

Cabinet – 10 September 2014

Review of Social Care and Inclusion charging policy for non-residential services

Portfolio: Councillor Diane Coughlan, Social Care
Councillor Barbara Cassidy, Children's Services and Education

Service: Social Care and Children's Services

Wards: All Wards

Key decision: No

Forward plan: No

1. Summary

- 1.1 This report seeks Cabinet approval to begin a process of consultation on a new charging policy for non-residential social care services arranged for local residents by the Council.
- 1.2 Several factors have combined to make a review of non-residential charging arrangements timely and necessary:
 - 1.2.1 Elements of the coverage and implementation of existing charging policies have proved problematic, at risk of legal challenge, and the subject of adverse observations by the Local Government Ombudsman
 - 1.2.2 The increasing use of personal budgets, with service users choosing and arranging how to meet their assessed social care needs, provides both opportunities and challenges in relation to charging policy and practice
 - 1.2.3 The introduction of the Care Act 2014 from April 2015 lays new and altered duties on social care services, some of which are either outside, or are incompatible with, the existing charging policy. (Much of part 1 of the Act - the sections that relate to adult social care - is, however, a bringing together and updating of 65 years of legislation and ministerial guidance in a single streamlined statute. The new elements are only a small part of the whole.)
 - 1.2.4 The parallel implementation of the Children and Families Act 2014, beginning in September 2014, has implications for some chargeable adult social care services
- 1.3 Recent guidance from the Council's Legal Services team has clarified and codified the need to undertake comprehensive and inclusive consultation with interested parties before bringing forward proposals for change.

- 1.4 When the consultation has been completed, a further report will be submitted to Cabinet on 18 March 2015 seeking approval of a revised policy which is Care Act compliant and legally robust. Detail on the process and results of the consultation will be included in that report.

2. Recommendations

- 2.1 That Cabinet approve consultation on social care and inclusion non-residential charges.
- 2.2 That Cabinet agree to receive a further report at a future meeting on the outcome of the consultation, with consequent recommendations for a new non-residential charging policy to operate from April 2015.

3. Report detail

Definition of non-residential services

- 3.1 Non-residential services cover any setting for meeting care and support needs outside of a care home, and thus include in a person's own home, extra care housing, supported living and shared lives arrangements. They also include short breaks / respite in residential or nursing homes.
- 3.2 Long term residential and nursing care has a separate and different, nationally prescribed, charging regime and will continue to do so. This is not addressed in this report and will not be part of the consultation exercise.

Existing powers to charge

- 3.3 Under existing legislation, local authorities have a discretionary power to charge adult recipients of non-residential services such amounts as they consider reasonable. Whether or not to charge for a service and where a service is charged for, and what is a reasonable charge are all discretionary elements to the decision and are thus amenable to judicial review if that discretion is exercised unreasonably, unlawfully or irrationally. Although charging is a power and not a duty, the level of resources for adult social care in the annual local government settlement assumes a level of income derived from discretionary charges.

Existing policies

- 3.4 In February 2011, Cabinet approved the introduction of a Benefits Based charging system for non-residential services which replaced some, but not all, of the previous charges. The precise levels of charge have subsequently been regularly reviewed in line with changes to benefit rates and inflation, as appropriate. In addition there is a separate policy for Extra Care which was approved by Cabinet in October 2009 as well as care and well-being charges applied specifically to the Housing & Care 21 contract.

Drivers of change

- 3.5 An increasing proportion of service users now have a personal budget, whereby they arrange their own services to meet assessed needs. How they meet their

needs is, subject to a test of reasonableness, their decision. This means that they can choose from an “a la carte” menu rather than a short list of “traditional” services. The new charging policy will need to reflect this; individual charges for individual services will not be practical. Following legal advice, the possibility of paying the personal budget net of the client charge (contribution) will also be consulted on for those clients who take their personal Budget as a Direct payment. This would substantially reduce transactions and transaction costs, and generate efficiencies.

- 3.6 Since the introduction of the current charging policy new technology, including electronic payment systems, has had a step change in take-up and use. The review will consider how to make the best use of such applications. Areas for consideration include charging notifications, payment mechanisms, and a ready-reckoner facility to enable service users, their carers or representatives to calculate the likely charges for themselves, potentially reducing the need for a full financial assessment of means in many cases.
- 3.7 The Benefits Based Charge is considered to comply with national statutory guidance on “Fairer Charging” which dated from 2004, and which had previously been applied in Walsall. However, the Local Government Ombudsman has recently found against the council (28 July 2014) in relation to application of the policy, in particular the eligibility for a particular Welfare Benefit.
- 3.8 Although the Benefits Based charge was intended to cover the service user contribution to the cost of meeting their assessed needs, the Social Care and Inclusion Directorate provides other services which are not subject to an assessment of need under the Fair Access to Care Services criteria. Community alarms provided to adults under the age of 80 who do not have other eligible assessed needs, are separately charged for, as are other things. A full list of current charges is attached at Appendix 1.
- 3.9 Following an investigation which found maladministration causing injustice reported in March 2014, the Local Government Ombudsman recommended the Council to complete a review of the charging model it uses for Housing & Care 21 Extra Care.
- 3.10 Draft guidance to the Care Act 2014 re-affirms the power of a local authority, where it arranges care and support to meet a person’s needs, to levy charges, except in cases where it is required by law to arrange care and support free of charge. Charging regimes will continue to be based on a means test, have regard to ability to pay, be comprehensive to reduce variation in the way people are assessed and charged, and be clear and transparent.
- 3.11 The Care Act also widens the range of people who adult social care has a responsibility to assist, and thereby increases the number and types of people who may be charged for such assistance. In particular:
 - Self funders (people whose level of income and savings is such that they are not eligible for subsidy in meeting their care needs) will for the first time be able to choose to ask the local authority to arrange their care on their behalf. They will pay the full costs of those services but the charging regime

and its management will need to allow for the consequent financial assessment and income collection.

- Carers will be able to be assessed and receive services in their own right, and may be charged for such services.
- The same will apply to parent carers. These are people with a child or children with eligible needs. Children's services will be responsible for meeting the child's needs, but the Council will have a duty to meet parental needs.

3.12 Members may be aware of the "Care Cap" and "Care Accounts" which have been the subject of much publicity in relation to the Care Act. Although linked to the charging regime, and the subject of parallel preparatory work, these will not form part of the non-residential charging review and are not addressed in this report.

3.13 Members should also be aware that while draft guidance on the Care Act, including charging, has been issued by the Department of Health (DH) and was consulted on between June and August 2014, the final statutory guidance and much important detail has yet to be published, and may impact on the proposals. The latest DH fact sheet on charging is attached at Appendix 2.

3.14 There are also some important welfare benefit reforms which will impact on the existing charging policy in particular the changes in relation to disability living allowance.

Proposals for consultation

3.15 The consultation will cover

- What services should be charged for
- What resources (such as benefits) should be included or excluded from means testing
- What the level of charges should be
- Impact of any proposed charges on young carers

It may also consider other relevant matters such as assessment and payment mechanisms.

3.16 Members will be aware of new statutory duties regarding Young Carers where the council has to assess their needs and how the task of caring impacts on their personal development. Any proposed charges will need to avoid adverse impacts on children and young carers

3.17 A wide range of interested people and organisations will be consulted. These will include:

- Current and potential users of services
- Carers – who for the first time can be charged for services under Care Act provisions
- Representative organisations – such as Age UK, carers' forums, disability groups, Benefits Agency

- Children's services – Parents and Carers - Parent caring for a disabled child with very complex needs and young carers of adults or siblings
- 3.18 The mechanisms for consultation will balance inclusivity and accessibility with efficient use of scarce resources. They will include:
- Face to face through public meetings and group discussions
 - Telephone, letter, email and website
- 3.19 The timescale for consultation will be sufficient to allow meaningful engagement and minimise the risk of legal challenge. From approval of this report, a minimum of 2-3 months' consultation will take place, prior a further Cabinet report in March 2015

Other considerations

- 3.20 Most if not all councils with adult social care responsibilities are having to review their charging policies in the light of the Care Act. Walsall is engaging with similar authorities and within the West Midlands region through the Association of Directors of Adult Social Services and other bodies and mechanisms to ensure no unnecessary duplication of effort or inefficient use of resources in preparing for the implementation of the Care Act.

4. Council priorities

Reviewing the non-residential Charging Policy will eradicate existing anomalies leading to a fairer, more transparent system of charging for adults and older people.

5. Risk management

- 5.1 The consultation on charging will be undertaken using a project management approach including ongoing risk management.
- 5.2 To mitigate potential risk:
- The project will risk model the different options and include an analysis of winners and losers
 - An Impact Assessment will be included in the follow up report to Cabinet
 - Full financial implications will be reported in the light of consultation and the Impact Assessment

6. Financial implications

- 6.1 There are no direct financial implications from this report. The consultation exercise will be undertaken using existing approved resources.
- 6.2 The current charging income budget is £ 3.441million for the 2014/15 budget. Changes in this policy will have an impact on this level of income but that impact is currently unknown.

- 6.3 Adult Social Care senior managers are working closely with the Association of Directors of Adult Social Services, the Local Government Association and other bodies to lobby central government for additional support to local authorities.

7. Legal implications

- 7.1 The Care Act regulations are still in the consultation stage themselves and it may be that further guidance will be issued in September 2014, as mentioned earlier in section 3.13, we may need to review proposals once the final Care Act statutory guidance has been received.
- 7.2 The possibility of net payments are discussed above in para 3.5. Legal services confirm that it is lawful for net payments to be made in this way although the presumption thus far has been for gross payments thereby placing element of choice and onus for payment on the service user. There is a practical advantage in net payments and Legal do agree that consultation on this potential service change would also be appropriate.
- 7.3 The consultation process should also extend to CYP parents/ carers. Consultation should take place across adult and children services, for reasons of equity and also as a result of the clear requirement within para 64(1) of the Children and Families Act to consult in respect of services for disabled people. There is a discretion to charge carers for services and consequently all carers need to be consulted. It would be logical and equitable for all carers to be consulted and assessed using the same criteria.

8. Property implications

There are no property implications arising directly from this report.

9. Health and wellbeing implications

The Council has a statutory duty to promote health and wellbeing in a fair and equitable manner.

10. Staffing implications

There are no staffing implications arising from this report. However, the charging policy will need to maximise clarity and ease of payment and minimise overheads and transaction costs, and this may result in staffing implications in due course. A clear and easily understood policy and charging arrangements should also minimise the number of enquiries and complaints relating to charging, and this may also have staffing implications.

11. Equality implications

A comprehensive Equality Impact Assessment (EQIA) is taking place as part of the policy review. The results of the consultation exercise will be used to inform the EQIA.

12. Consultation

- 12.1 Proposals for consultation are shown above in section 3.15 to 3.19.
- 12.2 Legal advice will be built into the consultation process as detailed in section 7.3 above .

Background papers

- 1 Introduction of a Benefits Based Charging Model – Cabinet Report - 9 February 2011

<http://www2.walsall.gov.uk/CMISWebPublic/Binary.ashx?Document=10147>

- 2 Department of Health - Fairer Charging Policies for Home Care and other Non-Residential Social Services - Guidance for Councils with Social Services Responsibilities, June 2013

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/208323/Fairer_Charging_Guidance_final_2013-06-20_rc.pdf

- 3 Department of Health - Care and Support Statutory Guidance - Issued under the Care Act 2014, June 2014 – Chapter 8

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315993/Care-Act-Guidance.pdf

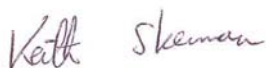
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Social Care and Inclusion - External Charges at 1/4/2014 (Appendix 1)

Service	Charge applicable		
Non residential services: including domiciliary care, day care, supported Living, community alarm (when part of a whole package), respite (when part of a whole package) One flat rate charge applied to cover all services Charged up to *minimum income guarantee applied via financial assessment <ul style="list-style-type: none">• 50% of Attendance Allowance• 50% of Disability Living Allowance (care component)• 100% Severe Disability Premium (where applicable)	*Charged up to: 50% of disability benefit		
	Benefit	No SDP	With SDP
	AA low	£27.23	£88.33
	AA high	£40.65	£101.75
	DLA low	£10.78	£71.88
	DLA med	£27.23	£88.33
	DLA high	£40.65	£101.75
Emergency response service –for clients who are under 80 and not in receipt of any other non-residential services <i>N.B. Over 80's are free and those who receive non-residential services have community alarm service included in the BBC charge described in fig. 1</i>	£12.50 per month		
Transport — Flat rate charge outside of benefits based charge but will cease on 1 st April 2014 when Assisted Transport policy – implementation cabinet approved Oct 2013 not yet fully implemented.	£2 per Journey		
Respite charge – charge applicable for respite where planned or emergency outside of someone receiving respite as part of their	£101.75 per week		
Day Centre Meals - this is a everyday expense and as such the council do not provide meals, clients who receive a meal at a day centre pay the provider direct.	Variable charges paid directly to the provider		
Adaptations to homes over £1500 and not done as a part of a disabled facilities grant (DFG) - If the home is sold or a 'relevant transfer' takes place a charge is applied <i>N.B. The Housing Improvement Service can explain the charges in more detail for each individual situation.</i>	The council will recover the original cost of the adaptation which includes an agency fee of 7%.		
Extra Care (non Housing 21 provided) - flat rate charge, based on 80% of Attendance Allowance paid directly to the provider, council pays provider net of the charge. <i>N.B. Due to transfer to benefits-based charging model as of 01.04.14</i>	80% of higher rate AA £63.32 but will be switched to BBC from 1 April 2014		
Extra Care (Housing 21 provided) - Flat rate wellbeing charge applied to all tenants based on 80% of attendance allowance. Care Banded Charge based on the level of support received and assessed ability to pay.	Wellbeing charge - £65.04 per week 4-7 hrs £43.80 7-10 hrs - £136.89 11+ hrs - £164.36		
Court of protection - nil charge	£0		
Appointeeships - nil charge	£0		
Deferred payments	Currently no charge		



FACTSHEET 5

The Care Act – charging and financial assessments

“All councils should have transparent charging policies... service users, carers and the public should understand the purpose of local charging policies and the criteria used to determine levels of charging for particular services” Standing Commission on Carers

This factsheet describes how the Act and supporting regulations and guidance will create a clearer, more consistent way of assessing what people can afford to pay for their care and support.

What is the charging process?

Care and support is not a free service like the NHS. People have always had to pay something towards the cost of their care and support. Whilst some types of care and support are provided free (for instance, information and advice), many types will be subject to a charge.

People will only be asked to pay what they can afford. Sometimes the person will pay the full cost, sometimes the cost will be shared between the person and their local authority, and sometimes the local authority will pay the full cost itself.

To decide what a person can afford to pay, a local authority will carry out a **financial assessment**. The local authority will consider the person's income and any assets they own, like a house or other investments. The local authority will then calculate how much the person can afford to pay towards their care and support costs.

Sometimes a homeowner may want to consider a **“deferred payment agreement”** with the local authority. This is an arrangement whereby the person agrees, with their local authority, to pay

some of their fees at a later date. This means they do not have to sell their home during their lifetime, to pay for their care. A person usually

repays the local authority from the sale of their property at a later date.

Why do we need to change the law?

The rules on charging for care and support date back to 1948. As a result, the current law is hard to follow and has a number of anomalies.

What does the Act do?

The new law for adult care and support sets out a clearer approach to charging and financial assessment.

First, a local authority will assess someone and decide whether they have eligible needs. The local authority will then work with the person to consider what types of support might be provided to meet their needs.

Not all types of care and support involve a cost for the person. Whilst the Act gives local authorities the power to charge for care and support, they may not charge for services which the regulations say must always be free, for example reablement services or equipment and minor adaptations to the home.

Additionally, from 2016/17, where the individual has reached the cap on care costs (see **factsheet 6**) the local authority may not charge towards the cost of meeting their care and support needs.

How does the local authority decide what charges are due?

If the local authority thinks that the person needs a service for which a charge can be made, it must

decide whether or not the person can afford to pay. The rules on how this financial assessment should be carried out are set in the draft regulations and guidance so that people's finances are assessed in a consistent and transparent way.

The financial assessment will consider what sources of income a person has and what other assets they hold. There are different rules for the treatment of income depending on whether the person is expected to need care in a care home, or other settings.

This financial assessment will ensure that when an adult contributes towards their care and support they must still be left with a certain amount of money for themselves after the local authority has charged them.

Sometimes, the local authority may only make a small charge for a particular service, and it would not be practical to carry out a detailed financial assessment. In these cases, the local authority may carry out a "light-touch" assessment to determine that the person can afford the charge, and will not need to follow the full detail and rules.

In other cases, a person who can afford to pay the full costs of their care may ask the local authority to carry out a "light-touch" financial assessment, for example if they do not want to undergo the detailed process. If the local authority is satisfied that the person will continue to be able to afford the cost of their care, they may agree to this.

After the financial assessment, the local authority will tell the person whether they need to pay for all, some or none of their care costs.

When can a person defer care charges?

The Act also expands an existing scheme called 'deferred payment agreements' to make this available universally across England. People who own their own home will be able to make an arrangement whereby they do not have to sell their home, during their lifetime, to pay their care home costs. Instead, the local authority will pay the costs, and recover the money that the person owes, plus interest, at a later date.

Deferred payment agreements can be offered in certain circumstances where an adult owns their home. Local authorities will be able to charge interest on these payment arrangements, so that they can cover their own costs of offering them.

How do I comment on the proposals?

We have published regulations and guidance for local authorities that set out how they should carry out their responsibilities under the Care Act. This guidance is open for discussion and we want to receive your comments to make it right.

More information, including how to comment, is available at: www.careandsupportregs.dh.gov.uk