

CABINET

15 February 2016

Title: Outcome of Consultation on 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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Summary <p>The Care Act 2014, implemented on 1st 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.</p> <p>An interim Care and Support Charging Policy was agreed by Cabinet in February 2015 which was introduced in April 2015. The interim policy applies to new service users assessed for services under the Act and transitional protection was put in place for existing services users.</p> <p>The policy was to be subject to consultation alongside the introduction of the Cap on Care costs however, in June 2015, the Government announced that the Cap on Care costs was deferred to 2020.</p> <p>In light of this change and to formalise the Care and Support Charging policy, Cabinet approved proposals at its meeting on 10th November 2015 (Minute 61) to consult on a revised and consolidated Care and Support Charging policy which included:</p> <ul style="list-style-type: none">a) Approach to the amount of the Disability Related Expenditure disregard (DRE) applied to all services users when assessing the amount they will be required to contribute to their care and support services.b) That the Council consider exercising its discretion to introduce charges to carers eligible for care and support services based on agreeing the principle of charging carers at this stage. <p>In a separate report to the 10 November 2015 meeting (Minute 62 refers) the Cabinet also agreed to consult on placing a legal charge on a property to recover all or part of a Disabled Facilities Grant (DFG) if the property where the adaptation is made is sold in a</p>	

10-year period as set out under the Housing Grants, Construction and Regeneration Act 1996.

The consultation has been completed and Cabinet are now asked to adopt revised charging policy.

Recommendation(s)

Cabinet is recommended to:

- (i) Adopt the revised Charging Policy attached at Appendix 1 to the report which will mean that:
 - (a) The same amount of Disability Related Expenditure disregard shall be applied to all service users when assessing the amount they contribute to their care.
 - (b) That the new disregarded amounts of £5, £15 or £25 shall be phased in as disability benefit rates are uplifted.
- (ii) Agree to the principle of charging for care and support services provided to carers who meet the eligibility criteria for services in their own right but that no changes are introduced for the 2016/17 financial year; and
- (iii) Agree the introduction of a scheme, in accordance with the Housing Grants, Construction and Regeneration Act 1996, 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 conditions set out in paragraphs 6.4 and 6.5 of the report.

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.

Under the Housing Grants, Construction and Regeneration Act 1996, Councils can exercise their duty to place a legal charge on the property of those awarded a DFG of £5,000 or more.

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.

Disabled Facilities Grant (DFG)

- 1.1.4 The Housing Grants, Construction and Regeneration Act 1996 gives Councils the power to provide a Disabled Facilities Grant (DFG). 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.
- 1.1.5 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.
- 1.1.6 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.

2. Background

- 2.1 The Council introduced an interim Care and Support Charging Policy in April 2015 to ensure compliance with the Care Act. The Act is generally prescriptive limiting the level of discretion that a local authority can apply to its charging policy.
- 2.2 Cabinet agreed the following discretion currently applied in the Care and Support Charging Policy which includes:
- The level of DRE 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
- 2.3 The interim policy intended that the discretionary aspects - the level of the DRE disregard and charges to carers - be subject to consultation within the financial year of 2015/16.
- 2.4 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.

- 2.5 This approach is applied by other local authorities with the income received invested back into their local disabled facilities programme to meet current and future demand. Barking and Dagenham do not currently operate such a policy.
- 2.6 The Council extended the consultation to seek views on placing a legal charge on the property of those awarded a DFG.

3. Consultation Process

- 3.1 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. A two month consultation period was proposed and agreed by Cabinet. The consultation commenced on 23 November 2015 and ended on 17 January 2016.
- 3.2 To ensure that the conditions for meaningful consultation were met, officers invited all service users, their carers and residents of Barking and Dagenham to participate in the consultation. Participants were able to express their views by:
- Completing the online survey
 - Speaking directly to an officer
 - Formal written responses
 - Contributing to a consolidated response as part of any wider consultation group.
- 3.3 The consultation was publicised in the One Borough Newsletter. Officers also attended the following forums/ meetings where the proposed changes to the Care and Support Charging Policy and the placing of a legal charge on the property on those awarded a DFG was discussed:
- Carer's Strategy Group: 23 November 2015
 - Healthwatch: 1 December 2015
 - Health and Wellbeing Board: 8 December 2015
 - Carers of Barking and Dagenham: 9 December 2015
 - Health and Adult Social Care Select Committee: 14 December 2015
 - CSV Equalities Forum: 14 December 2015
 - Learning Disability Partnership Group: 15 December 2015
- 3.4 Public consultation sessions were held on 8 December 2015 and 7 January 2016 and around 35 people took part. The first meeting on 8 December was attended by a very small number of carers. However, the meeting of 7 January 2016 held at the Civic in the Chambers had greater attendance from a much wider representative group of individuals including carers, service users with physical and learning disabilities, representatives from the voluntary sector and care and support workers supporting their clients.

- 3.5 The response to the consultation was low. Only three views were received via the Council's consultation portal with the majority of the views as set out in the report received via the public sessions, forums and meetings.
- 3.6 Those who provided feedback to the consultation process advised that some of the changes would not affect them whilst others found the issues and principles that underpin the Care and Support Charging Policy difficult to fully understand. Indeed over 60 people rang a Council officer to discuss what was proposed and how it would affect them.
- 3.7 The recommendations proposed in this report consider the feedback from the consultation and the needs of the local population.

4. Changes to the rate of Disability Related Expenditure (DRE) disregard

- 4.1 The Care Act 2014 requires a Council's Care and Support Charging Policy to take into account 100% of the care component of the individual's disability related benefits when assessing the amount an individual can contribute to their care and support services. Once the charge is known, a DRE disregard must be applied in recognition of the additional cost an individual incurs due to their disability. The application of this disregard reduces the amount an individual will pay towards their care and support services.
- 4.2 The legislation and guidance is not prescriptive about how the DRE disregard is applied, this is down to individual local authority discretion.
- 4.3 The Care and Support Charging Policy currently applies a two tier approach to the application of the Disability Related disregard. Those in receipt of services before April 2015 have 25% or 35% of their disability benefit disregarded **prior** to assessing their financial contribution towards their care and support services. In most cases, a disregard of £5.38, £13.91 and £28.45 per week is applied.
- 4.4 With the introduction of the Care Act 2014, new service users and existing service users who experience substantial change in their care and support package (i.e. increase in care hours from 7 hours per week to 21 hours per week or change in their financial circumstances) have a set disregard of £5, £15 and £25 applied **after** assessing the individual's contribution to their services from April 2015.
- 4.5 In most cases, the introduction of the new rate of DRE disregard would lead to an increase in the amount existing service users would be required to contribute to their care and support services.

Rate of care component	Disregard under the 2011 Charging Policy	Disregard under the Care And Support Act policy (Care Act 2014)	Potential increase in charges
Lower	5.38	£5	0.38
Middle	13.61	£15	-£1.39
Higher	28.45	£25	£3.45

- 4.6 To ensure the majority of existing service users were not immediately affected, transitional protection was recommended on the expectation that a consistent approach would apply from April 2016.
- 4.7 The report to Cabinet on 10 November 2015 sought permission to consult on the removal of the transitional protection. This will result in individuals seeing an increase to their contributions, with a small number making a nominal contribution to their care and support services for the first time.
- 4.8 The consultation proposed a gradual reduction in the current disability benefits until such time as the individual's disability disregard was £5, £15, or £25 depending upon the rate of disability benefit.
- 4.9 The consultation proposed the gradual reduction in the DRE disregard would occur in the following way:
- a) The assumption is that disability related benefits would be subject to annual inflation uplift. The proposal is that the DRE disregard would reduce annually by the amount of the corresponding inflation uplift until the set level of disregard is reached.

Example:

The impact is that an increase of £1.00 in a person's disability benefit will see a corresponding decrease in the disability disregard by £1.00 i.e. reduction from £28.45 to £27.45 per week. The individual will be required to pay an extra £1.00 towards their care and support services.

OR

The individual's financial circumstances change and/or there is a change to their care and support services.

- 4.9 Individuals did not oppose the changes to the DRE disregard on the understanding that a gradual approach to its introduction would be applied as set out above.
- 4.10 However, those who participated in the consultation of the disability related benefit disregard did advise that Care and Support Charging Policy needed to be more transparent in setting out that:
- Councils are required under the Care Act 2014 to account for a person's DRE.
 - Where the expenditure exceeds the disregard applied by the Council and there is supporting information to justify the additional disability related costs in line with the guidance, a further disregard will be made.
 - Where the package or care and support provided by Adult Social Care did **not** provide the night time care, the night time element of the disability related benefit should be disregarded within the financial assessment.

- A waiver is not the same as a DRE disregard. A waiver will only be considered in exceptional circumstances where the person is able to demonstrate that after the policy has been correctly applied they are still unable to contribute to their services. Each waiver to be considered on its own merits.

4.12 The financial impact of this change to service users and income generated to the Council is dependent on the annual uplifts agreed by Central Government. The 2016/17 Welfare Benefit Rates circulated by Central Government show that all of the disability related benefits included within a clients financial assessment will **not** increase in 2016/17 but will remain at the same level as 2015/16.

4.13 The consultation was that the Council will apply a gradual approach which is aligned to the annual uplift by Central Government. As there is no annual uplift in 2016/17, there will be no immediate change to service user's disregards in 2016/17 or an increase in the amount of income generated through the application of the change in DRE disregard. However, a change to the DRE will be applied in future years as an increase is applied to an individual's disability benefits.

5. Charging carers

5.1 The Care Act 2014 greatly enhances the rights of informal/family carers in relation to assessment of need with their own eligibility criteria, provision of support and information and advice.

5.2 The current Care and Support Charging Policy exempts carers in receipt of services from charges in recognition of their role. Barking and Dagenham are keen not to discourage carers from providing support. The consultation was to seek views on establishing the principle of applying a charging regime for carers that is fair and equitable which enables a carer to make a financial contribution to the support they receive.

5.3 The report to Cabinet in November 2015 sought permission for the Council to consult on establishing the principle of applying a charging regime with a view that implementation of charges may be considered at some point in time. Further, that the Council reserved 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 carers is disproportionate to the amount that would be collected
- The full implementation of charges is considered a disincentive to carers providing care and support.

5.4 While a significant majority rejected charging carers, a number of people did not specifically object to the principle of carers (who could afford it) being charged on the same basis as a service user.

5.5 The main objections to charging carers included:

- a) Carers contribute an incalculable amount of unpaid care and support without which the Council would be financially bankrupt and vulnerable individuals would suffer.

- b) If charges are introduced, the Council will be sending a message that carers are not valued and at risk of breaking a key trust with carers.
- c) The amount likely to be collected in charges is limited. In most cases carers only request that support where there is no other way in which they can continue to support the service user safely. Introducing a charge is adversely affecting the health and wellbeing of the carer. Carers may not approach the Council for care and support and risk early breakdown for them and the individual for whom they care.
- d) The majority of respondents advised that that they had been carers for young adults all their parenting lives and had limited financial means. Most are in receipt of the basic benefits and had little or no opportunity to bring in additional income in their working lives or set aside savings from which they could be charged for services.
- f) Those carers who may be financially better off tend not to approach the Council or the voluntary sector carer groups for support but may make their own arrangements.
- g) The Council needed to consider the financial viability of administering a charge where the cost incurred for assessing and applying the charge may outweigh the Personal Budget to the carer. Since April 2015 the Council has awarded £21k in Personal Carers budgets.

5.6 The Care Act 2014 guidance advises that Councils should consider the impact of introducing a carer's charge for their support services.

5.7 Taking into account the feedback from the consultation and the Care Act 2014 guidance it proposed that the principle of charging carers is agreed. However it is proposing that no charge is applied in 2016/17 but that the Council reserves the right to review this and may at future date implement charges to carers.

6. Placing a legal charge

6.1 The Housing Grants, Construction and Regeneration Act 1996 gives councils the power to provide a DFG. 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.

6.2 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.

6.3 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.

6.4 The charge on the property can be placed where:

- a) The grant has been awarded in accordance with legislation and guidance.
- b) 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

- 6.5 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 and once the Council satisfies itself that:
- a) The recovery of the debt would not lead to financial hardship of the individual, and / or
 - b) 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.
- 6.6 No objections were raised to this approach, participants in the consultation where accepting of the legal charge being placed on the property where the award and recovery of the debt was in line with the legislation and guidance.

7. Options Appraisal

7.1 OPTION 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
- The principle of charging carers assessed for service in their own right is not established and carers continue not to be subject to a financial assessment and required to contribute to their services.
- A legal charge is not placed on the property of those awarded a DFG.

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.
- 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 the old disregard each time a financial reassessment is completed. This is costly and time-consuming.
- d) Carers not recognising that there is the possibility that services provided to them may become chargeable in the future.
- e) The Council will not be exercising its duty to apply legal charges on property.

This option is not recommended

7.2 OPTION 2 - Apply the changes to the charging policy

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.

- The principle of charging carers is agreed with a view that implementation of charges may be considered within the current administration at some point in time.
- The Council introduces the placing of legal charges on the property of those awarded a DFG.

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 DRE disregard being easier to administer in the system with significantly less manual intervention to change levels of disregard to an old rate.
- c) The principle of charging carers is established.
- d) The Council exercises its right to apply a legal charge on the property of those awarded a Disability Facilities Grant where the funds can be reinvested in the DFG pot.

This is the recommended option

8. Financial Implications

Implications completed by: Richard Tyler, Finance Group Manager

- 8.1 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.
- 8.2 The revenue budget setting process for 2016/17 assumes 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.
- 8.3 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.

9. Legal Implications

Implications completed by: Chris Pickering, Principal Solicitor

- 9.1 Once a Council exercises its discretion to charge for services, the charging policy has to adhere to the Regulations. The Care Act 2014 has limited the level of discretion a Council can apply within its charging policy. The Council consulted on the discretion to be applied to the policy.

9.2 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 required the Council to go out to consultation to ensure that the proposals are communicated and residents had the opportunity to participate in the decision making process.

10. Other Implications

10.1 **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.

10.2 **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 DRE above the disregards applied.

The Council has considered the views of Carers and has proposed in the body of the report to review charging individual carers where charging carers may adversely affect their ability to carry out their role as a carer.

10.3 **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:

- Summary of Consultation Responses
- Equalities Impact Assessment

List of Appendices

Appendix 1 – Draft Care and Support Charging Policy (February 2016)