

## CABINET

10 November 2015

<b>Title:</b> Care and Support Charging Policy	
<b>Report of the Cabinet Member for Adult Social Care and Health</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> Yes
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<b>Summary</b> <p>The Care Act 2014, implemented on 1 April 2015, set out a single legal framework for charging users and carers for their care and support. The Care Act 2014 allows the Council to apply charges; where it does so, legislation and guidance requires the local authority to develop and maintain a charging policy. However the Care Act 2014 also limits the level of discretion a Council can apply to its charging policy. This is the subject of this report.</p> <p>The Care and Support Charging Policy was presented to Cabinet on 16 February 2015 and became effective from April 2015; it was agreed that the policy was subject to review pending consultation to include the introduction of the cap on care costs in April 2016.</p> <p>On 17 July the Government responded to a letter from the Local Government Association (LGA) calling for a delay in the implementation of the cap on care costs system. In light of concerns expressed by the LGA and many other stakeholders about the timetable for implementation and pressures on adult social care, the Government has decided to delay implementation of the cap on care costs system until 1 April 2020.</p> <p>In view of the deferral of the cap on care costs until 2020 and future financial pressures, this report seeks permission to consult on confirming the current interim approach as substantive in line with the Care Act 2014. The Council is not required to consult on the mandatory areas of the Care and Support charging policy as those have been agreed by Parliament and passed into law. The report is about aspects of the charging policy where discretion has been applied, and now needs to be normalised.</p>	
<b>Recommendation(s)</b> <p>The Cabinet is recommended to:</p> <p>(i) Endorse the proposal that the Council consults on revisions to the Care and Support Charging Policy in the following areas where discretion can be applied:</p>	

- The level of the disability related expenditure (DRE) disregard automatically applied to the financial assessment;
- The principle of charging for care and support services provided to a carer who meets the eligibility criteria for services in their own right.

(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 revised draft Care and Support Charging Policy for approval.

### **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 Background**

### **1.1 Legislative Framework: Charging for Care and Support Services**

1.1.1 The Care Act 2014 (Sections 14 and 17) introduces a single legal framework for charging for care and support which came into force in April 2015. The Act gives local authorities the power to charge service users and carers for care and support.

1.1.2 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.

1.1.3 The current Care and Support policy updated in April 2015 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.

## **2. Current and future legislative changes**

2.1 It is recognised that current and future service and financial changes to mainstream funding may present challenges to the level of income generated from the Care and Support Charging Policy.

2.2 Pension reforms introduced in April 2015 enables individuals aged 55 and over with a personal or workplace pension to draw down from their pension. This can include a lump sum amount taken in the early stages with a smaller pension paid in later years.

2.3 How individuals access their pension will be dependent on their own personal circumstances but could lead to future service users in need of care and support having less disposable income available to support their care needs and charges.

2.4 The Welfare Reform Act 2012 introduced a cap on the maximum amount a family member can receive in welfare benefits (inclusive of housing benefit). This amounts to £26,000 per annum for those with children and £18,000 for those with no dependents.

- 2.5 The Welfare Reform and Work Bill which had its second reading in the House of Commons in July 2015 proposes a further reduction to the cap for those in greater London to £23,000 and £15,410 for those with no dependents. This will further limit the level of disposable income of individuals likely to be in receipt of care and support services.
- 2.6 The Bill also includes the introduction of the national minimum wage from April 2016. Although the change will not increase the income of those charged for their services, it may impact on their cost of living as they use their disposable income to pay the increased rates of providers' services.

### **3. Background**

#### **3.1 Mandatory requirements within the Care and Support Charging Policy**

3.1.1 The Council introduced a Care and Support Charging Policy in April 2015 to ensure compliance with the Care Act. The policy must:

- exempt those from charges for care and support services who meet the qualifying criteria
- carry out a full financial assessment except where a light touch assessment could apply i.e. the client has savings over the capital threshold limit and does not wish to disclose their savings
- ensure the individual retains the minimum income guarantee disregard as part of the financial assessment. The minimum income guarantee amount is equivalent to Income Support plus a buffer of 25%
- take into account 100% of a person's disability related benefit within the financial assessment (with some exceptions). However, the Council must also apply a disability related expenditure disregard, this represents the additional cost a person may incur due to their disability i.e. additional laundry costs
- apply the treatment of capital within the financial assessment as specified in the guidance.
  - Apply tariff income for those with savings between £14,250 and £23,250. Tariff income is calculated on the basis that of every £250 above £14,250 the Council assumes £1 in income.
  - Treat those with savings of £23,250 or more as self-funders.

3.1.2 The Care Act 2014 has also introduced a new discretion to apply an administration charge to self-funders requesting the Council to arrange their care and support services on their behalf.

#### **3.2 Discretion within the Care and Support Charging Policy**

3.2.1 The Care Act 2014 limited the discretion a local authority can apply within its charging policy. Where the Act allows for discretion, it was agreed by Cabinet to continue to apply discretion to the charging policy as detailed below.

3.2.2 Discretion currently applied in the Care and Support charging policy includes:

- The level of disability related expenditure disregard automatically applied to service user charges. This is £5, £15 or £25 according to the rate of care component paid as part of a person's disability related benefit.

- An additional £10 disregard applied to service users aged 85 and over
- No charges to carers for their services

3.2.3 Where the Council takes into account the care component of the disability related benefit, a disability-related expenditure disregard must be applied in recognition of the additional cost an individual incurs due to their disability.

3.2.4 Before the introduction of the Care Act 2014, Councils had the discretion over the amount of the care component of the disability related benefit to be taken into account when assessing a person's financial contribution. To simplify the approach for service users the Council assumed 75% of the care component of the disability related benefit within the financial assessment and disregarded 25% as the person's disability related expenditure.

3.2.5 The introduction of the Care Act required 100% of the care component of the disability related benefit be taken into account. To ensure the Council's charging policy was Care Act compliant changes were made to the disability-related expenditure disregards as follows:

Rate of Care Component	Disregard under the 2011 Charging Policy	Disregard under the Care And Support Act policy (Care Act 2014)	Difference
Lower	5.38	£5	-£0.38
Middle	13.61	£15	£1.39
Higher	28.45	£25	-£3.45

3.2.5 The Cabinet report in February 2015 recommended delegated authority be given 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.

3.2.6 The transitional protection was to ensure service users provided with care and support before the introduction of the Care Act 2014 would continue with the same level of disregard as applied under the Charging Policy 2011. At the point of an assessment of eligibility or a change in financial circumstances, the new disregard would apply. If the newly applied disability related expenditure disregard increased the service user's weekly contribution, transitional protection is applied to ensure that their weekly contribution remains unchanged.

**Example:**

Mr J Jones has been in receipt of service since July 2010. He is in receipt of the higher rate care component and the disability related expenditure disregard of £28.45 is applied to his financial assessment; he is required to contribute £7.50 per week towards his services. In May 2015 Mr Jones has a change in his needs and reassessed under Care Act 2015. Mr Jones has a financial re-assessment and the disability disregard reduces from £28.45 to £25.00 per week, this increases his contributions by £ 3.45 per week to £10.95 per week. Transitional protection of £3.45 per week is applied and he continues to pay £7.50 per week.

3.2.7 In applying transitional protection the Council does not generate the additional income that would have been charged had the new disability-related expenditure

disregards been applied to all service users as from April 2015. The loss of income is shown in the table below:

Rate of care component	No. of chargeable service users	Disregard under the Charging Policy 2011	Disregard under the Care and Support Policy	Change between new and old disregard	Increase(+) / reduction(-) to annual revised income
Lower	5	5.38	5	0.38	£99
Medium	299	13.61	15	-1.39	-£21,612
Higher	500	28.45	25	3.45	£89,700
<b>Total</b>	<b>804</b>				<b>£68,187</b>

#### 4. **Proposals to change the discretion applied to the Care and Support Charging Policy**

4.1 This section of the report proposes the changes to be made to the discretion applied to the Care and Support Charging Policy, this would be the basis of the proposed consultation.

#### 4.2 **Discretion: Rate of Disability-related expenditure (DRE) disregard applied.**

4.2.1 The Care Act requires 100% of an individual's care component of their disability related benefit to be taken into account within the financial assessment to determine how much one can contribute to their care and support services. Where the care component of the disability related benefit is assumed in the financial assessment, the Council has to apply a disability-related expenditure disregard. The Care Act is not prescriptive as to the amount to be disregarded only that there is to be a disregard where the service user demonstrates they have disability-related expenses.

4.2.2 It is recommended that the Council retains the current approach, applying a set disregard of £5, £15, £25 according to the rate of care component of the benefit paid to service users. This is until there is an equalisation between the individual's care component and decrease in the disability related disregard.

#### **Example:**

Mr Jones who has been in receipt of care and support services since July 2010 has a disability related expenditure disregard of £28.45 applied to his financial assessment. The care component of Mr Jones's disability related benefit will need to increase by £3.45 per week before his disregard reduces to £25.00 per week.

The point at which there is likely to be an equalisation between the disability-related care component and disability related expenditure disregard is shown as an example in the table below:

Financial Year	Lower Rate Disregard		Higher Rate Disregard	
	Care Component Rate	Revised Disregard	Care Component Rate	Revised Disregard
15/16	21.80	5.38	82.30	28.45
16/17	22.06	5.12	83.28	27.47
<b>17/18</b>	<b>22.28</b>	<b>5.00</b>	84.28	26.47
18/19			85.29	25.46
<b>19/20</b>			<b>86.31</b>	<b>25.00</b>

**Note: this assumes the disability care component has a year on year inflationary increases by 1.2%:**

Mr Jones's disregard is likely to see the equalisation between his disability related benefit and disability related expenditure disregard to £25.00 in 2019/20.

4.2.3 To support a seamless transition, it is proposed that the Council retains the disability-related expenditure disregard until:

- The financial equalisation between the disability-related care component and the disability-related disregard as presented in the table at 4.3.2
- The point of their annual social care review of their needs and care and support service
- Any change in provision of services to the individual, or
- Services cease.

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

- a) Where an individual can demonstrate that their disability-related expenditure exceeds the disregard applied, an additional disregard as per their expenditure will be applied
- b) Where no disability benefits are in payment, individuals who can demonstrate that disability-related costs are incurred will have a disregard applied.

### 4.3 Charges to carers

4.3.1 Carers in Barking and Dagenham play a vital role 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 greatly enhances the rights of carers in relation to assessment of need with their own eligibility criteria, provision of support and information and advice.

4.3.2 The current policy exempts carers in receipt service from charges in recognition of their role. Barking and Dagenham are keen not to discourage carers from providing support. However there is a need to consider a charging regime for carers that is fair and equitable which enables a carer to make a financial contribution to the support they receive.

4.3.3 The Council has 2,600 registered carers. Many carers receive information and advice from the Council which is not chargeable. In line with the Care Act applying a resource allocation system, 54 carers have been assessed as eligible for services in their own right since April 2015. The numbers are small and it is therefore difficult to predict the total numbers that would receive services in their own right.

4.3.4 The proposal is to consult on the principle of charging carers for their service applying the Care and Support Charging policy to assess their contribution to services, with a view that implementation of charges may be considered within the current administration at some point in time.

4.3.5 It is further proposed that Members agree the Directorate reserves the right to review the implementation of charges to carers in the future, if the introduction of a charge to carers indicates:

- The costs associated with charging carer's is disproportionate to the amount that would be collected
- The full implementation of charges is considered a disincentive to carers providing care and support.

4.4 The report proposes the aspects of discretion applied to the Care and Support Charging Policy detailed in the report below remain unchanged; they will not be subject to the proposed consultation.

#### 4.5 **Age-related disregard**

4.5.1 The Care and Support Charging Policy (April 2015) continued to apply the £10 age-related disregard for service users aged 85 and over in line with the Charging Policy 2011. There are 111 chargeable service users aged 85 and over in receipt of community based services.

4.5.2 The removal of the £10 disregard would generate maximum additional income of £57,000 but the removal of the £10 would impact some of the most vulnerable individuals in the community.

4.5.3 It is proposed that there is no change to the age-related disregard. This will retain the individual's daily living allowance and support the Council's aim to help older adults with care and support needs to remain independent in the community for as long as possible.

#### 4.6 **Administration charges**

4.6.1 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.

4.6.2 The proposal is for the Council to continue to apply a flat rate fee of £300 for making these arrangements but to exercise discretion in exceptional cases. The flat rate fee will be subject to the Council's annual fee and charges review.

## 5. Options Appraisal

5.1 **Do nothing:** If the Council makes no amendments to its current policy

- The current disability-related expenditure is applied to new clients and transitional protection remains for existing clients until such time as the individual is no longer in receipt of services
- Carers assessed for service in their own right are not subject to a financial assessment and required to contribute to their services.

This will lead to:

- a) The different treatment of the application of disability related disregard for all service users possibly leading to challenges from individuals:
  - New service users assessed under the Care Act will be applied the new disregards
  - Those assessed in receipt of services before the introduction of the Care Act 2014 will have the old level of disregard applied consistently until they have a change in circumstances or they are no longer in receipt of services.
  - Service users in receipt of services before the Care Act 2014 but have had a change in their circumstances may have the new disregard applied as their new service has been provided under the Care Act 2014.
- b) Difficulty and costly to administer the different disregards as the systems are unable to automatically differentiate between those who should be assessed applying the old disregard and those where the new disregard applies.
- c) The need for manual intervention to change to the old disregard each time a financial reassessment is completed. This is costly and time-consuming.

5.2 **Apply the new discretion:** the Council amends the discretion applied to the Care and Support Charging Policy

- The current disability-related expenditure is applied to new clients and an equalisation approach is applied to existing clients. This to ensure equal treatment of the disability-related expenditure disregard for all clients in receipt of care and support services.
- To consult on the principle of charging carers for their service applying the Care and Support Charging policy to assess their contribution to services, with a view that implementation of charges may be considered within the current administration at some point in time

This will lead to:

- a) A clear and transparent approach as to how discretionary disregards are applied to a service user's financial assessment with less likelihood of challenges from individuals



- b) The application of the disability related expenditure disregard being easier to administer in the system with significantly less manual intervention to change levels of disregard to an old rate.

## 6. Consultation

- 6.1 It is proposed to consult residents and stakeholders in the borough to communicate the proposed changes and provide an opportunity for people to give their views.
- 6.2 A reasonable consultation period is generally seen as good practice when proposed changes may affect a large number of people, and ensures that residents and stakeholders have sufficient time and opportunity to participate. It is proposed there is a two month consultation period.
- 6.3 A number of legal cases have established the principles underpinning a robust local authority consultation. These include: 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.
- 6.4 The timelines for consultation and proposed implementation are detailed below:

Consultation and proposed Implementation steps	Dates
Consultation opens and information and engagement sessions commence	23 November 2015
Consultation ends	17 January 2016
Findings of the consultation compiled and proposal reviewed taking into account the responses.	By 31 January 2015
Report to Cabinet setting out the findings from the consultation, proposal and draft policy for approval (if applicable)	15 February 2016
Communication, workforce and infrastructure development	By 31 March 2016
Implementation of proposal (if applicable)	4 April 2016

- 6.5 The consultation methodology is described below:
- a) Adult social care will provide respondents with the opportunity 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 also 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) Member's briefings, reports to Health and Wellbeing Board, Scrutiny and Cabinet.
- i) Briefings to Council staff using existing communications vehicles.

## **7. Financial Implications**

Implications completed by: Carl Tomlinson, Finance Manager

- 7.1 The Council currently generates £1.5m of income for care and support service charges. This supports the delivery of care and support to residents of Barking and Dagenham. The change to the level of disregard when compared to the 2011 policy equates to an impact of £68k based upon current service user profile.
- 7.2 The revenue budget setting process for 2016/17 will assume the Council continues its Care and Support Charging Policy. In retaining the policy, the Care Act 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.
- 7.3 Where discretion to the policy can be applied it is being proposed changes are made that will ensure equality in how charges are applied between service users in Barking and Dagenham.

## **8. Legal Implications**

Implications completed by: Dawn Pelle, Adults Lawyer

- 8.1 Once a Council exercises its discretion to charge for services, the charging policy has to adhere to the Regulation. The Care Act 2014 has limited the level of discretion a Council can apply within its charging policy. The report proposes to consult on the discretion applied to the policy.
- 8.2 The proposed changes to the Care and Support Charging policy will have an impact on existing and new service users of care and support services. A high percentage of current users will be affected which requires the Council to go out to consultation to ensure that the proposals are communicated and residents have the opportunity to participate in the decision making process.

## **9. Other Implications**

- 9.1 **Risk Management** - There are different risks that impact these changes. If all the changes are not applied, there is a risk of income loss to the Council. On the other hand, incremental change proposed for the disability-related expenditure disregard minimises the potential risk in bad debts as those required to contribute will not experience a direct loss in income. However, at this point the Council cannot predict the impact of the changes in the Welfare Reform and Work Bill on an individual's ability to pay their care and support charges.

9.2 **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. The EIA shows that the Council has paid due regard to the equality implications associated to the Care and Support Charging Policy 2015.

The equalisation of the disability-related disregard should not have disproportionate impact on those with a disability as the Care and Support Charging Policy allows an individual to submit supplementary information to evidence their disability related expenditure above the disregards applied.

9.3 **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.

The introduction of charging for care and support service has been in operation since 2011. The impact of the change puts in place safeguards to minimise as much as possible the impact to service users.

**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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315215/draft_regs.pdf)

**List of appendices:** None