

CABINET

16 February 2015

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| Title: Care and Support Charging Policy | |
| Report of the Cabinet Member for Adult Social Care and Health | |
| Open Report | For Decision |
| Wards Affected: All | Key Decision: Yes |
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| Accountable Divisional Director: Glynis Rogers, Divisional Director of Community Safety and Public Protection | |
| Accountable Director: Anne Bristow, Corporate Director of Adult and Community Services | |
| Summary <p>The introduction of the Care Act 2014 sets out a single legal framework for charging users for their care and support. The Act is being implemented in April 2015, with further changes focussing on the charging regime in April 2016. The Act still allows the Council to apply charges and where it does so, legislation and guidance requires the local authority to develop and maintain a charging policy.</p> <p>Barking and Dagenham's Fairer Charging Policy was last reviewed and updated in 2011. As the policy stands it would not be compliant with the Care Act 2014.</p> <p>The report identifies the key changes to the charging framework that would need to be made if the Council wishes to continue to levy charges as a result of the Care Act 2014.</p> <p>The key areas covered within the body of the report are:</p> <ul style="list-style-type: none">• Informal Carers e.g. family• Services exempt from charges• Financial Assessments• Minimum Income Guarantee Disregard;• Income from disability benefits• Capital• Administration Charges• Notional Capital and Income <p>Appendix 1 includes Barking and Dagenham's proposed Care and Support Charging Policy which sets out how charges will be made for those in receipt of care and support services provided under the Care Act 2014.</p> | |

Recommendation(s)

The Cabinet is recommended to:

- (i) Confirm that the Council will continue its current policy of charging for adult social care;
- (ii) Note the introduction of the Care Act 2014 as the new legal charging framework for care and support services provided under the Act;
- (iii) Agree that the Care and Support Charging Policy set out at Appendix 1 be implemented from 1 April 2015 for all new service users and implemented on a phased basis for all existing service users; and
- (iv) Delegate authority to the Corporate Director of Adult and Community Services, in consultation with the Cabinet Member for Adult Social Care and Health and the Chief Financial Officer, to put in place transitional protection in appropriate circumstances.

Reason(s)

There is a legal requirement for the Council to implement the Care Act 2014. Sections 14 and 17 set out the legal framework for charging for care and support services provided to an adult under the Care Act 2014.

1. Introduction and Background

- 1.1 The Care Act 2014 (Sections 14 and 17) introduces a single legal framework for charging for care and support which will come into force from April 2015. The Act gives local authorities the power to charge for care and support services to service users and carers.
- 1.2 Where the local authority charges it must follow the Care and Support (Charging and Assessment of Resources) Regulations 2014 and have regard to the Care and Support Statutory Guidance 2014 in determining its charging policy.
- 1.3 The current Fairer Contribution Policy takes into account the needs of local residents who might require care and support services, applying discretion within the policy where the legislation and guidance allows a Council to do so. The Care Act 2014 charging framework further limits that discretion.
- 1.4 The current policy was last reviewed in 2011. The revised Care and Support Charging Policy has been updated in line with the Care Act 2014. Draft regulations published in early February 2015 in respect of the sections of the Care Act 2014 coming into force in April 2016 suggest a further more substantial review of the charging policy will be required next year

2. Proposal and Issues

2.1 The Care Act 2014 requires the local authority's charging policy to ensure:

- a charge will be levied after a means tested financial assessment;
- that services users and carers are only charged what they can reasonably afford to pay;
- contributions do not exceed the costs of providing the service;
- after charges have been applied, service users will retain at least their basic income support or pension credit plus 25% as protected income.

2.2 Carers

Carers in Barking and Dagenham play a critical part in supporting people to remain healthy and independent for as long as possible. There is evidence to show that investment in carers and carers' services can reduce demand for more expensive health and social care services. The Care Act 2014 greatly enhances the rights of carers in relation to assessment of need, provision of support and information and advice.

At the 2011 Census, 16,200 people in Barking and Dagenham indicated that they provide some form of informal care, with 28% reporting that they provide weekly care totalling 50 hours or more. The current policy exempts carers in receipt of a carers service from charges as recognition of their valuable role in supporting the cared for person. It is proposed to maintain this position and provide carer's services free of charge from April 2015.

2.3 Services exempt from Charges

Services exempt from charges under the Care Act 2014 includes:

- service users who are diagnosed as suffering with any form of Creutzfeldt Jacob Disease (CJD);
- after care services provided to service users subject to Section 117 of the Mental Health Act 1983;
- the first six weeks of a person's care and support service or Intermediate Care services;
- community equipment and minor adaptations(under £1,000);
- service users in receipt of NHS continuing healthcare, living in their own home where the NHS is responsible for meeting all nursing and personal care needs;
- the needs and eligibility assessment and financial assessment for care and support.

2.4 Financial Assessments

The local authority must carry out a financial assessment to determine a person's contribution to care and support services. The Act now introduces the concept of a 'light touch' assessment' to be applied in these circumstances:

- where a person has significant financial resources, and does not wish to undergo a full financial assessment;

- where the local authority charges a small or nominal amount for a particular service and it would be disproportionate to carry out a financial assessment;
- when an individual is in receipt of benefits which demonstrate that they would not be able to contribute towards their care costs.

2.5 **Minimum Income Guarantee Disregard**

On undertaking a financial assessment to determine a person's contribution to their care and support the local authority must ensure they retain the minimum income guarantee disregard. The minimum income guarantee amount is equivalent to Income Support plus a buffer of 25%.

2.6 **Income from disability benefits**

The current policy is to take only 75% of disability related benefits into account when assessing an individual's ability to contribute towards their care and support. However the Care Act 2014 requires 100% of the income to be taken into account. There are a small number of exceptions to this general rule, namely:

- the mobility component of Disability Living Allowance and Personal Independence Payments; and
- Guaranteed Income Payments made to Veterans under the Armed Forces Compensation Scheme

However the care component of other disability related benefits is taken into account for the purposes of calculating how much an individual will have to contribute towards their care and support costs

Recognising that there are additional living costs associated with disability it is proposed that:

- a) A set flat-rate disregard (£5, £15, £25- see Section 10.3 of policy document) is applied according to the level of care component received as part of their disability related benefit.
- b) Where an individual can demonstrate that their disability related expenditure exceeds disregard applied an additional disregarded as per their expenditure will be applied.
- c) Where no disability benefits are in payment, individuals who can demonstrate that disability related costs are incurred will have a disregard applied.

At this stage detailed modelling of gainers and losers is not complete. Therefore it is recommended that delegated authority is given Corporate Director of Adult and Community Services, in consultation with the Cabinet Member for Adult Social Care and Health and the Chief Financial Officer, to put in place transitional protection in appropriate circumstances.

2.7 **Capital**

The Care Act 2014 sets out how capital is to be treated in the assessment:

- a. Any capital under £14,250 will not be taken into account
- b. If a person has between £14,250 and £23,250 then they will be assumed to have an income from this capital. This is known as tariff income and is not related to the actual income that may be earned or this capital. Currently this is set at £1 in every £250 above £14,250.
- c. If a person has more than £23,250 that person will have to fund their own care

The current policy does not apply tariff income rules but the Care Act 2014 no longer allows local authorities discretion to do this. It is estimated up to 50 individuals may be adversely affected by this legislative change. It is anticipated the capital limits will change in 2016.

2.8 Administration Charges

The Care Act 2014 has also introduced a new discretion. Where a person assessed as having eligible needs whose care and support would not be met in a care home setting but has savings over the £23,250 the local authority may:

- pay towards the cost of care and support;
- administer a fee for arranging the care and support where the person has requested the Council makes the arrangement. This fee is to cover the costs the Council incurs for making these arrangements.

The proposal is for the Council to usually apply a flat rate fee of £300 for making these arrangements but to exercise discretion in exceptional cases.

2.9 Notional Capital and Income

The Care Act 2014 defines the meaning of and how to treat notional capital and income. Where the person deprives themselves of their capital or income so as to pay less care costs, the Council can assume the notional income or capital within their financial assessment. Examples of this may be a person transferring their property to a family member simply to avoid care charges or by refusing to claim a benefit to which they are entitled.

3. Options Appraisal

- 3.1 The Council ceases to charge for care and support services, this would result in a loss of income of £1.883m.
- 3.2 The Council amends its policy on charging to comply with the Care Act 2014 and continues to levy charges. This is the recommended option.

4. Consultation

- 4.1 The Care Act 2014 has formed part of the wider Department of Health consultation.

5. Financial Implications

Implications completed by: Roger Hampson, Finance Group Manager

- 5.1 The 2015/16 Revenue Budget has been prepared on the basis that the Council will continue its Care and Support Charging Policy. In retaining the Care and Support Charging Policy, the Care Act (2014) and associated guidance removes some areas of discretion for calculating charges as described in this report; this is in order to promote greater equality between local authorities.
- 5.2 In order to comply with the regulation and guidance of the Care Act 2014 the new policy will be applied to new service users in 2015/16 and to existing service users as and when a financial reassessment is required.

6. Legal Implications

Implications completed by: Dawn Pelle, Adults Lawyer

- 6.1 The Legal implications have been set out clearly above in the report in relation to the Charging Regime under the Care Act 2014. All the relevant areas have been captured by the report and there is nothing additional to add to what has been set out within the body of the report.

7. Other Implications

- 7.1 **Risk Management** – There are different risks to the current option. Not to apply all the changes by April 2015 could lead to a loss of income to the Council, equally by deferring the changes it may be minimising a possible increase in bad debt as those who may be required to contribute for the first time or increase their contributions may not pay. The financial risk can only be properly assessed through financially modelling the impact of the Care Act 2014 charging framework changes.

- 7.2 **Corporate Policy and Customer Impact** - Implementation of the Care Act contributes to the vision and priorities of the Council to enable social responsibility where the person has control about how their care and support needs are met. An Equalities Impact Assessment (EIA) has been carried out to assess the impact of the policy on the protected groups under the Equality Act see Appendix 2. The EIA shows that the Council has paid due regard to the equality implications associated to the Care and Support Policy 2015.

The application of the flat rate disability related expenditure should have no disproportionate impact on those with a disability with the disregards being similar to current disregards applied. The Care and Support Charging Policy allows an individual to submit supplementary information to evidence their disability related expenditure above the flat rate disregard applied.

The application of the 'tariff income' affects a small minority of current services users. The numbers affected will be monitored to determine if any group is affected.

- 7.3 **Health Issues** - Under the Care Act 2014, charging for care and support directly affects some of the most vulnerable individuals whose health needs may be at risk. It is expected that individuals with disability benefits are using these benefits to help

support their health and wellbeing and/or meet their care and support needs. Reducing the level of available income may have an impact on how those needs are met but this cannot be quantified at this time.

Public Background Papers Used in the Preparation of the Report:

- <http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>
- https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315215/draft_regs.pdf

List of appendices:

- **Appendix 1** - Draft Care and Support Charging Policy (February 2015)
- **Appendix 2** - Equality Impact Assessment