

HEALTH AND WELLBEING BOARD

8 December 2015

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| Title: Disabled Facilities Grant: Introducing Legal Charges on Properties | |
| Report of the Cabinet Member for Adult Social Care and Health | |
| Open Report | For Information |
| Wards Affected: All | Key Decision: Yes |
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| Accountable Divisional Director: Tudur Williams, Divisional Director of Adult Social Care | |
| Accountable Director: Glynis Rogers, Divisional Director of Commissioning and Partnerships, Adult Social Care | |
| <p>Summary</p> <p>The Council operates the mandatory national Disabled Facilities Grant (DFG) Programme, in line with nationally determined award and allocation criteria.</p> <p>The care and support reforms and introduction of the Better Care Fund (BCF) in April 2015 places the disabled facilities grant as a key lever in the delivery of integrated health and social care services, contributing to reducing delays in hospital discharges, hospital avoidance and putting in place support and interventions to help older adults and disabled people to remain in their homes.</p> <p>The Council's disabled facilities grant programme has seen a year on year increase in the numbers meeting the criteria for a mandatory grant award. The projected cost pressure of £150,000 in 2015/16 is to be met through the Council's resources. However, future projected numbers of older people and disabled children and an adult requiring support and intervention to remain at home makes it necessary for the Council to consider other options in order to manage cost pressures.</p> <p>The Housing Grants, Construction and Regeneration Act 1996 gives the local authority the power to recover some or the entire grant award by placing a local land charge on the property where the disabled person or the person making the application has a financial interest in the property. The recovery of any award through the use of a land charge on the property is prescribed in Regulation to ensure recovery does not disproportionately affect the disabled person or result in financial hardship.</p> <p>This report proposes consulting on the introduction of placing a charge on properties for people awarded a disabled facilities grant. The proposal for recovery of the award is in line with the Regulation with additional conditions proposed by Barking and Dagenham to</p> | |

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| <p>ensure that the approach is sensitive and reflects local needs.</p> <p>This report was considered and agreed at the Cabinet Meeting on 10 November 2015.</p> |
| <p>Recommendation(s)</p> <p>The Health and Wellbeing Board is asked to note the Cabinet's decision to:</p> <p>(i) Agree that the Council consults on the proposed introduction of arrangements whereby some or all of a Disabled Facilities Grant may be recoverable via the placing of a local land charge where a person in receipt of a grant has a financial interest in the property, in line with the Housing Grants, Construction and Regeneration Act 1996, in order to regularise the position and to support the growth of the scheme; and</p> <p>(ii) Note that a further report shall be presented to the Cabinet in February 2016 advising on the outcome of the public consultation and, if appropriate, presenting a draft policy for approval.</p> |
| <p>Reason(s)</p> <p>It is mandatory for the Council to provide Disabled Facilities Grants under the Housing Grants, Construction and Regeneration Act 1996. This Act gives the local authority the power to place a charge on a property of those awarded a disabled facilities grant with recovery of the grant made within the prescribed criteria as set out in the Regulations.</p> |

1. Background

- 1.1 The National Disabled Facilities Grant (DFG) programme provides the framework for local authorities to administer mandatory grants for those who meet the criteria for housing adaptations which enable a disabled person to live independently in their own home.
- 1.2 The disabled facilities grant will be considered where it is deemed that the adaptation works to the property are:
- necessary and appropriate to meet the disabled person's needs and
 - are practical and reasonable to undertake depending on the age and condition of the property.
- 1.3 The disabled facilities grant programme also sets out national criteria for determining how the grant award is to be calculated and what type of adaptations qualify for a grant. In Barking and Dagenham, Adult Social Care administers the award of DFG for disabled children and adult's resident in privately rented property and for homeowners.
- 1.4 Research commissioned by Department for Communities and Local Government (DCLG) and carried out by the Building Research Establishment (BRE) published in February 2011, *Disabled Facilities Grant allocation methodology and means test* estimated future demand for the grant would increase. The Government concluded from the findings that the administration of disabled facilities grants should be considered as part of the wider review of care and support.

- 1.5 As part of the June 2013 spending round, the Government announced that a combination of funding streams (including £220m of DFGs) would be placed in a pooled fund known as the Better Care Fund (BCF) from April 2015 to enable the NHS and local authorities to jointly commission health and social care services. This is not new funding but existing funding of both parties brought together in the pool.
- 1.6 The Better Care Fund supports the integration of health and social care services to deliver better services to older and disabled people that help keep individuals out of hospital avoid long hospital stays and reduce delays in hospital discharges. Key performance targets are attached to the Better Care Fund; failure in meeting targets results in financial penalties jointly shared between health and social care.
- 1.7 Although the Building Research Establishment report identified the increase in the numbers requiring disabled facilities grant over a ten year period, the Better Care Fund did not address the need for more funding specifically for disabled facilities. It is expected that the local authority continues to manage any cost pressures associated with disabled facilities grant within the agreed Better Care Fund pool arrangement with any cost pressure above the current Better Care fund pot being met from within the Council's financial resources.
- 1.8 Barking and Dagenham's disabled facilities grant cost pressure is anticipated to increase by £150,000 in 2015/16 and an increase in cost pressures is predicted in future years. The underlying reasons for increased demands are:
- an integrated health and social care approach which includes the delivery of the seven-day Joint Assessment and Hospital Discharge Service to support admission avoidance and discharge will require adaptations to an individual's home to support their care and support packages and independence at home
 - primary care are putting in place support and interventions into an individual's home to reduce their reliance upon acute services
 - The ageing population and family members are seeking adaptations to the home to enable the older person to continue to live at home and avoid residential care
 - more disabled children are remaining in their home with appropriate but, in some cases, costly adaptations.
- 1.9 Local authorities have the power to place a charge on the property to which the adaptation is being made where the disabled person or the person making the application for the grant has a financial interest in the property. This approach is applied by other local authorities with the income received invested back into their local DFG programme to meet current and future demand. Barking and Dagenham do not currently operate such a policy.

2. Legal framework

- 2.1 The Housing Grants, Construction and Regeneration Act 1996 gives Councils the power to provide a disabled facilities' grant. Key provisions were repealed by the Regulatory Reform (Housing Assistance) Order 2003. The grant is awarded to enable individuals to undertake necessary adaptations to enable the disabled person to continue to live in their own home.

- 2.2 The grant award can be paid to homeowners or to residents in a property managed by a private landlord on the understanding that the disabled person will permanently reside in the property for at least five years.
- 2.3 With the exception of an award made for a child under the age of 19, the grant award is subject to a financial means test. The application of a means tested financial assessment is determined by Regulation and not subject to discretion by the Council.
- 2.4 The maximum grant award is £30,000 although the Council can apply its discretion to award a higher amount where it is in the interest of both the disabled person and Council to do so.
- 2.5 The local authority has the power under sections 34(6) (b), 46, 52 and 94 of the Housing Grants, Construction and Regeneration Act 1996 to place a local land charge on a person's property.
- 2.6 The charge on the property can be placed where:
- The grant has been awarded in accordance with legislation and guidance
 - The grant application exceeds £5,000 and the recipient of the grant has a financial interest in the whole or part of the property to which the adaptation is being made
 - The Council can recover from a minimum of £5,000 but only up to a maximum of £10,000. The recovery of the grant is up to a period of 10 years after the grant has been awarded once the Council satisfies itself that:
 - The recovery of the debt would not lead to financial hardship of the individual, and /or
 - Where the disposal of the property by the disabled person or applicant has not occurred as a result of the physical or mental health or wellbeing of the recipient of the grant, the disabled occupant of the property or the need to care for another disabled person.

3. Meeting the national eligibility criteria for a Disabled Facilities Grant

- 3.1 The disabled person in the property has to be registered as disabled or would meet the criteria to register as disabled. There is no requirement for the disabled child to be in receipt of care and support services under the Children's Act 1989 or the Care Act 2014 in respect of adults.
- 3.2 Only applications for disabled adults aged 19 and over are subject to a financial assessment to determine if the applicant can meet the cost of the adaptation in their own right or is required to make a contribution towards the costs of the works.
- 3.3 Those in receipt of means tested benefits are automatically deemed to meet the eligibility criteria and awarded 100% of the grant assuming all the conditions are met.
- 3.4 Those not in receipt of a means tested benefit are required to:
- Provide proof of income and savings

- Undergo an assessment that takes into account how much of their disposal income including savings over £6,000 the family have that can be used to pay off a loan if that were meeting the cost of the adaptation. The loan assumes a repayment over 10 years for homeowners and 5 years for tenants
- Compare the size of loan that the applicant could afford against the cost of works to determine the amount of the DFG to be awarded.

4. Award of a Disabled Facilities Grant (DFG)

4.1 A grant can be awarded to support the disabled occupant in the property in order to:

- facilitate access to and from the dwelling or building
- make the dwelling or building safe
- provide access to the principal family room
- provide access to or provide a bedroom
- provide access to or provide/facilitate a room containing a bath/shower, WC or wash basin
- facilitate an area for the preparation and cooking of food
- improve or provide a heating system
- facilitate the use of power, light or heat by altering existing or by providing additional means of control
- facilitate access and movement around the dwelling, and
- facilitate access to a garden (this provision was brought into scope by government from May 2008).

4.2 A Council has a statutory duty to make a decision to award a grant within six months of the application being received. The grant is awarded once the Council is satisfied that:

- An occupational therapist has assessed and confirmed the need has met the grant conditions and the works are necessary and practical
- The means tested financial assessment has been completed and the individual or representatives are clear of their contribution towards the cost of the works
- The applicant is supported to access the Council's Procurement Framework to obtain contractors in which to complete the works. The individual can manage the contractor directly or, where required, seek advice and assistance from the Council
- The proposed works and agreed timescales have been approved by Council;

5. Proposal to recover the Disabled Facilities Grant in full or in part

5.1 It is projected that there will be an increase in the number of applicants meeting the criteria for the award of a DFG. As the award of the grant is mandatory, the Council is obligated to meet the need. With increasing demand and reducing budgets nationally the Council may be forced to maintain a waiting list, a prospect that provides no benefits to the disabled person, the Council or health services.

5.2 The Council has undertaken significant work to reduce the waiting list of those awarded a grant. Any delay in award is in direct conflict of the strategy to support

early discharge from hospital, retain a disabled person's independence in their home or help maintain the individual's care and support package.

- 5.3 The BCF capital allocation for DFG is £671,682, however, in 2014/15 the Council spent £576,679 and in 2015/16 it is projected the Council will spend £818,718.
- 5.4 The means test ensures only those entitled to receive an award do so. However, there has been no condition applied for the recovery of the grant or in whole or part where there is a financial interest in the property and the disabled person ceases to occupy the home as their main residence within 10 years of the grant award.
- 5.5 The proposal is that the Council uses their power under the Housing Grants, Construction and Regeneration Act 1996 to place a legal charge on homeowners to recover an award of a grant over £5,000 up to a maximum of £10,000 where the disabled person ceases to be permanently resident in the property within 10 years of the grant award.

Example

| Amount of grant award | Legal Charge applied | Minimum recovery limit | Maximum amount that can be recovered |
|-----------------------|--------------------------|------------------------|--------------------------------------|
| £3,500 | No | Zero | Zero |
| £7,500 | Yes (grant over £5,000) | £5,000 | £7,500 |
| £25,500 | Yes (grant over £5,000) | £5,000 | £10,000 |

6. Recovery of Debt or Charge on the Property

- 6.1 It is proposed that at the point of application the person is advised that the Council will apply a local land charge on the property for recovery of the debt:
- The disabled person or the applicant has a financial interest in the property and
 - Where the disabled person for whom the grant is awarded no longer permanently resides in the property within 10 years of the grant award and
 - The DFG award is over £5,000 (however, only up to the maximum of £10,000 will be recovered). Any grant award under £5,000 or over £10,000 will not be subject to recovery in the form of a charge on the property at the point of the grant award.
- 6.2 Barking and Dagenham will not take immediate recovery action where the person ceases to occupy the home as their main residence within 10 years in following circumstances:
- The disabled person is deceased or moves into a care home and the living spouse occupying the property is aged 65 and over and the property remains their main home of residence

- The disabled person has deceased or moves into a care home and there is a dependent under 65 registered disabled or would meet the conditions to be registered as disabled where the works in the home helps to retain their independence
- The person with the interest in the property has sold the home but has used the proceeds of the home to purchase a property to meet the needs of the disabled person or a disabled person to whom they are responsible
- If the client's death results in a child inheriting the whole of the property whose financial position is such that they could not raise a mortgage or a loan to repay the charge. This is intended to be a safeguard for children who may have acted as the main carer for the disabled adult.

6.3 In the circumstances mentioned in 6.2 above the charge on the property will continue to remain up to a period of 10 years.

6.4 Before agreeing to a charge being placed on the property, applicants will be advised that they can seek independent legal advice before they accept the terms and conditions of the grant award.

6.5 It is envisaged that in most cases the amount of the charge placed on the property will be less than the level of equity available within the home. This will reduce any financial hardship to those who may be affected by this policy change.

6.6 It is not proposed that the Council imposes interest charges until 56 days after the debt becomes payable. However the individual may incur additional legal charges if there is a requirement for the Council to pursue the recovery of the debt through the courts.

7. Options Appraisal

7.1 The local authority has the power under sections 34(6) (b), 46, 52 and 94 of the Housing Grants, Construction and Regeneration Act 1996 to place a charge on a person's property. Barking and Dagenham have not previously exercised their power in this regard.

7.2 **Do nothing:** No charge is place on the property and the Council continues to meet the increasing demand pressures.

7.3 **Agree to consult to apply a property charge:** The application of a property charge:

- Will increase the contributions being made to the Disabled Facilities Programme and help to mitigate some of the increasing demand.
- May act as a disincentive reducing the number of grant applications as some may prefer not to have a charge placed against their property but wish to seek alternative means to meet the cost of the adaptation.

8. Consultation

8.1 As there is no requirement to be in receipt of services from health, social care or housing to be awarded a disabled facilities grant, the charge can affect any

homeowner in Barking and Dagenham now or in the future. To ensure that the proposed change is properly communicated and provide an opportunity for residents and stakeholders to provide feedback on the proposals, it is recommended that a consultation exercise is carried out.

- 8.2 A reasonable consultation period is seen as good practice when consulting on proposed changes which may affect many people. This ensures all interested parties have sufficient time and the opportunity to participate in the process. It is proposed that there is a two month consultation period.
- 8.3 A number of legal cases have established the principles underpinning a Council's consultation process including the case of R (on the application of Moseley (in substitution of Stirling Deceased)) (AP)(Appellant) v London Borough of Haringey. The case highlights that it is the Council's *duty* to provide sufficient information to allow individuals to meaningfully participate in the decision making process. The consultation is to include:
- An outline of the change being introduced;
 - Document realistic alternative options where appropriate; and
 - Reasons for the change.

- 8.4 The timelines for consultation and proposed implementation are detailed below:

| Consultation and Proposed Implementation steps | Dates |
|--|----------------------------------|
| Commence opens and information and engagement sessions | 23 rd November 2015 |
| Consultation ends | 18 th January 2016 |
| Findings of the consultation compiled and proposal reviewed taking into account the responses. | By 31 st January 2015 |
| Report to Cabinet setting out the findings from the consultation, proposal and draft policy for approval (if applicable) | 15 th February 2016 |
| Communication, workforce and infrastructure development | By 31 st March 2016 |
| Implementation of proposal (if applicable) | 4 th April 2016 |

- 8.5 The consultation methodology is detailed:
- a) Adult social care will make provision for respondents to reply to the consultation:
 - Using paper based methods including easy read format
 - Via the internet.
 - b) The consultation document will be published on the Council's website
 - c) Leaflets and information inviting individuals to participate in the consultation will be displayed in the local newspaper, libraries, Council gyms, local service centres and health centres
 - d) Advice on how to participate will be available to those who call the Council
 - e) Consultation with affected groups will include attendance at local disability forums and meetings, carer's forums and health and social care forums
 - f) Consultation with the voluntary sector such as Age Concern
 - g) Presentation and information to health colleagues (providing an opportunity to engage with the policy)

- h) Members briefings, reports to Health and Wellbeing Board, Scrutiny and Cabinet
- i) Briefings to Council staff using existing communications vehicles.

9. Financial implications

Implications completed by: Carl Tomlinson, Finance Manager

- 9.1 The capital funding available for the Disabled Facilities grant (DFG) scheme in 2015/16 capital programme is £818,718 which is funded from the DFG allocation (£671,682) and corporate borrowing which was agreed by Cabinet to fund the estimated pressure of £150,000 required to manage a backlog as a result of increased demand levels, over and above the available DFG funding allocation.
- 9.2 Currently the Council does not place a legal charge on properties. The table below provides a snapshot of the amounts that could have been recovered over the last four years had the Council exercised its power to apply legal charges:

| Financial Year | Total amount awarded for grants of £5,000 or more | Total amount subject to a legal charge on the property | Amount subject to recovery | Ten year recovery limit |
|-----------------------|--|---|-----------------------------------|--------------------------------|
| 2011/12 | £404,919 | £100,614 | £16,629 | 2021/22 |
| 2012/13 | £442,770 | £133,420 | £26,996 | 2022/23 |
| 2013/14 | £373,717 | £102,823 | £28,529 | 2023/24 |
| 2014/15 | £316,737 | £114,207 | £9,610 | 2024/25 |
| TOTAL | £1,538,143 | £451,064 | £81,764 | |

- 9.3 If the amounts above were considered over a ten year period, the cumulative amount that the Council is likely to recover would be greater as there is the likelihood that the person for whom the adaptation was intended may no longer be resident in the home. Income generated from these charges can then be re-invested back into the programme.

10. Legal implications

Implications completed by: Evonne Obasuyi, Senior Lawyer

- 10.1 The report seeks approval to carry out consultation exercise prior to introduction of policy where Council recovers debt arising from disabled facilities grant awarded by securing a charge on relevant property. The local authority has powers pursuant to the Housing Grants, Construction and Regeneration Act 1996 amended by the Regulatory Reform (Housing Assistance) Order 2003 and the Disabled Facilities Grant (Conditions relating to approval or payment of Grant) General Consent 2008 to place a local land charge on property in which the grant recipient has an interest.
- 10.2 This would allow for the Council to recover debt in excess of £5,000 and up to a maximum of £10,000 in the event of a relevant disposal within ten years of the grant. The grant will be registered as a local land charge and against the property at HM Land Registry.

11. Other implications

- 11.1 The operational mechanics for placing a charge on a property currently exist for service users who currently meet the national Deferred Payment Scheme eligibility criteria under the Care Act 2014. It is proposed that the infrastructure and process in place for the Deferred Payment Scheme are extended to the recovery of the DFG and managed within the current resources.
- 11.2 **Risk management** - Housing Grants, Construction and Regeneration Act 1996 gives the Council the power to place legal charges on the property helping to mitigate some of the financial risk to the Council is facing in meeting the cost of disabled facilities grants. The proposal to recover all or part of the disabled facilities grant will ensure the Council has recurring income that can be reinvested in the DFG programme. The criteria set out in the regulations as to whom a legal charge applies minimises the numbers affected and prospect of financial hardship.
- 11.3 **Corporate policy and customer impact** - The Council has the power to introduce legal charges on properties where a disabled facilities grant has been awarded in line with the Regulation. The Regulation is prescriptive as to the circumstance in which a charge can apply significantly limiting the prospect of financial hardship to those affected by this policy change. As set out in the policy, it is proposed the Council will provide information and advice and advise individuals they have the option to seek legal advice for those where a legal charge may apply.
- 11.4 **Health issues** - The inclusion of the disabled facilities grant in the Better Fund Care to support the integration of health and social demonstrates the pivotal role of the disabled facilities grant both as a preventative measure and as part of ongoing health, care and support. The increased cost is projected to continue with the change in the health and social care needs of the population. The proposal to implement charges on properties of those who are able to repay back all or a proportion of the award will support the ongoing investment required to the ensure disabled facilities grant resources are available to continually support individuals to be independent in their home.

Public Background Papers Used in the Preparation of the Report:

- Legislation
<http://www.legislation.gov.uk/ukpga/1996/53/contents>
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9424/138592.pdf
- Supporting Information
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6335/1850571.pdf.
<http://researchbriefings.files.parliament.uk/documents/SN03011/SN03011.pdf>
- Case Law
https://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0116_Judgment.pdf

List of appendices:

None