market conditions, in the light of its statutory duty under the Care Act 2014, to ensure the sustainability of the market. In the circumstances, it would be advisable to align any interim relief measures to the time limit of 31st October 2020 imposed by the effective date of the guidance.
- 7.4 The report outlines the requirement to reconsider the uplift to the annual social care fees approved by Full Council at its budget setting meeting in March 2020 and the need for additional support for carers.
- 7.5 When setting the fees, the authority should address the effect of its decision in terms of the quality of the service provided and the sustainability of the providers.
- 7.6 The courts have provided some guidance with regard to the appropriate considerations of a Local Authority when setting fees in relation to the actual costs of providing care. A Local Authority has a statutory duty to provide residential accommodation to categories of adults in its area in need of care and attention which is not otherwise available to them. The duty can be discharged by contracting with a private care home provider. Local authorities are responsible for achieving a responsive, diverse and sustainable market of service providers that can provide high quality, personalised care and support that best meets the needs of people. Local authorities must have regard to the sustainability of the market as a whole including, for example, taking care not to set fee levels below an amount which is not sustainable for providers in the long-term.
- 7.7 Local authorities have to act under the general guidance of the secretary of state who has issued formal statutory guidance in Local Authority Circular LAC (2004) 20 which stated at para.2.5.4 that councils should have due regard to the actual costs of providing care and other local factors. Councils should also have due regard to Best Value requirements under the Local Government Act 1999 to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”. It was held by the Court of Appeal that the circular did not prescribe any methodology which local authorities had to adopt in order to have due regard to the actual cost of providing care. An arithmetical calculation was one way of carrying out the exercise but it was not the only way. Provided some inquiry was made by the decision maker, it was for the decision maker to decide how much attention to pay to it. In one case the fact that the Local Authority had considered the rates and compared them to others in the region and had sought information from one of the providers and carefully considered its accounts, which was sufficient for the decision of the Authority for it to be robust. In paragraph 3.3 of the statutory guidance “a council should be able to demonstrate that this cost is sufficient to allow it to meet assessed care needs and to provide residents with the level of care services that they could reasonable expect to receive if the possibility of resident and third-party contributions did not exist.” Non statutory guidance “Building Capacity and Partnership in Care” points out that local authorities must not use their dominant position to drive down fees. “Fee setting must take into account the legitimate current and future costs faced by providers as well as the factors that affect those costs, and the potential for improved performance and more cost-effective ways of working.”
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- 7.8 Consultation is necessary for this type of decision. As stated above, the statutory guidance states that “local authorities are to have due regard to the actual costs of providing care and other local factors” and to take account of the legitimate current and future costs.”
- 7.9 When making financial decisions the authority must ensure that it takes account of all relevant circumstances and is able to carry out its statutory functions. The council is able to take into account its limited financial resources but must draw a reasonable balance between such limitations and its other duties, including an obligation to make decisions with an awareness of responsibilities under the Equality Act 2010. The public sector equality duties under the Equality Act 2010 extends to cover various protected characteristics, including age and disability, and therefore the Act is relevant here in that there is a potential effect on such people. Under the Act, public authorities have legal duties to have due regard in the exercise of their functions to the need to eliminate discrimination; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 7.10 Case law also suggests that it is good practice to document how decisions were reached. Equality Impact Assessments are not a prescribed requirement but they provide a structured framework which enables the Council to ensure that it considers the equality impact of its decisions, and to demonstrate to others that it has done so.
- 7.11 It is essential that consultation with providers and stakeholders should address the issues raised above to ensure that the Council has the evidence necessary to defend its position when making a decision with regards to the uplift of adult social care fees.
- 7.12 Similarly, it is important that any decisions around the level of support provided to carers is evidence based with appropriate consultation in light of the current circumstances surrounding the COVID -19 pandemic. (Elizabeth Cunningham-Doyle)
- 7.13 Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response and where the consultation spans all or part of a holiday period. Policy makers should consider what if any impact there may be and take appropriate mitigating action. The amount of time required will depend on the nature and impact of the proposal (for example, the diversity of interested parties or the complexity of the issue, or even external events), and might typically vary. The timing and length of a consultation should be decided on a case-by-case basis; there is no set formula for establishing the right length. For a new and contentious policy, 12 weeks or more may still be appropriate. When deciding on the timescale for a given consultation the capacity of the groups being consulted to respond should be taken into consideration. (Salma Yasmeen)

8. **Co-operative Agenda**

- 8.1 This decision relates to the Council supporting the independent care sector and the wider healthcare system to respond to the challenge of Covid-19, by taking all reasonable and practical steps to enable the health and care sector to support some of the most vulnerable members of our community

9 **Human Resources Comments**

- 9.1 There are no direct staffing implications for the Council.
(Emma Gilmartin, HR Business Partner)

10 Risk Assessments

- 10.1 The risks of not acting to extend the support proposed include the potential for multiple, unplanned exits from the care market, resulting in risks to the health and wellbeing of residents associated with moves to other provision, should that provision be available.
- 10.2 There are also risks in relation to continuing higher costs associated with care delivery as a consequence of increased operating costs and more stringent infection control measures, and whilst some of these can be mitigated by the Infection Control Fund, the restrictive nature of the grant conditions mean that some costs cannot be covered through this route.
- 10.3 There is risk of carer breakdown and the need to plan for this both financially and in terms of having respite options available either within people's own homes or in care settings.
- 10.4 Given the level of financial support to Care Homes by Councils since the pandemic there is a risk at a point in time that the total amount of financial support provided both nationally and locally to larger providers could breach State Aid limits.
- 10.5 This report gives authority to ensure continuity of provision until the end of October 2020. There is a risk the occupancy levels will not return to pre-pandemic levels by this date and the option of further financial support to preserve long term capacity may need to be considered.

11 IT Implications

- 11.1 None

12 Property Implications

- 12.1 None

13 Procurement Implications

- 13.1 The Commercial Team agrees to extend the support measures as recommended in the report to support the care sector through the COVID19 pandemic. However, as referred by the Legal Team the current Procurement Policy Note (PPN04-2020) which provides guidance to the contracting authorities to continue supporting their contracted providers where required until 31st October 2020 ensuring delivery of critical services.
- 13.2 The commercial team also recommends the following:
- a. Assess the care market until such time i.e. by end of Oct 2020, with a view to fully understand the additional or further support they may require ensuring their sustainability.
 - b. Assess all available support to the care market from various sources and ensure it is applied proportionately to all providers avoiding any duplication.

(Raj Ahuja, Senior Category Manager)

14 **Environmental and Health & Safety Implications**

14.1 The environmental and health and safety implications relate to the impact of Covid-19 and the increased risk of the spread of infection, which a number of these measures is seeking to address.

15 **Equality, community cohesion and crime implications**

15.1 The proposals relate to actions required which will contribute to the ability to meet the health, care and support needs of the entire Oldham population.

16 **Equality Impact Assessment Completed?**

16.1 No

17 **Key Decision**

17.1 Yes

18 **Key Decision Reference**

18.1 Under Rule 14 an agreement has been made by the Chair of the Overview and Scrutiny Board to authorise the decision in respect of additional expenditure in response to the Covid-19 Emergency.

18.2 The Chair of the Overview and Scrutiny Board has agreed that the decision cannot be reasonably deferred in order to authorise the support to Covid-19 response. The support is in line with the Council's Budget and Policy Framework. The decision is exempt from call-in.

19 **Background Papers**

N/A

20 **Appendices**

Appendix number or letter	Description
1	Emergency Decision 01/04/20
2	Support to Adult Social Care Providers During Covid-19
3	LGA Statement – summary of the approach proposed by local government – ASC final
4	Institute of Public Care - Surviving the Pandemic: New challenges for Adult Social Care and the Social Care Market
