

FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

CABINET

Thursday, 10 February 2022

Report of the Executive Director-Adult Social Care

**Retention Payments for Homecare workers in Private, Voluntary, and
Independent market**
(Cabinet Member for Adult Social Care)

1. Divisions Affected

1.1 County-wide

2. Key Decision

2.1 Yes

3. Purpose

3.1 To seek cabinet approval of an Officer Decision made on the 21st December 2021, following agreement of the Corporate Management Team on 16th December 2021, to administer a one-off grant available to registered domiciliary care providers in the Private, Voluntary and Independent market in Derbyshire to pay a retention payment to workers remaining employed by their organisation through the winter months.

4. Information and Analysis

4.1 This is a one-off action to retain the existing workforce capacity at a time of acute seasonal pressures alongside increasing infection rates associated with the Omicron variant of the coronavirus. The impact of this retention payment will be evaluated via workforce and capacity data and qualitative information provided by providers.

To support retention in the Private Voluntary and Independent domiciliary care workforce at a time of increased demand with an existing substantial capacity gap that will:

- Support delivery of services to Derbyshire residents with social care needs living in their own homes who would face substantial risks to their safety, health and wellbeing without the continued delivery of such services
- Retain our domiciliary care capacity to prevent admissions and support discharges out of NHS acute settings
- Mitigate against the risks associated with increased infection rates and staff absence in the PVI domiciliary care market

There has been increasing demand for support at home over a period of 4 years. This demand is related to several factors including: changing expectations of people who have social care needs and from their families for support at home as opposed to permanent admission to residential care; increased demand from the NHS to facilitate hospital discharge much more quickly and to reduce non-elective admissions to hospital and the Adult Social Care Better Lives strategy which seeks to support people to retain their independence and continue to live independent lives in their own homes in the community.

Workforce capacity has not increased in line with the increase in demand and, whilst workforce capacity has been challenging in domiciliary care services for several years, this has been exacerbated by the opening up of other parts of the job market following the loosening of covid restrictions earlier in the year, the payment of incentives and bonuses to new workers by some employers in logistics and retail, low unemployment rates in Derbyshire and Derby and the impact of the Covid-19 pandemic with which has resulted in many leaving the caring profession. As the UK is experiencing high infection rates associated with the Omicron variant, sickness absence associated with infection is likely to also increase over the next few months alongside an increase in demand associated with seasonal pressures and capacity gaps due to care workers leave over the festive period.

Significant waiting lists have developed for domiciliary care in Derbyshire over the past 4 years with these currently being at their highest with 413 people without their required homecare package on the 15/12/21. This impacts on people's safety, health, and wellbeing, leads to increasing safeguarding concerns and can lead to increased deterioration often resulting in more intensive intervention by social care and health, including hospital admission. It also causes significant delays in hospital discharge and discharge from rehabilitation beds and from the Council's short-term service which supports people to maximise their independence and have reduced or no ongoing needs for social care services in accordance with the requirements of the Care Act. It also creates new demand for other services, including health, and results in the Council being unable to deliver its statutory duties.

Due to extremely high occupancy levels in hospital and continued high demand alongside the likely additional demand associated with the Omicron variant, health colleagues are taking all possible steps to maintain the acute hospital services and require all partners to also deliver actions to protect and maintain capacity in the acute hospitals.

In order to mitigate against the risks associated with further reductions in the domiciliary care workforce capacity, the Clinical Commissioning Group has provided funding of £2.1m across Derbyshire to make a retention payment of up to £500 to all homecare workers by way of a grant to providers.

Full consideration of this decision has been made by legal, finance and HR services with specialist advice obtained from Counsel on the risks associated with the Council administering payment on behalf of the Clinical Commissioning Group.

This approach was communicated to regulated providers of domiciliary care in the Private, Voluntary, and Independent (PVI) sector in Derbyshire on the 22nd December 2021.

4.2 The funding of £2.1m for Derbyshire is being provided by the Clinical Commissioning Group in the context of significant workforce capacity challenges across this market in Derby and Derbyshire which impact on the health, wellbeing and safety of people who are waiting for such services, but for whom there is no current capacity, and which also impacts adversely on hospital discharge and demand for acute and community health services.

5. Consultation

5.1 This is not a decision that would normally have required consultation.

6. Alternative Options Considered

6.1 Alternative options considered include:

- to take no action and continue to maintain the current position, doing this would very swiftly lead to a critical lack of capacity to deliver to urgent and essential current commitments for people living in the community and also cause a blockage on hospital discharge.
- continue to provide support via Joined Up Careers Derbyshire to the Private, Voluntary, and Independent market with rolling recruitment and this continues alongside the development and delivery of a comprehensive health and social care workforce strategy, but the impact has not been significant and the imperative currently is to retain the workforce that is already available via the payment of a one-off retention payment

7. Implications

7.1 The risks associated with his approach have been considered in detail from a human resource, legal, financial, corporate and Adult Social Care perspective and appropriate mitigations have been identified and will be implemented. It is a one-off initiative approach, and the impact will be reviewed and reported corporately as well as into the health and social care system.

The risk to the authority if unable to retain sufficient capacity is a failure to deliver its statutory duties. There would also be significant risks to Derbyshire residents many of whom would not have access to the support they require to remain safe in their own homes in addition to the risks associated with delayed hospital discharges for people medically fit to leave hospital and to the acute hospital in relation to inadequate in-patient capacity. The Council would also face a reputational risk if no action taken.

8. Background Papers

8.1 Officer Decision Record dated 21/12/2021

9. Appendices

9.1 Appendix 1- Implications.

10. Recommendation(s)

That Cabinet:

- a) Note the challenging position of Adult Social Care regarding sufficiency in the homecare market.
- b) Note the receipt of the funding provided by Derby City and Derbyshire Clinical Commissioning Group and support the use of this to fund retention payments to homecare workers in Derbyshire's Private, Voluntary, and Independent sector.
- c) Note and support the decision made by Helen Jones, Executive Director Adult Social Care and Health, to make retention payments to homecare workers employed in the Private, Voluntary, and Independent sector.

11. Reasons for Recommendation(s)

- 11.1 It is expected that a retention payment will lead to a reduction in the number of people leaving their employment in the Private, Voluntary, and Independent Homecare sector and, therefore, protect the existing capacity in this market which is used to support those people with social care and health needs.
- 11.2 The retention of this capacity will support the Council's delivery of its statutory duties.

12. Is it necessary to waive the call-in period?

- 12.1 Yes, permission was sought to waive the call-in period Cllr Wharmby, Chair of the Health Improvement and Scrutiny Committee, confirmed her approval of the decision to be made without the requisite notice and also approved the waiver of the call-in period for this decision on the 20/12/2021.

Report Author: Gemma Poulter
Contact Details gemma.poulter@derbyshire.gov.uk

Appendix 1

Implications

Financial

1.1 This will be funded in full from the £2.1m made available to the Local Authority by Derby & Derbyshire CCG. There will be no impact on the current budgetary position of Adult Social Care & Health.

1.2 To enable consistent pro-rata payments to be made across those eligible, a formula will be developed by DCC and given to each provider in order to calculate the value of the payment each worker would be eligible to. This would depend upon the average weekly hours worked as opposed to their contracted hours given the fact that the majority of homecare workers work above their contracted hours on a consistent basis. Additionally, a deadline would be implemented for receipt of applications for this funding in order to mitigate against the risk of late applications resulting in an over-commitment of funding.

The actual pro-rata payment (currently proposed at up to £500 gross) will be finalised once we have received staffing levels from all relevant parties. This will ensure that we remain within the level of funding provided by Health.

Legal

2.1 Legal considerations

Commercial

The recruitment and retention payments to home care providers in private sector (PVI – Private, Voluntary and Independent Sector) who provide home care packages to the Council have been considered from a legal risk point of view.

The proposed payment will be provided by way of a grant received from the NHS CCG and it thereafter proposed to provide such payments to care providers by way of a grant.

The grant will be made available to all PVI care providers in Derbyshire, who may apply for such a grant to be used for the prescribed purposes of the incentive.

Advice has been sought from the Council's specialist legal advisors in respect of the use by the Council of this grant and its implications in respect of subsidy control (formerly known as state aid).

In summary, the advice sought in respect of subsidy control gives consideration to the legal risk of challenge in the use of grant monies to be paid in the manner prescribed.

It is clear that there are several areas of subsidy control law that provide protection to the Council from the use of funds spent in this way. It was noted by our external advisors that it was significant that the funds would be made available to all relevant PVI providers. It is also relevant that the payments made to each provider would not exceed a minimum amount of funding that would cause a concern. This is called the 'de minimus' level and is set at an amount equivalent to approximately £330,000.

Provided this level was not exceeded, the risk to the Council would be minimised.

In addition, there are exemptions in law for provision to address matters of national concern or particular difficulties in a given sector. Further, the pressures on the National Health Service itself by the failure to not release more patients into their homes and instead for them to remain in hospital could be used as another perfectly valid example to demonstrate the net benefit of making payments in the manner proposed.

The Council would need to be robust in its scrutiny of how a provider spent its funds in respect of the proposed retention and recruitment benefits and make it clear to providers that such funds could be recovered if they weren't spent at all or, in the correct way.

The Council, via a grant agreement, would also require recipients to report on the outcomes achieved and to be open to scrutiny via audit to ensure the grant is used as intended.

Legal services will work with adult care to ensure that the appropriate grants are in place and further ensure that the documents address the points of scrutiny discussed above.

Employment issues.

2.2 The decision at this stage only relates to the payment of the grant to persons employed within the Private, Voluntary, and Independent sector rather than Derbyshire County Council employees.

Human Resources

3.1 The proposal to make a one-off retention payment to Private, Voluntary, and Independent sector employees is a matter for ASC and the Council to determine. However, it must be noted that an approach which does not include providing payment to the Council's directly employed workforce within this sector could potentially raise employee relations challenges, further reducing morale and facing challenge from Joint Trade Unions. This is something Adult Social Care will manage effectively through appropriate communications and engagement with internal employees.

Information Technology

4.1 There are no information technology implications related to this decision.

Equalities Impact

5.1 An Equalities Impact Analysis (EIA) was not indicated for this decision as it is not envisaged that there will be a differential impact between groups with protected characteristics under the Equality Act (2010). This decision is regarding supporting the continued delivery of domiciliary care services to the people who use these who are predominantly, but not exclusively, older adults with frailty, long term conditions and disabilities. As with much of the adult social care workforce nationally and locally, the majority of care workers are female and aged 35 plus; however, where there are workers employed in these services who do not fall into this demographic, they too will be eligible to the payment.

Corporate objectives and priorities for change

6.1 Resilient, healthy, and safe communities.

A retention payment made to individual homecare workers employed in the Private, Voluntary, and Independent domiciliary care market is one of the strategies available to the Council to protect the existing capacity in that market. This capacity supports delivery of our corporate priority to support resilient, healthy, and safe communities where people can access care and support in their local community and remain living in their own homes. This results in improved outcomes for individuals and for communities and also reduces the number of avoidable admissions to hospital and supports improved resilience in the health and social care system.

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 Risk management and safeguarding are both applicable to this report and the recommended decision is expected to result in improved risk management and a reduction in adult safeguarding concerns arising from the lack of provision to people waiting for homecare services to be available.