



Cabinet Meeting on Wednesday 20 February 2019

Changes in Charging and Deferred Payment Policies

Cllr Alan White, Deputy Leader and Cabinet Member for Health, Care and Wellbeing said,

“As a county council we want to be as open as possible when it comes to how much people pay towards the care they receive. The redesign of how we carry out financial assessments has demonstrated a need for changes to improve their efficiency, consistency and transparency.

“This report outlines our ambition to simplify our charging process, so people know how much they are likely to pay before a full financial assessment is completed and are charged based on the annual cost of their care.”

Report Summary:

This report outlines proposed policy changes to adult social care financial assessments which aim to streamline and clarify the process whereby people are assessed to pay towards the cost of their care, in line with the Council’s ambition to provide more services online.

Recommendations

I recommend that Cabinet:

- a. Note the changes (Appendix A) to the new Adult Social Care Contributions Policy.
- b. Note the changes (Appendix B) to the Deferred Payment Agreement Policy.
- c. Approve the Adult Social Care Contributions Policy to replace the existing Charging Policy and the revised Deferred Payment Agreements Policy (both Appendix C).
- d. Authorise the ASC Policy & Guidance Approval Board to deal with appeals and associated policy interpretation plus any debts relating to delayed invoices.
- e. Note the management and performance management arrangements for adult social care financial assessments.

- f. Delegate responsibility to the Director for Health and Care to review care fees and charges annually up to the “actual cost” of care.

Local Members Interest
N/A

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Recommendations of the Deputy Leader and Cabinet Member for Health, Care and Wellbeing

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- f. Delegate responsibility to the Director for Health and Care to review care fees and charges annually up to the “actual cost” of care.

Report of the Director for Health and Care

Reasons for Recommendations:

1. This report outlines proposed policy changes to adult social care financial assessments. These will allow the process whereby people are assessed to pay towards the cost of their care to be streamlined and clarified, in line with the Council’s ambition to provide more services online.

Required Policy Changes

2. The Council’s Charging Policy was last updated through a Delegated Decision on 24th May 2017. The redesign of financial assessments pathway and guidance has demonstrated the need for changes to improve efficiency, consistency and transparency of financial assessments.
3. The policy changes are listed below and are explored in detail in Appendix A. The revised Adult Social Care Contributions Policy incorporating these changes is included in Appendix C.

- a. **Enabling the use of indicative financial assessments for charging:** charges to people can be made based on an indicative charge where care starts before a full financial assessment is completed, with all people having an indicative financial assessment.
- b. **Billing for care based on personal budgets:** people's charges can be based on their personal budget, i.e. the annual cost of their care, with adjustments made at year end to reflect variations. This option for the future will be required when the payments to providers are fully aligned to clients' care and support plan.
- c. **Applying automatic annual uprating** to all DWP benefits, pensions and disregards used in financial assessments when their rates change.
- d. **Decisions regarding what social care will fund:** this applies to the calculation of Personal Budgets and Direct Payments as well as the expenditure we consider for calculating Disability Related Expenditure allowances and sets out a new Council Policy on how it decides what is a reasonable cost to fund or allow. It specifically refers to items such as exceptional private care, adaptations and equipment or travel costs and whether they can be considered. It also sets out that clarifications and appeals on such issues will in future be determined by the ASC Policy & Guidance Approval Board as per para 4 below. The policy proposals are explored in detail in Appendix A, and the proposed "What Staffordshire County Council Funds" Policy is included in Appendix C.
- e. **Clarity on the provision of care for self-funders and when care should be terminated:**
 - i. People receiving a non-residential care service who fail to submit a financial assessment within 4 weeks of care commencing will be deemed self-funders and charged for the full costs of their care plus appropriate self-funder fees.
 - ii. People receiving a residential care service who fail to submit a financial assessment and/or complete a deferred payment agreement within 12 weeks of care commencing will be deemed to be a self-funder. People will be charged for the full costs of their care whilst their case is risk assessed to determine whether Council funded care should be terminated, or legal action taken to secure a charge against their property. Practice guidance for social care staff to evaluate the risks of terminating Council funded care for self-funding people will be devised to support this.
- f. **Increases in SCC fees and charges:** agreeing that the Director of Health and Care has delegated authority to approve each year all locally-determined fees, charges and rates. They will be no more than the actual cost to the Council of providing or purchasing that service.
- g. **Capital limits** are amended to apply the £23,250 (current national) limit to all current and new non-residential cases and phased in excluding the small number of people whose capital is currently between £25,000 and £23,250.

- h. **Streamlining Disability Related Expenditure (DRE) Allowances** through introducing a banded system of DRE allowances linked to a person's level of DWP disability benefits, ensuring all people are aware that they can appeal the up-front banded allowance and be given an individualised allowance on presentation of appropriate evidence. The Policy will be updated to recognise that the Council will continue to take the highest disability benefits into account in a financial assessment even if the person is not receiving night care and will ensure that individualised DRE allowances are more closely related to the level of disability benefit the person receives. More details are set out in Appendix A.
- i. **Property and other disregarded costs:** it is generally discretionary as to what, and how much, a local authority includes as an allowance or disregard for these costs, and the Adult Social Care Contributions Policy will be amended as in Appendix A to clarify the application of property disregards and the allowances that can be provided.

Policy Clarification and Appeals

- 4. There is an opportunity to improve the way we deal with situations where there is a need to interpret policy "grey areas" and/or to respond to appeals and complaints. Where the Council makes such decisions (e.g. to fund a specific type of care, allow a cost in a financial assessment, or write-off a disputed charge) then it is important that these decisions are considered in terms of their broader impact, not just how they affect the individual person.
- 5. It is proposed that in future these decisions are overseen by the ASC Policy & Procedure Board: the current representatives are the Adult Social Care & Safeguarding Lead (Assistant Director), the Lead Commissioners (Care Commissioning), the Lead Commissioner (Adult Social Care) and the Principal Social Worker, representing the policy, social work and budget holder functions. The decisions for the person will be recorded appropriately on Care Director for audit purposes, and the learning from the appeal or write-off will be fed into future policy, practice guidance and development.
- 6. There are also situations where system issues mean that an invoice has not been raised for a considerable time for a charge to a person. "Waiving" these delayed invoices has been identified by Audit as an issue as there is no clear audit trail, so it is proposed that all such debts are formally "processed" by the raising of an invoice, and that the Board be responsible for deciding whether that invoice should be issued to the person or written-off.
- 7. This will ensure greater fairness and equity in decision-making and a direct link between charging decisions and those relating to the person's assessed care needs. It also allows people access to a process that is more responsive than a formal complaint. The Board will apply the policy and practice guidance (including that proposed in this document) and will recommend amending them when required to reflect new decisions.

Deferred Payment Agreements

8. Alongside the work on a new financial assessments pathway, the Council's arrangements for Deferred Payment Agreements (DPAs) has been considered. DPAs are determined by national regulations and must be offered to anyone going into residential care who does not wish to sell their (former) main home and who has less than £23,250 in wealth other than their main home.
9. Work has been undertaken to clarify the Policy to ensure that for areas where the Council has discretion, it is clear when and how the Council would exercise that discretion. The changes to the Deferred Payment Agreements Policy are listed in Appendix B, and the revised policy is included in Appendix C.

Management and performance management of adult social care financial assessments

10. The management of financial assessments and a range of related functions currently reside in the Adults' & Children's Finance Service (ACFS) in the Corporate Services directorate. Two options have been identified for future management of the functions:
 - a. Continue the current arrangements and ensure that a robust performance framework is in place with clear service standards and regular reporting to Health and Care against a range of indicators to reflect the timeliness and outcomes of financial assessments,
 - b. Transfer the functions to the Health and Care directorate.
11. The intention is to proceed with option a. for 2019/20 and review performance ahead of the 2020/21 financial year.

Transition

12. These policy clarifications and changes will be implemented on 1st April 2019 and applied to all new financial assessments or reassessments from that date. In respect of the two changes that may impact on *existing* clients' assessed financial contributions (capital limits and the DRE bandings), this will not be applied until their next financial reassessment, at which stage they will be able to appeal through the process described in para 4 above.
13. To minimise the financial impact on individuals, if the increase in their contribution is significant it will be phased in by applying the council's mitigation policy (see Appendix C) which limits changes to £40 a year for a maximum of three years.
14. Furthermore, any significant changes to the disability- or care-related allowances in a client's financial assessment that arises from these policy clarifications and changes will be considered in a joint review by both social care and financial assessment functions to ensure that financial and care decisions are aligned

Consultation

15. The key benefit of the proposals in this paper is through providing clarity and consistency. It is considered that the policy changes reflected in this document do

not require consultation, as changes are *either* clarification of current policy, *or* (in the case of DREs and capital limits) any impact on people is highly personalised to each individual.

16. The impact on *current citizens* is not only personalised, it is hard to identify in terms of how it impacts on specific individuals or groups. This is in part due to concerns with the accuracy of historic data for long-standing cases, and partly because older records on clients did not record data on the protected characteristics of clients. This is reflected in the Community Impact Assessment.
17. It is not possible to resolve these data issues in any reasonable timeframe, and hence the key point is that the changes proposed in this document will have a very limited impact on current citizens, because they are subject to the protection outlined in this document, i.e.:
 - i. Changes will only be completed on reassessment;
 - ii. Changes in charges will not be backdated
 - iii. Right to appeal for individual circumstances
 - iv. Phasing of changes if there is a negative impact through mitigation
18. Resolution of any concerns expressed by individuals as to the impact of these changes on the sums they are liable to pay will be best resolved through the formal financial assessment review and appeals processes, when any equality-related issues can also be assessed.

Risk analysis

19. The Council considers that general consultation on this policy is not a good use of tax-payers money (as described above, the impact on citizens is personalised; and the Council has put mitigating actions in place in the event of any impact on individuals). However, there remains a risk that the Council is challenged by the Local Government Ombudsman regarding its decision to not to consult on this change in policy.
20. As documented in *Appendix A*, in adopting this policy, there is a risk that the Council may face challenge from the Local Government Ombudsman and/or legal action. However, this risk must be set against the major costs that can arise if decisions are not made and the need to act reasonably. It is considered important that the Council be able to define limits as to what is a *reasonable* level of care to provide in the context of a client's needs. The *What SCC Funds Policy* has been written to provide reasonable guidance which avoids being too restrictive.

List of Appendices:

Appendix A - Details of the reasoning for the changes to the Adult Social Care Contributions Policy

Appendix B - Detailed recommendations on amendments to the council's Deferred Payment Agreements policy

Appendix C - ASC Policy Statement including Contributions, Deferred Payment Agreements and What Staffordshire County Council Funds Policies

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