

Committee Name and Date of Committee Meeting

Cabinet – 20 July 2020

Report Title

Further Financial Support for Adult Social Care providers to mitigate the impact of the Covid-19 Pandemic

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Anne Marie Lubanski, Strategic Director of Adult Care, Housing and Public Health

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Ward(s) Affected

Borough-Wide

Report Summary

The Council has been allocated two un-ringfenced grants totalling £16.2m from government to support the Council in meeting additional costs associated with its response to Covid-19 and a subsequent ring-fenced grant through the Infection Control Fund of £3,008,676 specifically for Adult Social Care.

Within the Secretary of State for Health and Social Care, Matt Hancock's grant letter issued on 19th March 2020 were specific requirements to support Adult Social Care based on the guidance previously issued to local authority commissioners by the LGA, ADASS and the Care Provider Alliance. The Council has responded to the requirements set out by the Secretary of State's letter through Cabinet reports and Officer Executive Decision Records to financially support the Adult Social Care market in Rotherham. However, these measures have been time limited and are due to expire on 30th June 2020.

Lower numbers of reported Covid-19 infections and deaths have led the government to reduce the threat level from 4 to 3 with the virus no longer judged to be "high or exponentially rising". However, despite the welcome improvements nationally and locally in combatting the virus, this has not diminished the impacts on Adult Social Care providers who support the most vulnerable people in society. The people supported are in many cases at high risk should they contract Covid-19. In response to this, the Council proposes to extend the financial support measures agreed by Cabinet on 11th May 2020 and by previous Officer Executive Decision Making to the

Adult Social Care sector for a further 3-month period up until 30th September 2020. This report outlines the proposed approach to facilitate support for the sector. The measures proposed within the report are an extension of previous decisions, with one new addition in terms of proposed cash grants for Home Care and Support providers.

Recommendations

That the funding arrangements currently in place be extended for a further three months (backdated from 1st July 2020) until 30th September 2020 and that the costs be funded from the government grant referred to within the report:

1. Care Homes for Older People

- A. Continue advance additional payments of £15k to each Older Peoples' Care Home in Rotherham (a total cost of £495k).
- B. Continue provision of a £100k contingency fund for Adult Care to utilise should additional emergency funding be required for Older People's Care Homes approved by Cabinet (11th May 2020).

2. Home Care and Support Services

- A. Continue advance additional payments of £15k for each contracted Home Care and Support provider (a total cost of £195k).
- B. Continue the approach of 100% payment of planned hours to contracted Home Care and Support providers until 30th September 2020.
- C. Continue to cover the cost of suspended packages and the application of the 20% tolerance rule within the contract at 100% cost of planned care hours for the contracted Home Care and Support providers until the 30th September 2020.
- D. Continue provision of a £200k contingency fund for Adult Care to utilise should additional emergency funding be required for contracted Home Care and Support providers.

3. Learning Disability and/or Autism

- A. Continue to pay the providers for people with a Learning Disability/Autism additional costs as defined by service area in the table at paragraph 3.5.4 until the 30th September 2020.
- B. Continue the provision of a £100k contingency fund for Adult Care to utilise should additional emergency funding be required for contracted residential/supported living providers for people with a Learning Disability/Autism approved by Cabinet (11th May 2020).

4. Review

- A. That the position be will be continually reviewed on a monthly basis during the 3-month period up to 30th September and that the Council will work with Adult Social Care providers to transition from these arrangements in accordance with PPN/04 20 Supplier Relief (Recovery & Transition).

List of Appendices Included

- Appendix 1 Initial Equality Screening Assessment Form
- Appendix 2 Equality Analysis Form

Background Papers

[Government advice: Secretary of State Matt Hancock MP Letter 19th March 2020 to Local Authority Chief Executives](#)

[Report to Cabinet – 11 May 2020 – Financial Support for Older Peoples Residential Care Homes during the Covid-19 Pandemic](#)

[Report to Cabinet – 11 May 2020 – Financial Support for Learning Disability Day Opportunity Providers during the Covid-19 Pandemic](#)

[Report to Cabinet – 15 June 2020 – Finance Update and Budget Monitoring Report](#)

[Delegated Decision Record - COVID-19 - LGA Guidance on Home Care Provider Payments – 1 April 2020](#)

[Delegated Decision Record - Covid-19 Revision to approach for Home Care Provider Payments – 5 June 2020](#)

[Delegated Decision Record – COVID-19 - Payments and Support to Suppliers \(PPN02\) – 8 April 2020](#)

[Delegated Decision Record – COVID-19 - PPN/04 20 Supplier Relief \(Recovery and Transition\) – 26 June 2020](#)

Consideration by any other Council Committee, Scrutiny or Advisory Panel
None

Council Approval Required
No

Exempt from the Press and Public
No

Further Financial Support for Adult Social Care providers to mitigate the impact of the Covid-19 Pandemic

1. Background

- 1.1 The Secretary of State for Health and Social Care, Matt Hancock wrote to all local authorities on the 19th March outlining the financial support available to support the response to Covid-19. The Council has since been allocated two un-ringfenced grants totalling £16.2m. Within the grant letter were specific requirements to support Adult Social Care based on the guidance previously issued to local authority commissioners by the LGA, ADASS and the Care Provider Alliance to Adult Care commissioners entitled: Social care provider resilience during Covid-19: guidance to commissioners.
- 1.2 The Secretary of State's letter specifically reminded local authorities of the need to support the Adult care provider market, though it did not specifically reference the Care Act, the inference was strong.
- 1.3 The Council continues to work to the requirements of the Care Act duty to promote:
 - "the efficient and effective operation of the market for adult care and support as a whole."
 - "a sustainable and diverse range of care and support providers, continuously improving quality and choice, and delivering better, innovative and *cost-effective outcomes that promote the wellbeing of people who need care and support.*"Care and Support Statutory Guidance, Section 4.2

The Council therefore continues to have a legal obligation to support the adult care and support market in Rotherham to enable it to thrive, remain financially viable and most crucially deliver vital services during the on-going period of the Covid-19 threat.

- 1.4 The Secretary of State's letter specifically highlighted that the funding should be utilised to support the following activity:
 - a. Protecting [home care] providers' cashflow by accelerating payments and paying 'on plan' where appropriate. We recognise that where the support providers are able to provide is significantly below plan, commissioners may have needed to fund support elsewhere.
 - b. Helping providers deal with the costs of increased workforce pressures due to higher sickness absence caused by the outbreak, but also due to self-isolation and family caring responsibilities. Care providers will need to be able to deploy their staff flexibly. They may need to hire new staff quickly or increase use of agency staff, creating additional cost pressures. The funding could also help providers support workers on zero-hour contracts.
 - c. Facilitating arrangements for adjusting packages as required in a timely and non-bureaucratic way, especially where providers are having to operate beyond normal services in order to respond to need.

- d. Ensuring councils can adjust care packages in accordance with guidance on prioritisation and social work ethics.
- e. Helping providers to meet costs associated with enhanced infection control and the protection of staff.
- f. Ensuring there is clear and effective transfer of information between commissioners and providers on the general market picture, including the picture around self-funders.
- g. Finding supportive and creative ways to support providers in handling wider pressures caused by Covid-19.

1.5 In response to the Secretary of State's letter the Council put in place a package of financial support for three of the main Adult Social Care sectors, Care Homes for Older People, Learning Disability Day Opportunities provision and Home Care and Support services. This was facilitated through:

- Cabinet report 11 May 2020 Financial Support for Older Peoples Residential Care Homes during the Covid-19 Pandemic (Pages 21 - 43)
- Cabinet report 11 May 2020 Financial Support for Learning Disability Day Opportunity Providers during the Covid-19 Pandemic (Pages 45 - 68)
- Officer Executive Decision published on 1 April 2020 on the Council website for Home Care and Support Services (ACHPH) COVID-19 - LGA Guidance on Home Care Provider Payments

1.6 These existing arrangements are all due to expire on 30th June as this was the initial period for support in line with the original LGA guidance.

1.7 Details of total Council expenditure to support the Adult Social Care provider market were also published on the Council's website as per government requirements on 29th May 2020. This included direct financial support including cashable elements of mutual aid.

2. Key Issues

2.1 Lower numbers of reported Covid-19 infections and deaths have led the government to reduce the threat level from 4 to 3 with the virus no longer judged to be "high or exponentially rising". This has resulted in the easing of a variety of 'lockdown' measures introduced on 23rd March designed to support social distancing and prevent the spread of the virus. However, despite the welcome improvements nationally and locally in combatting the virus, this has not diminished the impacts on Adult Social Care providers who support the most vulnerable people in society. The people supported are in many cases at high risk should they contract Covid-19.

- 2.2 Adult Social Care providers have had to adapt to new ways of working that were not envisaged prior to the pandemic to mitigate the spread of the virus. These include increased usage of additional Personal Protective Equipment (PPE), enhanced infection control regimes, frequent testing of frontline social care staff and managing safe service delivery when staff have to self-isolate as a result of positive test results. Such practices have led to increased costs for providers, highlighted by the LGA, ADASS and the Care Provider Alliance in recent press releases.
- 2.3 The Infection Control Fund announced on the 14th May the Minister for Care, Helen Whatley, was designed to support Adult Social Care providers to reduce the rate of transmission in and between care homes and support wider workforce resilience. The fund was allocated to local authorities in addition to the funding already provided to support the Adult Social Care sector during the Covid-19 pandemic outlined in 1.1 above. The allocation for Rotherham was £3,008,676 and though this financial assistance was gratefully received, it was in the form of a ring-fenced grant with specific national conditions.
- 2.4 The Council has ensured that as per national guidance, 75% of allocated funding (£2,256,507) will be given to the 84 Care Quality Commission (CQC) registered care home establishments within the borough. It was agreed by Cabinet through the 15 June 2020 Finance Update and Budget Monitoring Cabinet report that the remaining 25% of the discretionary element of the allocated funding (£752,169) would be shared with all 41 eligible domiciliary care organisations registered with CQC and currently operating within the borough as per the option provided within the national guidance.
- 2.5 Under the Infection Control Fund grant fund conditions, care homes were unable to use the grant for expenditure on PPE or deep cleans of their premises, whilst domiciliary care organisations (home care and support / supported living providers) were limited to the purchase of PPE or to support the workforce to maintain effective infection control. There was therefore limited scope for providers to determine spend priorities driven by Covid-19 outside of the grant conditions. The grant did not also address support for Learning Disability Day Opportunity Providers.
- 2.6 It is therefore proposed to revisit the previously agreed recommendations to support three of the main Adult Social Care sectors, Care Homes for Older People, Learning Disability Day Opportunities provision and Home Care and Support services. The proposals would enable the extension of the period of application for a further 3-months, subject to regular review, taking the proposals up to 30th September.

3. Options considered and recommended proposal

- 3.1 In line with commitments and best practice from the original LGA guidance, it is proposed to continue payments to Older People's Care Homes and contracted Home Care and Support providers on a weekly basis for a further 3-month period (back dated to 1 July 2020 and ending on 30th September 2020). This will support their cashflow and ensure the finances are in place to maintain their workforce.

- 3.2 All Adult Social Care providers will be able to access the Council's fast track recruitment and training offer – the Rotherham Skills Academy. This can support the independent/voluntary sector and also people with direct payments to recruit ready-made applicants to supplement staff shortages as an alternative to agency staffing.

3.3 **Care Homes for Older People**

- 3.3.1 It is proposed that the Council provides further direct financial support to the 33 Independent Sector Care Homes for Older People currently operating in the Borough with a total capacity of 1,657 beds.

- 3.3.2 Options to be considered:

Option 1 (recommended option)

Cash Grants - Awarding each Care Home a fixed upfront cash payment. £15k backdated from 1st July 2020. This would support all Older People's Care Homes in Rotherham and consequently the wider Health and Social Care system, recognising the increase in the level of voids directly attributable to Covid-19 and currently running at circa 26% of total bed capacity in addition to increased PPE costs and deep cleaning costs not covered by the Infection Control Fund. This would have a total cost of £495k plus continuation of a contingency fund of £100k approved by Cabinet (11 May 2020).

Note: All care homes would receive the same level of funding, regardless of size, bed availability, bed occupancy rates and number of self-funders in care homes.

Option 2

Continue with existing contractual/payment arrangements only – this would increase the risk of care home failure due to the additional costs being incurred. (not recommended).

3.4 **Home Care and Support**

- 3.4.1 The Council currently commissions 16,289 hours of home care per week to 1208 customers. It is proposed that the Council facilitates further direct financial support to the 13 contracted independent/voluntary sector Home Care and Support providers currently operating in the Borough (Tier 1, Tier 2 and specialist).

- 3.4.2 Options to be considered:

Option 1 (recommended option)

- The Council proposes to continue the approach of 100% payment of planned hours to contracted Home Care and Support providers from 1st July until 30th September 2020, subject to monthly review. The estimated cost would be £400k-£500k assuming a three-month period.
- The Council proposes to continue to cover the cost of suspended packages and the application of the 20% tolerance rule within the contract at 100% cost of planned care hours for the contracted Home Care and Support providers from 1st July until 30th September 2020, subject to monthly review.

- Cash grants - Awarding each contracted Home Care and Support provider a fixed upfront cash payment. £15k backdated from 1st July 2020. This would support the contracted Home Care and Support providers in Rotherham and consequently the wider Health and Social Care system, recognising for example, the increase in PPE costs, but enabling more flexibility in how providers can utilise the funding to respond to Covid-19 pressures than the Infection Control Fund. This would have a total cost of £195k

Note: All contracted Home Care and Support providers would receive the same level of funding regardless of the number of weekly care hours provided

- That the £200,000 contingency fund referenced in the Officer Executive Decision record will remain open

Option 2

Continue with existing contractual/payment arrangements only – this would increase the risk of Home Care market failure due to the additional costs being incurred and a reversal of some of the LGA guidance recommendations such as 100% payment of planned hours. (not recommended).

3.5 Learning Disability Day Opportunity Providers

- 3.5.1 The Council supports 768 customers aged over 18 with a Learning Disability and/or Autism accessing 1382 placements/services. The governments guidance on social distancing enacted on 23rd March as a response to Covid-19 has led to all day opportunities providers ceasing to deliver any building or community based services to people with a Learning Disability and/or Autism, though some of them are continuing to provide a limited offer through telephone and Zoom/Skype support to individuals.
- 3.5.2 It is proposed that the Council would continue to fund directly commissioned providers during the period of enforced closure in order to keep them financially viable. This would be based on average payments and support would end when services can safely reopen and generate income again if this occurs during the proposed 3-month window as 'lockdown' restrictions are further eased.
- 3.5.3 A consequence of the closures of the day opportunities offer is significant for residential and supported living providers who have residents that normally attend day opportunities provision for up to 8 hours a day, Monday-Friday. They are currently paid a set number of hours, excluding the periods of day support and therefore will need to make a request for payment for providing additional care and support hours as a result of the closure of day opportunities services accessed by the people who they accommodate.

3.5.4 **Option 1 (recommended option):** Pay the providers additional costs as defined by service area in the table below for the period 1st July to 30 September 2020. This is the recommended option.

This approach would differentiate the type of service provision and would consider financial stability considering the nuanced funding mechanisms either through commissioned services or through the use of Direct Payments.

Cohort	Proposed Offer	Customer Numbers*	Total estimated costs (£000)**
Supported Living	To pay providers based on the contingency hours for providing additional support to people who can no longer attend day opportunities provision.	77	151.7
Residential	To pay residential providers a fixed fee of £50 for every planned session of day opportunities per week that people were due to attend (and where providers are now providing this support instead)	41	84.7
Commissioned Day Opportunities Services	To provide financial support to providers who have had to close or are now providing an alternative support service. This will be agreed on a provider by provider basis and subject to the conditions below.	130	402
Direct Payments Day Opportunities Micro Enterprises	To provide financial support to providers who have had to close or are now providing an alternative support service. This will be agreed on a provider by provider basis and subject to the conditions below.	128	295
Total			933.4

* Current service

** Based on 3 months. Estimates are based on data currently available and the actual costs may be lower e.g. depending on alternative financial support being accessed by providers. In addition, the provision of a £100k contingency approved by Cabinet (11th May 2020) in respect of any exceptional costs directly attributable to Covid-19 incurred by residential and supported living providers remains in place.

3.5.5

Option 2: Continue with existing contractual/payment arrangements only – this would increase the risk of market failure for commissioned day opportunity services as they would not be able to discharge their contractual requirements and receive payment if social distancing measures continue to apply. Further, due to the inability of some of the commissioned day opportunity organisations and micro-enterprises not being able to generate income from direct payments, there is an increased risk of financial viability being compromised. (not recommended)

- 3.6 The request for additional funding as set out above, must be predicated on the condition that eligible organisations who continue to receive additional support over the next 3-months:
- apply for central government support e.g. payment of 80% of staff wages if staff are unable to work
 - apply for business rates relief where applicable
- 3.7 The Council will fund cost pressure up to the contract value (or average spend) after deducting all other financial support available.
- 3.8 Where organisations may be eligible for central government support but the Council could request that staff are redeployed to offer alternative support e.g. as per some of the day opportunities providers, the Council would consider funding the 80% as well where this is agreed with Commissioners that alternative work is of significant value.
- 3.9 It is recommended to Cabinet for approval that the funding arrangements currently in place are extended for a further three months (backdated from 1st July 2020) until the 30st September 2020 and that the costs are funded from the government grant referred to within the report:

1. Care Homes for Older People

- A. Continue advance additional payments of £15k to each Older Peoples' Care Home in Rotherham (a total cost of £495k).
- B. Continue provision of a £100k contingency fund for Adult Care to utilise should additional emergency funding be required for Older People's Care Homes approved by Cabinet (11th May 2020).

2. Home Care and Support Services

- A. Continue advance additional payments of £15k for each contracted Home Care and Support provider (a total cost of £195k).
- B. Continue the approach of 100% payment of planned hours to contracted Home Care and Support providers until 30th September 2020.
- C. Continue to cover the cost of suspended packages and the application of the 20% tolerance rule within the contract at 100% cost of planned care hours for the contracted Home Care and Support providers until the 30th September 2020.

- D. Continue provision of a £200k contingency fund for Adult Care to utilise should additional emergency funding be required for contracted Home Care and Support providers.

3. Learning Disability and/or Autism

- A. Continue to pay the providers for people with a Learning Disability/Autism additional costs as defined by service area in the table at paragraph 3.5.4 until the 30th September 2020.
- B. Continue the provision of a £100k contingency fund for Adult Care to utilise should additional emergency funding be required for contracted residential/supported living providers for people with a Learning Disability/Autism approved by Cabinet (11th May 2020).

4. Review

- A. That the position be will be continually reviewed on a monthly basis during the 3-month period up to 30th September and that the Council will work with Adult Social Care providers to transition from these arrangements in accordance with PPN/04 20 Supplier Relief (Recovery & Transition).

- 3.10 The Council will adhere to the government guidance outlined in the Procurement Policy Note, Supplier Relief Due to Covid-19 (PPN 02/20) to ensure that the principles pertaining to a transparent reconciliation processes are followed. There is a requirement that providers operate on an open book basis and the Council would be looking to recoup any unspent monies. Supplier relief is not allowed to fund profit. Any advance payments to providers should be reconciled against actual expenditure at a later date and any over provision be reimbursed to the Council.
- 3.11 For those Providers where the Council holds formal contracts, the proposals outlined in this report are in line with Cabinet Office guidance outlined in Procurement Policy Note (PPN) 02/20 (Supplier Relief Due to Covid-19) and more recently PPN/04 20 (Supplier Relief – Recovery & Transition). The most recent PPN advises for authorities to work with their providers to establish transition plans away from Supplier Relief by the end of October 2020. There is a requirement for Providers to operate on an open book basis, not profit from any relief granted and whilst multiple streams of relief can be sought and granted, they should not be for the same purpose (i.e. the Council should not be providing relief for staffing costs where staff have been furloughed through the Coronavirus Job Retention Scheme (CJRS)). This will require reconciliation processes, and any over provision reimbursed to the Council.
- 3.12 Where relief is granted, it is recommended that contract variations or grant conditions, where appropriate are entered into to formally document the agreement made.
- 3.13 For those Providers where there is no Council contract, the Cabinet Office guidance does not apply, although the recommendations outlined in this report are within the spirit of this guidance.

4. Consultation on proposal

- 4.1 The report has been produced in response to the Covid-19 pandemic and the need for the Council to ensure the financial stability of the Adult Care market. Consequently, there has been limited opportunity to consult externally on the proposals.
- 4.2 The Council has however considered written representations received from a range of Care Homes, Home Care and Support and Learning Disability providers operating in the borough and the LGA guidance to inform the approach and recommended option.

5. Timetable and Accountability for Implementing this Decision

- 5.1 It is proposed that should the recommendations be taken forward, that any payments made to Adult Social Care providers currently operating in the borough are backdated to the 1st July 2020.
- 5.2 The proposed financial support would be for an initial period of up to 3-months (30th September), effective from 1 July 2020 and subject to regular review considering the impact of the Covid-19 pandemic on the Adult Social Care providers currently operating in the borough and supported by these proposals.

6. Financial and Procurement Advice and Implications

- 6. The payment of cash grants to Care Homes for Older People would be an additional cost of up to £495k for the 3-month period, which results in a cumulative total of £1.090m when including payments already approved by Cabinet for April to June. This additional cost is over and above the existing budget.
- 6.2 The payment of cash grants to contracted Home Care and Support providers would be an additional cost of up to £195k for the 3-month period, resulting in a cumulative total of £395k when including payments already approved for the period April to June. Again, this cost is over and above the existing approved budget.
- 6.3 The Council currently pays Home Care and Support providers based on the actual hours delivered. This varies from planned hours by 10-12% on average. If paying based on 100% of planned of hours, the Council would expect to incur an additional cost of £1.5-£2m per annum. The figures in the report reflect the pro rata impact of paying based on planned hours for each option. The amount of income collected would remain unchanged as the Council can only charge for hours delivered.

- 6.4 For the proposed payments to Learning Disability and/or Autism providers, the Residential and Supported Living elements would be an additional cost of up to £638.4k for the additional 3 month period, which results in a cumulative total of £984.9k when including payments already approved for April to June. This cost is over and above the existing budget. The proposed payments for commissioned day opportunities are budgeted (£295k) but the Council may not receive a service: the payments are to ensure business continuity. Actual expenditure may be lower depending on alternative funding support accessed by providers and any reduction in costs due to the temporary closure of services.
- 6.5 Where the providers of care in the case of direct payments are not directly commissioned by the Council, the contractual relationship exists between the provider and the individual who is receiving the care. These circumstances fall outside the scope of Procurement Regulations, therefore the application of PPN 02/20 is not a mandated requirement as set by Cabinet Office. However, the Council recognises that in these circumstances the provider is delivering care to vulnerable adults in the same manner as those providers the Council directly commissions, and therefore to maintain continuity of care and ensure financial stability, the Council is seeking to adopt the principles of Supplier Relief as if they were the Council's own contracted providers.
- 6.6 In addition to the estimated cost for each option (as stated above in section 3), increasing the regularity of payments to Care Homes from fortnightly to every week would have a short-term impact on the Council's cashflow, but this would be within any one month. It would require paying c. £700k per week as opposed to c. £1.4m every 2 weeks.
- 6.7 Deferring the move to 4 weekly payments for Home Care and Support Services would have a short-term impact on the Council's cashflow but this would be within any one month. It would require paying c. £300k per week as opposed to c. £1.2m every 4 weeks.
- 6.8 This will need to be managed alongside other changes to payments and receipts as a result of impacts and decisions linked to Covid-19.
- 6.9 This report sets out recommendations which are consistent with Cabinet Office guidance and the related delegated officer decisions of 8th April and 26th June 2020 relating to supplier relief (see background documents to this report). Changes to the payment terms and reconciliation of the cash grant should be confirmed in writing with the providers through a contractual variation to the contract terms which can be enforced.
- 6.10 The costs associated with this decision would be an appropriate use and allocation of some of the Government Grant provided to manage the costs associated with the Covid-19 pandemic.

7. Legal Advice and Implications

- 7.1 Under the Care Act 2014 there is a requirement that the local authority supports the provision of services in its area and ensures, so far as it is possible, that those services are able to meet the needs of individuals in its area. The Covid-19 crisis has placed significant strain upon providers and the proposed financial support by the Council will ensure that they can continue to operate in an environment where costs have increased, amongst other things, due to illness amongst staff, higher demand for PPE and the requirement for carers to meet the needs of individuals who may have Covid-19.
- 7.2 Legal Services (in consultation with colleagues in Finance, Procurement and Adult Care, Housing and Public Health) has produced standard Grant Conditions which accompany grants of the kind described in this Cabinet Report. These Grant Conditions cover issues like payment, monitoring rights of the Council, and the right of the Council to require repayment if grant funds are either misused by the recipients or if they are unused by a specified deadline. By accepting grant funds, a recipient is deemed to have accepted the Council's Grant Conditions.
- 7.3 State aid issues have been considered. The main points:
- It is ultimately a matter for recipients to determine whether or not any funds it receives from the Council is unlawful state aid. Recipients bear the financial risk on this issue. The Council's main risk is reputational. The Council is not in a position to provide recipients with legal advice on the matter.
 - For state aid to be unlawful, there has to be some element of selectivity in the assistance (i.e. the state helps operators X and Y, but not Z). State aid is not unlawful if it helps all operators non-selectively. The grants to the care homes described in paragraph 3.3 of this report appear to be non-selective (i.e. available to all Care Homes for Older People in the borough regardless of whether they currently have contracts in place with the Council). Therefore, it appears this grant does not even meet one of the basic requirements for state aid to be unlawful.
 - Other grants described in this report (in paragraphs 3.4 and 3.5) do appear to be restricted to operators who have a contract with the Council. The grant does not appear to be available to other operators who do not currently hold Council contracts. Therefore, these grants do appear to be selective. There would be other grounds to argue that these grants are not unlawful state aid:
 - There is an argument these services are 'services of general economic interest; (or SGEIs) and is therefore exempt from state aid rules. Messages from central government suggest that central government thinks this is the case.

- Even if the services are not SGEIs, the EC has (as part of its framework for Covid-19 relief) allowed recipients to receive up to €800,000 in connection with the pandemic without breaching state aid rules. Grants from all public sources (e.g. central government, other local authorities) must be included in this calculation. Therefore, it seems likely that grants to operators who solely operate in Rotherham will comfortably fall below this threshold. However, this might not be the case for (say) national operators who are receiving similar grants from (say) 150 other local authorities across the country.

8. Human Resources Advice and Implications

- 8.1 There are no Human Resources implications for the Council as a result of the recommendations being taken forward by Cabinet as the financial support proposed is solely for the Independent Sector.
- 8.2 The proposed recommendations should have a positive impact for the independent sector in providing additional financial support with a direct aim of sustaining the businesses during the Covid-19 pandemic and ensuring that they can retain key staff delivering care and support to people with Adult Social Care support needs.

9. Implications for Children and Young People and Vulnerable Adults

- 9.1 There are no implications for Children and Young People as a result of the proposed recommendations as they apply to Adults only. Implications for Adults in receipt of Adult Social Care commissioned services are positive as the proposals ensure continuity where possible and provide for market stability of services that they access throughout the Covid-19 pandemic.

10. Equalities and Human Rights Advice and Implications

- 10.1 An Equality Analysis has been produced following the completion of the Initial Equality Screening Assessment Form. Both documents are attached at Appendix 1 and 2 to this report
- 10.2 The implications of the recommended proposals are positive in terms of financially supporting Adult Social Care commissioned services to continue to discharge their care and support duties to people with disabilities and older people throughout the Covid-19 pandemic.

11. Implications for Ward Priorities

- 11.1 The Adult Social Care services referenced in this report are situated across the whole of the borough.

- 11.2 The Council Plan has a specific vision that *Every adult is secure, responsible and empowered*. The Council want to help all adults enjoy good health and live independently for as long as possible and to support people to make choices about how best to do this. The Council wants a Rotherham where vulnerable adults, such as those with disabilities and older people and their carers have the necessary support within their community. Supporting people to continue to access services in their own home, in the community and to reside in their care home contributes to this aim at a local level.

12. Implications for Partners

- 12.1 In addition to older people directly funded by the Council permanently residing in Care Homes for Older People, the homes also play a key role in the hospital discharge pathway. Bed spaces are purchased by the Rotherham Clinical Commissioning Group (CCG) and the Rotherham NHS Foundation Trust (TRFT) to enable medically fit people to be discharged and rehabilitated prior to going home or being admitted into a Care Home of their choice. The CCG also funds Home Care and Support Services for people eligible for Continuing Healthcare funding and some provision for people with a Learning Disability and/or Autism who have additional health needs.
- 12.2 Usually spot purchase arrangements for Care Home beds are made throughout the winter period, but this has been extended by health partners as a result of the surge planning in response to the Covid-19 pandemic. The Rotherham Health and Social Care system therefore has a vested interest in the stability and financial sustainability of Care Homes and Home Care Support services, with the latter delivering the *Home First* provision. The recommended Options at 3.3 and 3.4 specifically support this aim.

13. Risks and Mitigation

- 13.1. The primary risk of not providing additional financial support, in addition to any mutual aid to the referenced Adult Social care services for people with disabilities and older people is that they become financially unsustainable and unable to effectively discharge care and support to the people they support. The Covid-19 pandemic has led to increased staff absences and an upward trajectory in ancillary costs which can further exacerbate financial risk for independent/voluntary sector providers and micro-enterprises.
- 13.2 The recommended options at 3.3, 3.4 and 3.5, if accepted by Cabinet should alleviate immediate financial pressures on independent/voluntary sector providers and micro-enterprises.

14. Accountable Officers

Nathan Atkinson, Assistant Director, Strategic Commissioning

Approvals obtained on behalf of Statutory Officers:-

	Named Officer	Date
Chief Executive	Sharon Kemp	26/06/20
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	25/06/20
Head of Legal Services (Monitoring Officer)	Stuart Fletcher	25/06/20

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