

## THE EXECUTIVE

29 JULY 2003

### REPORT FROM THE DIRECTOR OF LEISURE AND ENVIRONMENTAL SERVICES

#### **FEES AND CHARGES 2003/04 - CARELINE SERVICE**

#### **FOR DECISION**

*The Constitution reserves the setting of Charges to the Executive*

#### **Summary**

The Careline service provides vulnerable residents with speedy telephonic assistance for emergency situations and aids independent living. The aim of this report is to ensure that the service is correctly targeted to those in need using known and transparent assessment criteria and that charges are appropriate, recovering the full costs of the service. The recommended charges are in line with the Council's Policy on charging and providing care services and the policy proposals fit with previous changes made to the meals on wheels and homecare services.

There is an expectation that the revised assessment criteria and the increased unit cost will reduce the number of customers. In calculating the unit cost of the service, this reduction in usage has been estimated at 7% of overall client base. The proposed new charge, where it is applicable would be £169 (£3.25 a week), an increase of 48%, taking these changes into account.

#### **Recommendations**

The Executive is recommended to:

1. Agree a charge of £169 per year (£3.25 per week) to take effect from 1 October 2003 for 2003/04 for the Careline service
2. Agree the new Careline Service Statement (in accordance with Fair Access to Care) for access to the service; and
3. Note the time scale for reviews to be carried out and implemented.
4. Support the lead member in lobbying the Secretary of State for Health to change the fairer charging guidelines to allow for services such as Careline to be charged for where the individual chooses to pay for the service.

#### **Reason**

To implement the Council's charges policy and assist the Council in achieving its Community Priority of "*Improving, Health, Housing and Social Care*".

#### **Contact**

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## **1.1 Careline Service - Supporting People - Grant Funding Criteria**

- 1.1 A revised Charging Policy for the Careline (formerly Social Alarm) service was deferred in July 2001, pending settlement of the Supporting People (SP) Programme. This programme is a new policy and funding framework, which has been implemented nationally from April 2003.
- 1.2 There was an expectation that Supporting People grant would apply to all Careline clients on low incomes. However, in practice, only Careline services for Council sheltered housing tenants and dispersed alarms provided to Council tenants are eligible to receive SP grant funding. SP does not support residents living in private accommodation, whether rented or owned.
- 1.3 SP charging guidance recommends that these Careline users should be charged for the service, unless they receive Housing Benefit (HB), which exempts them from being charged. SP grant is based on those service users who receive Housing Benefit and who occupy Council homes i.e. Sheltered Housing and Council Tenants. All existing tenants who at 31 March 2003 were not paying for this service, and receive Housing Benefit, are transitionally protected and do not have to pay for the duration of their tenancy. Council tenants who receive this service from 1 April 2003 are exempt from charging if they receive Housing Benefit. The cost of this service provision is being recovered through the Supporting People grant.
- 1.4 Clients falling outside the SP framework are
- those Council tenants, not receiving Housing Benefit, and not in sheltered housing, who pay individually for the Careline Service.
  - all Careline clients in private property, around half of whom pay and the remainder receive Housing Benefit (HB) or Income Support (IS) and do not currently pay for the service.

## **2. Current Position**

- 2.1 The current make-up of Careline users is set out in para 3.1 and current assessment criteria is shown at Appendix A.
- 2.2 As part of the Council's Environmental Protection and Cultural Services (EPCS) financial savings for 2003/04, the Executive agreed to full cost recovery for the Careline service to fully implement the Council's charging policy. The Supporting People grant settlement, announced on 21 February, plus a recharge to the Housing Revenue Account covers the service cost for Council and sheltered housing tenants. To achieve full cost recovery, all Council tenants and private residents who currently pay an individual charge for the service would have to pay the full unit cost of the service. This charge will need to be increased as set out in this report.
- 2.3 The Department of Health has introduced a Fairer Charging mandatory statutory guidance which councils must follow. This requires that charging levels set should not allow service users' net disposable income to fall below basic levels of Income Support plus a 25% buffer. It is a means test of a person's income to determine whether they fall below Income Support (IS) thresholds as described above, which at present equates to an income of approximately £128 a week. Legal advice attached at Appendix B states that the fairer charging principles apply to the Careline service.

- 2.4 There are almost 600 private residents on Careline (19% of the service), who receive Housing Benefit or Income Support, to whom fairer charging is judged to apply and who cannot be charged for the service, which prevents full cost recovery. These individuals cannot be subsidised by Supporting People Grant.
- 2.5 The shortfall on the budget, from not charging these clients is currently funded from EPCS budget within the General Fund. Where the individual client is assessed as needing Careline as an integral part of their care package, social services will include the service in their assessment and will charge according to the existing policy for charging for care packages. Any shortfall in income in these cases is to be funded out of the Social Services budget.
- 2.6 Where the client is not assessed as needing Careline as an integral part of their package, the service is available at cost, which is recommended to increase in this report.
- 2.7 However, there may be many existing users of the service who will not be assessed as requiring the Careline Service according to the Social Service criteria, but where the individual is caught by the Fairer Charging guidance and the Council cannot levy a charge. The legal background to this is set out in the attached legal guidelines at Appendix B.
- 2.8 In these circumstances the Council has to choose between continuing to provide the service free of charge, although there is no assessed need for it, or withdrawal of the service from these individuals, supported by guidance and advice about alternative services that are available. This paper recommends the latter course of action in order to realise the targeted savings. This proposal is in line with previous policy and charging decisions made by the Council concerning the home care and meals on wheels services.
- 2.9 Clearly the situation is unsatisfactory and the Executive are asked to support the lead member in lobbying the Secretary of State for Health to change the statutory guidance to allow services such as Careline to be provided and charged where the individual requests it.

### **3. Revised Assessment and Eligibility Criteria**

- 3.1 The Council should now implement revised eligibility criteria for the Careline Service to bring the service in line with eligibility assessments used elsewhere to ensure that the services target those that most need it. Social Services staff will carry out an assessment of any current or potential user of the Careline service outside of sheltered housing (where the eligibility criteria for allocation of social rented supported sheltered housing should be in line with Social Services criteria in any case). Such existing users of the service need to be evaluated against the Careline Service Statement, proposed in Appendix C by Social Services, to determine whether they need the service.
- 3.2 In this context, Careline should be seen as an element of a care package. The assessment of clients who live in their own home or private, rented accommodation will take approximately 3 months at a cost of £20,000. The cost of the assessment work and the additional service cost will be met from the improvement monies for 2003/04, within Social Services FSS.

- 3.3 Access to the service will be reviewed for each case and any changes will be implemented with immediate effect for that individual. In the meantime, whilst reviews are being completed, these clients will continue to receive the service free of charge. This will result in a phased withdrawal of the service for any residents who are not eligible through social services and who cannot be charged for the service.
- 3.4 Given the legal advice attached as Appendix B, this will include withdrawal of the service from current users who are willing to pay but where the Council is not entitled to levy a charge, for example existing residents on income support who do not meet Social Services criteria. In these circumstances, the service will be withdrawn and advice will be given about alternative providers.
- 3.5 The Fair Access to Care Service Statement for Careline is attached as Appendix C. This is the document, which will be used in the future.
- 3.6 As the expectation is that this assessment arrangement will cause the service to be withdrawn from a number of existing Careline clients, who are judged not to need the service, this will increase the unit cost for those remaining. This increase, in turn, may cause clients who currently pay to leave the system. Social Services would provide advice and assistance about alternative providers.
- 3.7 Based on current client numbers the full unit cost of the service is £3.02 a week (34.7% increase from the 2002/03 charge of £2.20 a week.) Allowing for a reduction in client numbers of around 220 as a result of the revised assessment criteria, and those who do not wish to continue due to the increased cost per year, the revised unit cost would become £3.25 per week, an overall increase of 48% from 2002/03.

#### **4. Financial Implications**

- 4.1 There are currently 3,137 residents connected to the Careline scheme, split as follows:

<u>User</u>	<u>Total</u>	<u>In Receipt of HB or IS</u>	<u>Not In Receipt of HB or IS</u>
Sheltered Housing*	1,089	1,089	0
Council Tenants	1,000	943	57
Private Residents	1,048	593	455
	<b>3,137</b>	<b>2,625</b>	<b>512</b>

- 4.2 The estimated full cost of providing the Careline scheme in 2003/2004 is £493,105. The current charge is £114.40 a year (£2.20) a week.

Option 1 produces a unit cost per service user of £157.19 per year (£3.02 per week), assuming that there is no change in the number of clients.

<u>User</u>	<b>Estimate 2003/2004</b>				<b>Funding/</b>	
	<u>Gross Exp'd</u> £	<u>Gross Income</u> £	<u>SP Grant</u> £	<u>Net Exp'd</u> £	<u>HRA</u> £	<u>Social Services</u> £
Sheltered Housing	171,180	0	164,500	6,680	6,680	0
Council Tenants	157,190	8,960	138,100	10,130	10,130	0
Private Residents	164,735	71,521	0	93,214	0	93,214
	493,105	80,481	302,600	110,024	16,810	93,214

4.3 There are currently 512 clients not in receipt of Housing Benefit or Income Support paying £2.20 a week for the Careline service. This represents 57 Council tenants and 455 private residents. The proposals set out in para 2.1 are to apply the full charge to all paying clients.

4.4 Allowing for a reduction of 220 clients produces a revised unit cost for 2003/04 for all clients. This increases the recharge to the HRA, for which there is currently sufficient funding, and produces a revised charge to Social Services. The revised unit cost is £169.00. This assumes that the reduction in the client base will be predominantly from clients on Income Support assessed not to need the service.

Option 2 (based on a charge of £169 per year - £3.25 per week)

<u>User</u>	<b>Estimate 2003/2004</b>				<b>Funding/</b>	
	<u>Gross Exp'd</u> £	<u>Gross Income</u> £	<u>SP Grant</u> £	<u>Net Exp'd</u> £	<u>HRA</u> £	<u>Social Services</u> £
Sheltered Housing	184,091	0	(2) 164,500	19,591	19,591	0
Council Tenants	169,045	(1) 9,633	(2) 138,100	21,312	21,312	0
Private Residents	139,969	(1) 76,895	0	63,074	0	(3) 63,074
	493,105	86,528	302,600	103,977	40,903	63,074

**Net cost of Option 1 - £6,047.**

(1) Based on full recovery of those residents not in receipt of Housing Benefit or Income Support i.e. 512 residents who would therefore pay full cost

(2) Actual Supporting People Grant

(3) Maximum exposure. This may reduce if clients assessed as needing the service are not eligible for financial assistance.

## Background Papers

- Executive Report and Minute No 55, 10 July 2001 - Social Alarm Scheme, Revised Charging Policy
- Executive Report and Minute 394, 19 March 2002 - Fees and Charges: Social Alarm Scheme and Births, Deaths and Marriages Registration Service

## **Careline Assessment Statement**

If one of the following risks are identified following an assessment of a person's needs, i.e.

- (a) live alone or are frequently left alone and are unable to leave their homes unaided due to physical infirmity, general frailty or poor mobility, or
- (b) are suffering from a medical condition such that the need to summon assistance is essential to their safety

then the person will be able to access the service as long as they are able to understand the purpose of the system and operate it.

**FEES AND CHARGES FOR THE CARELINE SCHEME**

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**FURTHER ADVICE**

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1. In a written Advice dated 5<sup>th</sup> March 2003, I advised the London Borough of Barking and Dagenham (“the Council”) about its powers to impose charges upon local residents who receive the Council’s rapid response Careline Service.
  
2. The particular issue upon which I was asked to advise was the extent of the Council’s power to make charges to Careline Users. My advice, in summary, was as follows:
  - (1) as regards Council tenants who are in receipt of Housing Benefit, and in respect of whom a Supporting People grant is payable, the rules about the extent to which the Council can charge the users are determined by the Office of the Deputy Prime Minister (and, as I understand it, the ODPM has said that no charge at all can be levied).
  - (2) The position is different for the other Careline users who are not covered by the Supporting People regime, ie Council tenants who are not in receipt of Housing Benefit, and all users who are private occupation, whether or not they are in receipt of Housing Benefit. As regards these classes of users, the extent to which charges can be levied is governed by the mandatory Fairer Charging guidance issued by the Department of Health under section 7 of the Local Authority Social Services Act 1970. This guidance provides, inter alia, that Councils must ensure that charges are not levied if they would mean that persons on income support are left with an income that is less than income support plus an additional 25% buffer.
  
3. I have now been asked to review a further draft report from the Director of Leisure and Environmental Services, prepared for the Executive meeting on 10<sup>th</sup> June 2003.
  
4. The particular issue that has been identified for my consideration in relation to this report concerns the charging regime for those clients who live in private properties but who are on Housing Benefit or Income Support. The proposal is that Social Services should use an assessment tool to assess the needs of these clients. If the clients are assessed to need the

service, the charge for the service will be met by Social Services. If, however, clients are assessed by Social Services as not needing the service, they will be offered the option of remaining on the Careline system but will be required to pay the charge. Those who do not wish to pay will have to be removed from the system.

5. This proposal is, if I may say so, eminently sensible. It would give those who cannot be said definitely to “need” the service the option of taking up the service nonetheless, provided that they are prepared to pay for it.
6. However, unfortunately, for the reasons set out below, I do not think that the Council has the power in any circumstances to require a client to pay for the system if the effect of paying for the system would be to leave them with an income less than income support plus 25% - even if the client has voluntarily chosen to take up the service.
7. The starting-point is that the power provide the Careline Service comes from section 29 of the National Assistance Act 1948 and section 45 of the Health Services and Public Health Act 1968, and the power to recover charges for the Service comes from section 17 of the Health and Social Services and Social Security Adjudications Act 1983.
8. Section 17 gives a general discretion to levy charges. However, as I said in my first Advice, this power to recover charges is constrained by guidance issued by Secretary of State for Health in November 2001, called “Fairer Charging”.
9. This guidance was issued pursuant to the Secretary of State’s power under section 7 of the Local Authority Social Services Act 1970 which states that local authorities shall, in the exercise of their social services functions, including the exercise of any discretion conferred by any relevant enactment, act under the general guidance of the Secretary of State.
10. In practice, this guidance is mandatory In **Robertson v Fife** [2002] UKHL 35, at para 33, the House of Lords approved the statement made by Sedley J in **R v Islington LBC, ex parte Rixon** [1997] ELR 66, at 71 about the effect of general statutory guidance. Sedley J said that “guidance” is less than “direction” and the word “general” emphasises the non prescriptive nature of what is envisaged. However, Sedley J went on to say that the effect of a statutory power for the Secretary of State to give guidance is that local authorities are required to follow the path charted by the Secretary of State’s guidance, with liberty to depart



from it where the local authority judges on reasonable grounds that there is good reason to do so, but without freedom to take a substantially different course.

11. The difficulty is that the Fairer Charging guidance is clear and unequivocal: no charges may be recovered if the effect would be to reduce a client's income below income support plus 25%. No differentiation is made in the guidance between clients who are provided with a service because they need it, and those who are provided with the service because they have asked the local authority to provide it: in all cases, the charges must meet the conditions set out in the guidance.
12. So, for example, paragraph 16 of the Guidance states that "As a minimum, users' incomes should not be reduced by charges below "basic" levels of Income Support, as defined in this guidance, plus a buffer of not less than 25%.". No exceptions are provided for in the guidance.
13. In my view, the guidance ties the Council's hands. I think that to make any user pay for the services in circumstances in which the user's income would be reduced below the minimum level would mean that the council would be taking a "substantially different course" from the guidance. The Council's argument would be that it would not be requiring users to dip too far into their income if they had no alternative but to use the service, and it is, in effect, offering those who do not need the service the choice to take it. However, this is not compatible with the guidance since, as stated above, the line taken by the guidance is simply that the charges cannot bring a user's income below the threshold.
14. If the Council chose to make the service available to clients who did not meet the "need" criterion, and then invoiced the client for the cost of the service, the client could simply refuse to pay the charge (or the full charge), if the charges brought the client's income below Income Support plus 25%, on the ground that the Council had no power to impose the charge. If the Council then attempted to recover the debt through the civil courts, the user would have a good defence.
15. Put bluntly, therefore, if the Council chooses to provide the Service to clients who are on income support, whether or not the client meets the "need" criterion, the Council cannot charge the client. This applies even if the client would be prepared to pay for the Service.

16. An unintended consequence of the Fairer Charging guidance, therefore, may well be that some potential clients who do not absolutely “need” the Service, but would like to have it, and who would be willing to pay for it, will not have access to it.

### **Section 2 of the Local Government Act 2000**

17. I have considered whether the limitations on the Council’s powers to impose a charge could be overcome by exercising the Council’s well-being powers under section 2 of the Local Government Act 2000. Unfortunately, I do not think that this will be possible.

18. As those instructing me are well aware, the purpose of section 2 of the 2000 Act was to give to local authorities wide-ranging powers to do such things as they consider appropriate to promote the well-being of local residents, thereby rendering it unnecessary to hunt around in the legislation for a specific power.

19. Section 2(1)(b) provides that local authorities can do anything that they consider is likely to achieve the promotion of the social well-being of their area. This power can be exercised for any persons resident in a local authority’s area (s2(2)(b)).

20. The Careline Service promotes the social well-being of its users. However, in my opinion, the Council could not use its section 2 powers to provide the Careline Service to those who do not absolutely need it and charge those users more than the maximum permitted under the Fairer Charging regime, for two cumulative reasons.

21. First, section 3(1) provides that the section 2(1) power does not enable a local authority to do anything which they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in any enactment (whenever passed or made). The purpose of making use of the section 2 power would be to get around the restrictions on charging imposed by the Fair Charging guidance. Though this means that the restrictions are, strictly, imposed by guidance rather than an enactment, I think that, nevertheless, section 2 powers cannot be used to depart from mandatory statutory guidance such as this. The effectively compulsory nature of the guidance is based upon an enactment, namely section 7 of the 1970 Act, as interpreted by Sedley J in **Rixon**, approved by the House in Lords in **Robertson**. Accordingly, to fail to comply with the guidance would, in my view, amount to using section 2 of the 2000 Act to do something which statute prohibit.

22. I should make clear that, as far as I can find, there is no authority on the meaning of section 3(1) of the 2000 Act, but I think that it would be interpreted by a court in the above manner.
23. Second, section 3(2) provides that the section 2(1) power does not enable a local authority to raise money (whether by precepts, borrowing, or otherwise). In other words, the Council cannot do anything via its section 2 power which involves charging for the services it provides.
24. I should add also that the Local Government Bill currently before parliament contains a provision which will permit local authorities to charge for services which are provided under the local authority's discretionary powers. This is clause 94 of the current Bill. The powers pursuant to which the Council would be providing services to those on income support that do not need it are, of course discretionary.
25. Clause 94, at present, provides for a free-standing power, rather than for an amendment to the scope of section 2 of the 2000 Act. However, it provides that local authorities will not be permitted to charge if there is an express prohibition from doing so.
26. There is no guarantee that the Bill will be enacted in its current form. Even if it is, it is strongly arguable that the Council would not be able to levy charges not permitted by the Fairer Charging circular, because that would be to contravene an express prohibition. Of course, until we can see the Bill in its final form once enacted, it is not possible to form a view as to whether it will be possible to impose charges in circumstances not permitted by the Fairer Charging regime.

## **Conclusion**

27. I am sorry to cause difficulties for the Council's plans once again. However, in my view it is not permissible to recover charges for the Careline service that have an effect of reducing users' income below Income Support plus 25%, even if the user does not "need" the service and is willing to pay for it.
28. It is possible, though unlikely, that the position may change after the current Local Government Bill is enacted.
29. If I can assist further, please do not hesitate to contact me.

**JOHN CAVANAGH QC**  
11 King's Bench Walk Chambers,  
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London, EC4Y 7EQ,  
3<sup>rd</sup> June 2003.

**THE FAIR ACCESS TO CARE FRAMEWORK**

**ABOVE THE THRESHOLD FOR ELIGIBILITY**

CRITICAL AND SUBSTANTIAL RISKS AND NEEDS	
<p><b>A person with an assessed critical or substantial risk to their independence is eligible for services provided or arranged by Social Services – individuals or other agencies may also meet eligible needs.</b></p>	
1. CRITICAL	2. SUBSTANTIAL
<p>The person will be highly vulnerable with acute and immediate risk to life or rapid deterioration. There is a high risk of personal injury or harm to the person, their carer or other person.</p> <ul style="list-style-type: none"> <li>• life is, or will be, threatened; and/or</li> <li>• significant health problems have developed or will develop; and/or</li> <li>• there is, or will be, little or no choice and control over vital aspects of the immediate environment; and/or</li> <li>• serious abuse or neglect has occurred or will occur; and/or</li> <li>• there is, or will be, an inability to carry out vital personal care or domestic routines; and/or</li> <li>• vital involvement in work, education or learning cannot or will not be sustained; and/or</li> <li>• vital social support systems and relationships cannot or will not be sustained; and/or</li> <li>• vital family and other social roles and responsibilities cannot or will not be undertaken.</li> </ul>	<p>The person is very vulnerable with ill health and defined multiple needs and / or long term personal safety / independence risks to themselves or others.</p> <ul style="list-style-type: none"> <li>• there is, or will be, only partial choice and control over the immediate environment; and/or</li> <li>• abuse or neglect has occurred or will occur; and/or</li> <li>• there is, or will be, an inability to carry out the majority of personal care or domestic routines; and/or</li> <li>• involvement in many aspects of work, education or learning cannot or will not be sustained; and/or</li> <li>• the majority of social support systems and relationships cannot or will not be sustained; and/or</li> <li>• the majority of family and other social roles and responsibilities cannot or will not be undertaken.</li> </ul>
RESPONSE	RESPONSE
<p>Immediate provision of services including intermediate care to remove immediate risk and stabilise situation.</p>	<p>Provide services including intermediate care to reduce risk and stabilise situation.</p>

## MODERATE PLUS – ABOVE THE THRESHOLD FOR ELIGIBILITY

### **MODERATE ONLY – BELOW THE THRESHOLD FOR ELIGIBILITY**

#### **MODERATE RISKS AND NEEDS**

A person with an assessed moderate risk to their independence may be eligible for services provided by Social Services. See column below.

The person / and their carer may be vulnerable with a moderate risk to their independence. The person / carer is able to manage in the short term. Preventive services may be of help.

- there is, or will be, an inability to carry out several personal care or domestic routines; and/or
- involvement in several aspects of work, education or learning cannot or will not be sustained; and/or
- several social support systems and relationships cannot or will not be sustained; and/or
- several family and other social roles and responsibilities cannot or will not be undertaken.

#### MODERATE PLUS

The following factors must also be present for moderate risk and need to be above the eligibility threshold.

- ❖ In order to meet substantial or critical risks it is vital that moderate risks are met.
- ❖ It is necessary to meet a moderate risk in order to prevent an immediate substantial or critical risk to independence.

#### **RESPONSE**

Ensure that services are arranged or provided to meet moderate risks only where this is vital to meet substantial / critical risks or to prevent them from arising immediately.

Note that FACS does not require that all assessed eligible needs be met by Social Services. Other individuals or agencies may meet eligible needs – this will need to be detailed within the Care Plan.

## **BELOW THE ELIGIBILITY THRESHOLD**

### **LOW RISK AND NEEDS**

A person with an assessed low risk to independence is not eligible for services provided by Social Services – other than information, advice and assistance in contacting mainstream services or other agencies.

### **4. LOW**

The person may be vulnerable but with a low risk to independence. The person and / or their carer may benefit from preventive services.

- there is, or will be, an inability to carry out one or two personal care or domestic routines; and/or
- involvement in one or two aspects of work, education or learning cannot or will not be sustained; and/or
- one or two social support systems and relationships cannot or will not be sustained; and/or
- one or two family and other social roles and responsibilities cannot or will not be undertaken.

### **RESPONSE**

Provide information, advice, and redirection where appropriate.

Supporting People services may be required.

Advise to re-contact if needs change.