

Guidance for Commissioned Services during COVID-19 Response

17th April 2020

Introduction

This guidance has been adapted from advice published by Local Government Association (LGA), Association of Directors of Adult Social Services (ADASS) and Care Provider Alliance (CPA) in England.

The guidance details issues that have been raised by providers and some of the actions commissioners and providers should consider locally to resolve them. The aim of this guidance is to support collaborative working to protect the resilience of the social care sector and ensure it remains operationally and financially viable. It aims to provide clarity and promote the good practice that is already in place in different areas and outline clear objectives and standards to work towards. A summary of actions can be found at the end of the document in appendix A.

Commissioners should consider all these issues and possible mitigating actions and do what is reasonable to support their local providers. We are aware that a number of Partnerships have made local arrangements with Providers in their area and this guidance is not intended to cut across those arrangements.

Health and Social Care Funding

Commissioners should actively consider all issues and possible mitigating measures and do what is reasonable to support their local providers. We are aware that a number of Partnerships have already given funding assurance to support their local Providers and this has been welcomed.

Commissioners may incur extra costs to increase support to the social care sector, which includes care homes, care at home and community-based services including carers centres. In light of this, and subject to any additional expenditure being fully aligned to local mobilisation plans, reasonable funding requirements will be supported by the Scottish Government.

Additional costs for the response to COVID 19 should be recovered separately and not through a general rate increase. This will ensure that additional COVID-19 related costs can be aligned to local plans, which is a UK Treasury requirement.

It is therefore critical that all additional costs incurred arising from a Covid-19 response are recorded in the local mobilisation plan financial return to Scottish Government or where they are incurred in a non-delegated service the COSLA financial template issued to all local authority Directors of Finance.

1. Collaboration and Communication

Commissioners have a role to support providers and work in partnership to ensure that care and support can continue to be delivered to people. Providers will need the ability to raise issues and get answers quickly, and to be able to solve problems collaboratively, both with commissioners and with each other.

Communication can be supported by ensuring that all providers have a direct contact so they can contact commissioners quickly. Providers should alert the commissioners of their service immediately if there is a danger this service will not be provided, to ensure the safety of those accessing care and support.

Some local areas have set up a single email address to ensure that information can be picked up in light of any staff absence.

Commissioners will require timely two-way communication to ensure they are able to provide support where required. However, requests for information place an additional burden on providers and should be as streamlined and coherent as possible and consideration should be given to the frequency of requests. Some providers have reported that they can be approached for the same information from different areas of an authority such as commissioning and care management. Sharing information where appropriate or having a single point of contact is considered good practice.

National information is important to ensure that organisations such as the Care Inspectorate and Public Health are alerted to issues and can act with commissioners and providers accordingly. Consideration is being given at a national level to ensure that these requests are also streamlined and shared appropriately to prevent duplication.

2. Business Continuity Plans

Good business continuity plans should be in place and should be dynamic to reflect the current changing situation. However, commissioners should be mindful of placing any additional burden on providers unnecessarily by requesting these or other associated risk documentation. Routine requests for providers' Business Continuity Plans should be avoided, unless there is an intention to offer support in relation to issues being reported or to support whole-system planning and responses.

There should also be a recognition that some aspects of the plans rely on support from other organisations within the Local Resilience Partnerships, providers should be included in local resilience planning and wider considerations. This will ensure they are kept up to date with developments in their local area and wider local impacts such as transport which could affect operations. We are aware that good progress has been made in this regard in relation to planning for EU Exit and this should be built on.

3. Workforce availability

Providers will face higher workforce absence rates, through medically recommended self-isolation, sickness and family caring responsibilities.

Care providers should put plans in place to manage their services if a proportion of the workforce are unwell. They may also however, need to rely on other routes to access staff. The redeployment of staff will be crucial, and providers should support each other in local areas by allowing staff to be deployed across different care settings or between care providers. Consideration should be given by providers of how to do this without

causing undue stress to the employee such as keeping the employee on their payroll. There should be no financial penalty for providers working in this way.

Collating workforce data to ensure that support can be targeted where it is needed is important. However, requests for workforce data should be proportionate and streamlined to ensure that Providers and Commissioners are not completing multiple requests which may hamper frontline delivery. Some examples of how this can be mitigated are included in this guidance under section 1.

4. Rapid adjustment of support

Support will have to be rapidly adjusted. People will be admitted to hospital, care visits changed to meet the most urgent needs and some homecare visits will take longer due to infection control precautions and the availability of staff. Some people will decide to reduce or stop their care during this time, relying on family members or going without for a short period. This care and support will have to be re-started following this period.

This means that rapid decisions will need to be taken about appropriate adjustments of care packages. Providers should apply all safe levels of care at the appropriate time that reflects the risk to individuals. Doing this may increase providers' costs as it will require extra management time to make these adjustments. There may also be a higher ratio of travel to contact time in home care due to the rapid reorganisation of rosters.

Commissioners may choose to allow providers to adjust care packages within agreed limits or choose to retain decision making themselves.

If commissioners choose to retain decision making about changes to care packages themselves, they will need to have enough staff at the right level available to make these decisions rapidly and have simple processes in place. Commissioners should consider extra costs incurred from extra administration, increased travel times, visit lengths in homecare services and for extra administration within care homes.

There are also some places where homecare contracts use electronic call monitoring (ECM) to create a system of a "pay-per-minute" billing or to round visit times into defined bands. This may make it more difficult to make these rapid adjustments and ensure that providers are paid. "Pay per minute" also carries a significant risk of reducing the financial viability of shorter homecare visits (particularly those under 30 minutes). Commissioners can mitigate this by paying for care on plan or postponing this contractual obligation.

5. Contract Monitoring

Contract monitoring should be proportionate as the first priority is service continuity. Local contract monitoring processes should be flexed and relaxed if required to minimise service disruption as commissioners and providers prioritise essential support.

6. Contract Variation

For current contracts the maximum flexibility in the Procurement Reform (Scotland) Act 2014 and associated regulations to continue, extend and vary existing contracts should be applied. A summary of the flexibilities available can be found in the COVID-19 related SPPNs.¹ Consideration should be given to the impact and requirement for routine (re)

¹ SPPN 4/2020 Coronavirus (COVID-10) Procurement Regulations for Public Bodies

tendering exercises during this period. The Scotland Excel Care and Support framework is available to local authorities.

It may take time for providers and local authorities to return to normal following the crisis and this should be considered when scheduling future non crisis related (re)tendering exercises.

Local finance systems are under immense pressure in Local Government and with providers. Maintaining payments and supporting providers with additional costs should be a priority. However, uplifts for the Real Living Wage and National Care Home Contract rate should be applied as soon as possible to ensure frontline staff receive wage uplifts.

7. Cashflow

Invoice generation will become an increasingly complex activity however it is essential to ensure continued payment for frontline staff. Providers will be focused on delivering support to people and managing sickness absence in their own workforce. Every effort should be made to pay providers as quickly as possible, particularly where providers' financial viability is at risk. Providers may already have used reserves to meet additional costs.

It is likely that at this time providers may see increased costs; examples of increased costs being evidenced include:

- Additional travel costs (especially homecare)
- Additional IT and administrative costs
- Additional costs for PPE sourced locally
- Additional food costs
- Additional staffing costs due to sick pay or staff self-isolating and agency costs

These additional costs need to be documented to ensure they can be recovered through local mobilisation plans, this is a UK Treasury requirement.

A number of areas have already given re-assurance to providers in relation to payment of planned care or commissioned services and the reasonable additional costs that providers will incur. This is considered good practice and will ensure a collaborative approach to dealing with the current crisis.

8. Retrospective reconciliation

This will need to be handled transparently and through discussion, rather than unilateral applied. Reconciliation is appropriate when actual levels of support differ markedly from what was planned. Commissioners should be mindful of the impact on providers and the extra costs incurred including the ability to reduce variable costs in such a volatile operating environment. However, providers should be mindful that, where actual support levels are significantly below plan and they have not delivered a service, commissioners may need to re-direct funding elsewhere.

[https://www.gov.scot/publications/procurement-regulations-during-covid-19-outbreak-sppn-4-2020/SPPN 5/2020 Coronavirus \(COVID-19\) Supplier Relief](https://www.gov.scot/publications/procurement-regulations-during-covid-19-outbreak-sppn-4-2020/SPPN%205/2020%20Coronavirus%20(COVID-19)%20Supplier%20Relief/)
<https://www.gov.scot/publications/coronavirus-covid-19-supplier-relief/>

9. Homecare and other community-based services

Reduced cashflow will have a particular impact on homecare providers, as they are usually expected to submit itemised invoices of hours delivered for each person. Nonpayment in relation to cancelled visits, invoice disputes and delays in processing may have a serious negative impact on providers' cashflow and their ability to provide care and support.

Local arrangements should be put in place where there are identified critical issues such as an inability to provide support services due to a high level of workforce self-isolation. Pressures should be identified, and solutions sought on a service by service basis. Commissioners might consider, for example, payment on plan and an agreement to meet gaps in delivery later.

Additionally, some providers could be delivering extra care at short notice to people discharged from hospital, or where regular informal support ceases to be available due to unpaid carer illness or requirement to self-isolate. Payment approval methods should be designed to ensure that support is delivered as a priority with later reconciliation if required.

10. Residential care

Ensuring care homes can continue to admit residents where it is clinically safe to do so is a priority. However, if care homes stop admissions because it is unsafe to admit residents this could affect occupancy levels which in turn may impact on their sustainability. The National Care Home Contract is a spot purchased contract with a payment made per resident per week, it does not contain any clauses to protect providers from financial unsustainability during this period. Consideration should be given to making payment based on planned care to ensure they remain operationally viable. Additional costs should also be met and recorded through local mobilisation plans.

11. Carers Centres

Carers centres and young carer services are adjusting their operations so that they can continue to provide information, advice and emotional support to carers remotely. In light of the added pressure falling on unpaid carers at this time carer centre and young carer project capacity may need to be expanded. Additional cost associated with this beyond the funding for Carers Act should also be included in local mobilisation plans.

12. Children's Services

Services commissioned by local authorities are often for the most vulnerable children and young people in our communities. These services may be part of a Scotland Excel Framework or they may be commissioned directly by individual local authorities and the guidance outlined for other services within this document applies to children's services. Some families will also use a direct payment to manage their own support or employ a team of personal assistants.

Continuity of care and relationships are a priority for those already living in or being supported by these services, and it is also important that should new referrals or care and support packages for children and young people be required during this period it remains possible to provide them with the right kind of supports. These could include residential, daycare, care at home, secure care, foster care, kinship care and support services provided by an agency.

Payment approval methods should be designed to ensure that support is delivered as a priority with later reconciliation if required to actual support. As per the SSSC guidance (see above) staff can be redeployed across commissioned services allowing for mutual aid across providers.

13. Early Learning and Childcare

Across local authorities there are a wide variety of current offers of funded provision, and all areas will have differing approaches to the commissioning of Early Learning and Childcare provision.

The Scottish Government have confirmed that they will continue to fund local authorities for statutory provision and any early phasing of expanded hours that children currently receive, early learning and childcare services when services close or children are unable to use funded places due to the pandemic.

Where private or third sector ELC settings, including childminders are closed or children are unable to attend due to the pandemic, local authorities should continue payments to for funded places for the duration of the closure, to ensure that local ELC capacity is retained to ensure sustainability for the future delivery of ELC. A letter was issued by Scottish Government setting out the rationale for this and confirmed that, in line with other guidance e.g. SPPN5, providers should maintain an open book approach to ensure a Best Value approach is maintained.

14. Sick pay

Providers face increased cost pressures due to higher sickness absence rates among their workforce: they have to pay staff Statutory Sick Pay (SSP) or make sickness payments at a higher level than SSP because they have a contractual sick pay scheme (also known as an 'occupational scheme'), which offer workers payments above the basic minimum amount of SSP, which is £94.25 per week.

The passing of emergency legislation means that employers' liability for SSP starts at day one rather than day four, and requirements for workers to self-isolate will further increase financial pressures. Providers will have to backfill sickness absence to ensure continued delivery of critical support to service users most at risk, this represents a real cost pressure on providers.

Please note that employers are unable to reclaim payments for SSP from Government, except for some temporary arrangements announced in the Spring Budget, which will only be available to organisations with 250 or fewer employees.

Employers should maintain records of staff absences and payments of SSP, but employees will not need to provide a GP fit note if they contract COVID-19. If evidence is required by an employer, those with symptoms of coronavirus can get an isolation note from [NHS 111 online](#) and those who live with someone that has symptoms can get a note from the [NHS website](#).

Contracted hourly rates will incur provision for normal levels of sick absence. Scottish Government has agreed that any reasonable additional costs for adult services caused by Covid 19 for staff sick pay or for those self-isolating can be met and recorded through local Health and Social Care mobilisation plans. This would be costs that are over and above those already agreed as part of hourly rates.

15. Use of non-contracted providers

Commissioners who contract with approved providers on a framework may also need to commission service from non-contracted providers in the local area, as demand for care and support peaks.

Consideration should be given to the potential impact of paying non-contracted providers at lower rates than framework providers. Commissioners can mitigate this through careful consideration of the price paid for care and available capacity in the local market. They should be mindful of the impact on the market if there is more use of non-contracted providers.

16. Uplift to pay the Living Wage in Adult Social Care for Care and Support

COSLA and Scottish Government agreed that an uplift should be applied to ensure that all people providing direct adult social care and support in the third and independent sector receive the living wage of £9.30 backdated to 06th April 2020. The intention of reaching a national agreement is so that the uplift can be applied without the need to negotiate across each area. The national uplift only applies to this year in light of the response to COVID 19 and will not be in place in future years.

This agreement only applies to commissioned services in the third and independent sector and to personal assistants, and not Local Authority staff where the Scottish Joint Council agreement is in place.

What is covered by the national uplift?

The agreed uplift that should be applied to the hourly rate is 3.3%, this uplift applies to local contracts and frameworks where;

- The Provider is paying staff who are delivering direct care the living wage and includes care and support, day care, sleepovers and housing support in the third and independent commissioned services.
- Direct payments where they are being used to pay for staff who provide direct adult social care support, either in a social care provider organisation or someone employing a personal assistant, to ensure the Living Wage can be paid directly by the supported person.

Providers should transfer the entire uplift directly to wages to meet the living wage commitment, this gives contracted social care providers flexibility to increase wages across their organisation. Providers must confirm that they are passing this uplift to their staff to receive the national uplift.

This national uplift does not apply to;

- Children and young people's services;
- Previously agreed multiyear frameworks which already have an uplift factored in for living wage;
- Block contracts in full;
- Scotland Excel Care and Support Flexible Framework, awarded on 01st April 2020, where the uplift for living wage has been included;
- Any Residential care, the National Care Home Contract and Scotland Excel Care Homes for Adults with Learning Disabilities Framework is already agreed;
- Local Authority staff where the Scottish Joint Council agreement is in place.

Additional Costs of Commitment

Where the 3.3% uplift is greater than the planned/budgeted uplift payment, the additional cost will be agreed and met by Scottish Government. If an Authority has already agreed or offered an uplift for example 3%, Scottish Government will top up the uplift to 3.3%. It is not an additional 3.3% on top of what is already agreed. A process to agree additional costs will be agreed between Scottish Government, COSLA and Chief Finance Officers.

No additional costs can be claimed:

- To meet existing commitments of the living wage policy*.
- Where an Authority has agreed (or planned for) contract uplifts of at least 3.3% with commissioned providers.

*Payment of living wage to adult social care workforce for all hours worked including sleepovers is existing policy that Authorities will have already costed and budget for. The change in living wage from £9 in 2019 to £9.30 in 2020/21 will require a 3.3% increase on the wage element of hourly rates for most contracts. The national agreement is to meet any additional costs as a result of applying 3.3% to the full hourly rate.

There will be recurring costs as a result of this uplift and COSLA will work with Scottish Government and finance representatives to consider this element in future budget agreements.

Sick Pay announcement for adult social care

Contracted hourly rates will already have provisions for locally agreed levels of sickness absence. The social care workforce should receive statutory sick pay or more general contractual sick pay under their contract of employment.

Employers with less than 250 employees (as at 28 February 2020) will be able to reclaim SSP paid for sickness absence due to coronavirus [from the government](#).

Scottish Government has agreed that any reasonable additional costs, that cannot be claimed under the existing Government scheme detailed above, caused by Covid 19 for staff sick pay or for those self-isolating should be recorded in local Health and Social Care mobilisation plans for agreement with Scottish Government. This would be costs that are over and above those already agreed as part of the hourly rates.

Summary of Actions

1. Collaboration and Communication
 - Ensure there is a clear, timely two-way flow of information between commissioners and providers.
 - Providers should alert commissioners of any concerns about service provision.
 - Ensure information is only requested once from a provider and shared where appropriate.
2. Business Continuity Plans
 - Providers should have dynamic Business Continuity Plans in place.
 - Commissioners should be mindful of placing additional pressure on frontline providers by requesting these unless it is in relation to whole system planning.
 - Providers should be included in Local Resilience Planning.
3. Workforce Availability
 - Providers should put plans in place to manage services if higher proportion of workforce is absent.
 - Providers should support each other with the deployment of staff with no financial penalty for working in this way.
 - Collating workforce data should be streamlined and proportionate.
4. Rapid Adjustment of Support
 - Providers should apply safe levels of care at the appropriate time that reflects risk to individuals.
 - Commissioners may choose to allow providers to adjust care packages as required within agreed limits.
 - If commissioners retain decision making process, then rapid decisions will be required
 - Electronic Call Monitoring may impact on financial viability during this period. Commissioners can pay on plan or postpone this contractual obligation.
5. Contract Monitoring
 - Contract Monitoring should be proportionate to minimise service disruption to commissioners and providers.
6. Contract Variation
 - For current contracts maximum flexibility should be applied.
 - Consideration should be given to routine (re) tendering and scheduling of this following the COVID response.
7. Cashflow

- Local finance systems are under significant pressure however every effort should be made to pay providers as quickly as possible.
 - Reasonable additional costs for third and independent sector providers should be recognised and met through local mobilisation plans.
 - Additional costs should be documented by providers
 - Re-assurance should be given to providers in relation to payment of services and meeting additional costs.
8. Retrospective reconciliation
- Retrospective reconciliation should be handled transparently and through discussion.
9. Homecare and other community-based services
- Commissioners should consider payment for planned care and an agreement to meet gaps in delivery later.
 - Payment approval methods should be designed to ensure that support is delivered as a priority with later reconciliation if required.
10. Residential Care
- Commissioners should meet reasonable additional costs and record these through local mobilisation plans.
 - Consideration should be given to paying for planned care where a care home stops admissions because it is unsafe.
11. Carers Centres
- Additional costs associated with support for carers centres beyond the funding agreement of Carers Act should be recorded in local mobilisation plans.
12. Children's Services
- Continuity of care and relationships should be a priority
 - Payment approval methods should be designed to ensure that support is delivered with later reconciliation if required.
 - Staff can be redeployed across commissioned services if required.
13. Early Learning and Childcare
- Commissioners should continue to fund ELC providers to ensure capacity is retained and services are sustainable.
 - Providers should maintain an open book approach to ensure Best Value.
14. Sick pay
- Any reasonable additional costs caused by COVID 19 for staff sick or self isolating should be met and recorded through Health and Social Care mobilisation plans.
15. Use of non-contracted providers
- Commissioners should be mindful of the impact on the market if there is more use of non-contracted providers.