

Cabinet – 14 April 2010

Entitlements to Care

Portfolio: Councillor McCracken, Social Care, Health and Housing

Service: Social Care and Inclusion (Adult Services)

Wards: All Wards

Key decision: Yes

Forward plan: Yes

1. Summary of report

- 1.1 All Councils are required by the Department of Health to plan care and support so that people with similar needs receive a similar quality of outcome, on the merits of each individual case, according to a fair and equitable process.
- 1.2 In anticipation of fully implementing the personalisation agenda “Putting People First”, this report seeks to set out a framework by which consistent decisions can be made to ensure service users receive the best possible service from the council within available resources.

2. Recommendations

- 2.1 That Cabinet agree to the implementation of an equitable and fair process of allocating resources for care to those with greatest need – substantial and critical within the Guidance on Eligibility Criteria for Adult Social Care in England 2010 (Prioritising need in the context of Putting People First: A whole system approach to eligibility for social care).
- 2.2 That Cabinet delegate to the Director of Adult Social Services and the Chief Finance Officer an annual review of the ceilings for the values of critical and substantial care packages as set out in the table at section 3.5.

3. Background information

- 3.1 Fairer charging and eligibility criteria were originally introduced by government in April 2003, and whilst the fundamental principles remain the same, the newly issued guidance referred to in this report replaces the 2003 framework. Guidance on the application for carers remains as directed in the National Carers Strategy (Carers at the heart of 21st century families and communities: a caring system on your side, a life of your own).

- 3.2 Eligibility for social care in Walsall will continue at the existing levels, namely for those people with substantial or critical needs. Those people who have low or moderate needs will continue to access universal and preventative services.
- 3.3 Under Section 47 of the NHS and Community Care 1990 Act, the council has a duty to assess the needs of any person for whom we provide or commission community care services. Once eligible needs are identified, the council has a duty to meet them within the resources available to them.
- 3.4 Current guidance directs us to plan care and support for people with regard to outcomes based on equality of access, equality of outcome and equality of opportunity. People with similar needs within the same local authority should expect to receive a similar quality of outcome. We have a duty to consider the cost-effectiveness of support options and we are entitled to take resources into account, once an assessed need is identified, in order to best achieve someone's agreed outcomes.
- 3.5 To do this in a transparent, equitable way, guidelines will reduce the considerable variation that can occur. Discretion to depart from them will be exercised by the Director of Social Care and Inclusion, or senior managers with delegated responsibility for that Director.

CRITICAL	Funded care packages direct payments, indicative individual budgets	Other council funded services	Other services
Social Support Skills Development Supported Employment	Up to 5 days a week of day care	Benefits Advice	Independent Living Fund NHS Provider Services Supporting People Schemes Extra Care Housing Palliative/End of Life Care
Support to maintain independence Direct Care	Up to 30 hours a week of domiciliary care Up to 48 nights (days) per year respite care Carers support Assistive technology or Residential/Nursing Care	Aids and adaptations	
SUBSTANTIAL	Funded care packages, direct payments, indicative individual budgets	Other council funded services	Other services

Social Support Skills Development Supported Employment	Up to 3 days a week of day care, or equivalent	Benefits Advice	Independent Living fund NHS Provider Services Supporting People Schemes Extra Care Housing
Support to maintain independence Direct Care	Up to 20 hours a week of domiciliary care Up to 48 nights (days) per year of respite care Carer support Assistive technology	Aids and adaptations	
<p>Substantial Maximum value per week =£250</p> <p>Critical Maximum value long-term (longer than 6 weeks): up to the net, contracted cost of residential care less ILF if applicable. Maximum value short-term (less than or equal to 6 weeks): as above plus 20%</p>			

- 3.6 It is proposed that these guidelines apply immediately to all new eligible service users. Current service users will have the guidelines applied after formal review. When the review results in a reduction of allocation, this will be subject to an appeals process led by the Director of Social Care and Inclusion.

4. Resource considerations

- 4.1 **Financial:** There is a proposed saving in the 2010/11 budget for Social Care and Inclusion and this proposal will realise the saving identified.

4.2 **Legal:**

The council is committed to ensuring the delivery of care and support with due regard to race, gender and disabilities. Failure to do so could result in legal challenge.

As these new guidelines and processes will involve some individuals receiving less than they would have done formally, each such case could potentially be the subject of a Judicial Review application and the council be obliged to show that all actions were reasonable and in accordance with the principles of natural justice.

If not, an action by any one person affected could result in the Council being asked to review all its policies and possibly all its cases.

In order for the council to be able to resist Judicial Review, it is important that procedures and guidance set up for right to appeal, exercise of discretion take into account all the councils duties for example

i) Under section 49A of the Disability Discrimination Act 1995, public authorities must have regard to a range of needs in carrying out their functions, for example the need to promote equality of opportunity for disabled people.

ii) Under the DOH guidance Putting People First the council has a duty to

a) have a transparent, open and fair system for the allocation of resources with a stronger focus on outcomes for people.

b) consult the individual being assessed and to take all reasonable steps to reach agreement with the individual about the provision of support and information about likely costs.

c) have a review process that should allow for flexibility, by consulting the service users and if appropriate carers/representatives and allow for a right of appeal.

The guidance although allowing the council to have regard to resources, still requires it to meet the individuals needs once these have been assessed.

4.3 **Staffing:** There are no direct staffing implications as a result of this report.

5. **Citizen impact**

This report will result in increased parity of allocations between people, and some individuals will receive less.

6. **Community safety**

There are no direct community safety implications as a result of this report.

7. **Environmental impact**

There are no environmental implications as a result of this report.

8. **Performance and risk management issues**

Failure to implement the guidelines will result in a risk that the budget savings will not be realised. Benchmarking with other councils does not indicate a risk to performance.

9. Equality implications

The application of these guidelines will meet equality of outcomes, access and opportunity for citizens of the borough.

10. Consultation

Established consultation forums will be involved in the implementation of this policy.

Background papers

- Department of Health - Prioritising need in the context of Putting People First: A whole system approach to eligibility for social care – Guidance on Eligibility Criteria for Adult Social Care, England 2010
- Department of Health, Fair Access to Care Services – guidance on eligibility criteria for adult social care (2003)
- HM Government, Putting People First: a shared commitment to the transformation of Adult Social Care (2007)
- Carers at the heart of 21st century families and communities: a caring system on your side, a life of your own
- CSCI, Cutting the Cake Fairly: CSCI review of eligibility criteria for social care (2008)

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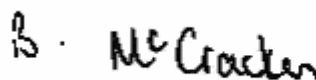
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Dated: 29 March 2010



Councillor Barbara McCracken

Portfolio Holder

Dated: 29 March 2010