

HEALTH AND WELLBEING BOARD

17 MARCH 2015

Title:	Care Act 2016 - Consultation on draft regulations and guidance to implement the cap on care costs and policy proposals for a new appeals system for care and support		
Report of the Cabinet Member for Adult Social Care and Health			
Open Report	For Information		
Wards Affected: None	Key Decision: NO		
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Sponsor: Anne Bristow, Corporate Director, Adult and Community Services			
Summary: On 4 February 2015 the Department of Health launched the consultation on the changes of the Care Act that come into effect from April 2016. The consultation is in two parts: <ul style="list-style-type: none">— Part 1 seeks stakeholders' views on funding reform, focusing on draft regulations and guidance that will introduce the cap on care costs— Part 2 seeks stakeholders' views on appeals policy proposals for a new system of appeals for care and support The consultation closes on 30 March 2015. This report summarises the areas local authorities are being consulted on and sets out at Appendix 1 the response of the Council to the consultation questions. The consultation document, draft regulations for the cap on care costs, and the funding reform impact assessment can be found at the link below. https://www.gov.uk/government/consultations/care-act-2014-cap-on-care-costs-and-appeals			
Recommendation(s) The Health and Wellbeing Board is recommended to: <ul style="list-style-type: none">(i) Delegate authority to the Corporate Director of Adult and Community Services, in consultation with the Cabinet Member for Adult Social Care and Health, to finalise the consultation response (Appendix 1) following the comments of the Health and Wellbeing Board.			

1. Areas under consultation

1.1. Cap on care costs

The cap will place a limit on the costs of care that people will face to meet their eligible care and support needs. The cost per week used to calculate whether someone has reached the cap is the amount that it would cost the person's local authority to meet their needs if they were eligible for local authority support and is not intended to cover the costs of daily living or any additional costs relating to the accommodation elements of their care, for example to have a bigger room.

1.2. Extended means test

Under the current system people with assets between £14,250 and £23,250 pay an amount towards their care. Above £23,250 individuals are required to fund the whole cost of their care.

Under the new system people with assets of more than £118k (the new upper capital limit) will pay the full costs of their care and support. People with assets below £118k right down to £17k will get financial support from the local authority to meet their care costs. The level of contribution for the individual will be calculated by applying what is known as tariff income¹. People below the £17k lower capital limit will pay only what they can afford from their income.

How will this work

- a) For all clients the lower capital limit will be £17,000. This is an increase by £2,750. This places £11 notional tariff income back in the pockets of a service user.
- b) For those in receipt of **community based services** the upper capital threshold limit will be **£27k**. At this point the client will become a self-funder, however the Act has allows a Council to commission the services on the individuals' behalf applying a brokerage fee if applicable.
- c) For those in **residential homes**:
 - a. Where the home has been **taken into** account as part of the financial assessment (Deferred Payment Agreement), the individual upper capital limit is **£118K**
 - b. Where the home is **disregarded** for the purposes of the financial assessment (dependent /spouse in the property) the individual upper capital limit is **£27k**. This reflects the fact that the capital asset is not being depleted
- d) Tariff income will still apply between the lower capital limit and upper capital limit- still £1 in every £250.
 - a. Upper capital limit of £27k: the maximum notional tariff income will be £40 per week, reviewed annually.
 - b. Upper capital limit of £118k : the maximum notional tariff income will be £404 per week.

¹ Tariff income requires that individuals contribute £1 towards their care and support costs for every £250 they have in assets that falls between the relevant upper and lower limits.

1.3. **Working age adults**

Under the new system people who develop eligible care and support needs below the age of 25 will have a zero cap for life. For those who develop a care and support need from the age of 25, the cap will be set at £72,000.

Alongside this there are proposals to make a change to the means test to increase the amount of income someone of working age receiving care outside a care home is left with after charges so that it is in line with the amount pensioners are left with. This will need to be phased in, but when complete it is anticipated that working age people will be over £50 a week better off.

1.4. **Care Accounts**

Under the Care Act local authorities will be responsible for maintaining this record for anyone ordinarily resident in their area with eligible needs for care and support. This will be known as a care account and will allow local authorities to keep track of when people are approaching the cap and to work with them to ensure a smooth transition to local authority support when the cap is reached. It will also ensure that a person's progress towards the cap is maintained should they move between local authorities.

The local authority will also be required to provide regular care account statements (at least annually) to keep people informed of their own progress towards the cap.

1.5. **Daily living costs**

The consultation confirms the intention to set daily living costs at £230 per week, in line with the recommendations of the Dilnot Commission, and recognising the concerns that have previously been raised about affordability, particularly for those on lower incomes.

1.6. **First party top-up payments**

The draft regulations will lift the restrictions on first party top-up arrangements that apply currently and under the 2015 reforms and require that arrangements are subject to the person being willing and able to meet the payments and a written agreement with the local authority. The scope of the statutory guidance will be expanded to cover first party top-ups under the new arrangements

1.7. **Independent personal budgets**

A self-funder will receive a record that sets out what the cost would be to the local authority of care to meet the person's eligible needs. It will be this cost, less daily living costs where applicable, that counts towards the cap. The record will be called the independent personal budget (IPB).

1.8. **Appeals**

As the Care Act 2014 progressed through Parliament, there was support for introducing a means of challenging local authority decisions made under the part 1 of the Care Act. Section 72 of The Care Act provides the power to make regulations to implement a system of appeals to challenge decisions taken by local authorities in respect of a person when exercising certain functions under Part 1 of the Act.

The purpose of the consultation in relation to appeals is to seek views on the appeals policy proposals for the new system that will inform the development of statutory

guidance. The proposals aim to set out a cost effective system for people to have their appeals heard in comparison to other legal means of redress, except where the courts are the most appropriate route for determining an appeal. They focus on achieving an early resolution between the person and local authority wherever possible. Where this is not possible, there is a review stage which is independent of the local authority, in which the appeal is considered by a third party with powers to make recommendations to which the local authority must have regard. The person would be able to take the matter to the Local Government Ombudsman (LGO) if they remain dissatisfied.

Scope of appeals system:

Section	Area of Appeal
Assessment	The local authority's decision as to the format of the needs or carer assessment eg. should it be face-to-face compared with a phone assessment
Eligibility	A decision by the local authority as to whether the person's needs are eligible for care and support or whether a carer's needs are eligible for support.
Care planning	The needs that the local authority is going to meet and how it is going to meet them
Direct payments	Decisions by the local authority for direct payments to the person or nominated/authorised person
Personal budgets	The amount that the local authority deems is appropriate to meet eligible needs Independent personal budgets The costs which count towards the cap for a person and care accounts meeting their own needs (Section 28)
Deferred payment agreements	Decisions about how much local authorities allow people to defer
Transition for children to adult	The local authority's decision to refuse a transition care and support assessment to a child, young carer, or child's carer
Independent advocacy support	Decisions by the local authority as to whether a person should have an independent advocate

2. Developing a consultation response

- 2.1. Included at Appendix 1 is the draft response to the consultation. It has been developed by the Care Act Programme Board and the Cabinet Member for Adult Social Care and Health.
- 2.2. On 24 February 2015 there was a regional event organised by the London Social Care Partnership (LSCP) to discuss and explore the consultation document and draft

statutory guidance and regulations. Issues arising from the facilitated workshops about care accounts and appeals have informed our local response.

- 2.3. Questions 1 - 10 relate to funding reforms and questions 11-22 seek stakeholder views on a set of policy proposals for the appeals system. In our response we have given answers to all 22 questions. Following comments and discussion by the Health and Wellbeing Board the response will be updated and then submitted to the Department of Health before 30 March 2015.
- 2.4. The timetable below outlines when we can likely expect final regulations and guidance from which we can implement the changes using.

Consultation timetable	
04 February 2015	Consultation on draft regulations and guidance for the cap on care
30 March 2015	Consultation closes
April 2015	2015 package of regulations and guidance come into force
7 May 2015	General Election
October 2015	Final regulations and guidance that will come into force on 1 April 2016 published
April 2016	Funding Reform comes into force

- 2.5. A regional response is being organised by the LSCP. Officers have worked at a sub-regional level to compile the response working on consultation questions 1-3 on behalf of the region. We await the draft of the complete London response to give comments and feed local perspectives into. Similarly London Councils is drafting a response to highlight London specific issues. Again, we wait to receive the draft to comment on.

3. Implementation issues/challenges

- 3.1. Arising from the April 2016 changes we will need to have in place:

- New charging arrangements to reflect the extended means test and the introduction of the cap on care costs
- Care accounts and independent personal budgets for all clients who contribute towards the costs for their care (which now includes self-funders)
- Local processes and procedures for responding to appeals.

- 3.2. Throughout 2015/16 the Care Act Programme Board will be working towards delivering the above changes. There are several challenges in doing so:

- **Short timescales**

As with the 2015 changes local authorities will have little time in which to implement considerable changes. Final regulations and guidance will be issued

in October 2015 leaving a short period to work with the final detailed implementation instructions.

- **IT development**

The introduction of the cap on care costs and care accounts requires significant development of IT systems and solutions. IT suppliers will be working under similarly tight timescales to develop products and this will have an impact on the speed at which we can introduce new or upgraded systems locally.

- **Scope and scale of appeals system**

The policy proposals for the appeals system, as it is currently set out in the consultation document, suggests that it will be challenging for local authorities to implement as it will require significant administration. Also the system described does not seem to take account of existing complaints procedures and has the potential to cause duplication and overlap by adding another means of redress which is seemingly separate and can run in parallel to the adult social care complaints function in terms of process.

- 3.3. The Care Act Programme Board is still analysing the implications of the 2016 Care Act changes and developing the approach to implementation. Further Care Act related reports to the Health & Wellbeing Board in 2015/16 will be necessary to explore the implications for the local health and social care system.

4. Financial implications

(Comments prepared by Roger Hampson Group Manager Finance, Adults and Community Services)

A report on the Care Act was presented to Cabinet at its February meeting; the report explained the rationale behind the reforms, gave an overview of the thrust of the Act and its main provisions, highlighted the impact of the Care Act for the Council and our partners, and outlined our approach to implementation. The report also spelled out implications for areas of corporate policy and the latest financial position.

The major financial impact for local authorities as a result of the Care Act 2014 is from 2016/17 with the raising of ceilings where individuals will pay less towards their care costs, and the local authority will pay more. Draft guidance on the cap on care costs and the appeals process has now been published and the Council's response is set out in this report. Further financial modelling work will be undertaken to estimate the likely impact on the Council. Provisionally, this is calculated at £4.5m; details of additional funding from central government may not be announced until after the General Election, possibly in December 2015.

5. Legal implications

(Comments prepared by Dawn Pelle, Adult Social Care Lawyer)

There are no legal implications. Legal Services has contributed directly to the answers to the consultation questions set out in Appendix 1.

6. Background Papers Used in Preparation of the Report:

- The Care Act 2014: Consultation on draft regulations and guidance to implement the cap on care costs and policy proposals for a new appeals system for care and support (Department of Health, February 2015)

7. List of appendices

- Appendix 1: London Borough of Barking and Dagenham response to the consultation on draft regulations and guidance to implement the cap on care costs and policy proposals for a new appeals system for care and support (DRAFT)