

<p>Non-Executive Report of the:</p> <p>Health and Adults Scrutiny Sub-Committee</p> <p>12 March 2020</p>	 <p>TOWER HAMLETS</p>
<p>Report of: Denise Radley - Corporate Director, Health, Adult and Community Services</p>	<p>Classification: Unrestricted</p>
<p>Adult Social Care Charging Impact Assessment – Follow-Up</p>	

Originating Officer(s)	Joanne Starkie, Head of Strategy and Policy for Health, Adult and Community Services
Wards affected	All wards

Executive Summary

An assessment of the impact of charging for community-based adult social care was presented and discussed at the July 2019 Health Scrutiny Committee meeting. This was a follow-up impact assessment to a more detailed impact assessment carried out in October 2018 and presented to the Health Scrutiny Committee in December 2018.

Following the July 2019 Committee meeting, further clarity and information was requested and reviewed at the September 2019 Health Scrutiny Committee and the November Health Scrutiny Committee meeting.

This report collates and summarises the requests and responses from these committee meetings into one place to inform a discussion on the issue at the March 2020 meeting. It also provides an update on the July 2019 request for more information on financial modelling in relation to respite.

Recommendations:

The Health Overview and Scrutiny Committee is recommended to:

1. Note the contents of this report.

1. REASONS FOR THE DECISIONS

- 1.1 Health Scrutiny Committee have requested a further discussion on charging for community-based service in adult social care following previous presentations at Health Scrutiny Committee meetings.

2. ALTERNATIVE OPTIONS

- 2.1 n/a

3. DETAILS OF THE REPORT

- 3.1 The table on the following page sets out:
- The information requested by Health Scrutiny Committee on charging following July 2019 and September 2019 meetings.
 - The response.
- 3.2 At the November 2019, the Committee requested copies of the October 2018 Charging Impact Assessment report and the June 2019 Follow-Up Impact Assessment report. These were circulated in December 2019.

No.	Reference	Action	Response
1	HASSC 08.07.19 Item 7	Officers to check the charging policy wording for clarification on the definition of close family member.	<p>The Charging Policy does not include a definition of a close family member. Section (15) of the Personal Budget and Direct Payment policy defines this in relation to our approach to employing family members as Personal Assistants</p> <p><u>15.4 Personal Assistant Restrictions:</u></p> <p><i>15.4.1 Direct payments cannot be used to secure care services from the following without the permission/agreement of the council:</i></p> <ul style="list-style-type: none"> • <i>The spouse or civil partner of the adult;</i> • <i>A person who lives with the adult as if their spouse or civil partner;</i> • <i>A close relative not living in same the household</i> • <i>A person who would normally live in the same household as the direct payment user which include those who are his/her:</i> • <i>Parent or parent in law;</i> • <i>Son or daughter, stepson or stepdaughter, or son in law or daughter in law;</i> • <i>Brother or sister;</i> • <i>Aunt or uncle;</i> • <i>Grandchildren or step grandchildren</i> • <i>Grandparent; or</i> • <i>The husband, wife or partner of any of the above.</i> <p><i>15.4.2 All requests for employment of any of the above would be considered within the decision-making framework below and referred to a service manager for a decision.</i></p> <p><i>15.4.3 The council would only agree to any of the above being employed if it was satisfied that it was deemed necessary to meet the person's need for that service. In any circumstance the council would insist that where family members are being employed the Direct Payment must be managed by a third party organisation in order to ensure that there is no conflict of interest and all employees are registered to pay tax and national insurance where applicable.</i></p>

2	HASSC 08.07.19 Item 7	Officers to provide the Committee with figures on the number of people employing care staff.	<p>As of 31st March 2019, 550 people in Tower Hamlets were in receipt of a direct payment¹ in adult social care.</p> <p>Between 1st April 2018 and 31st December, 302 adults received support through the Direct Payment Support Service to employ a Personal Assistant, suggesting that the majority of direct payment recipients use the payment in this way. The approach to charging and direct payments is articulated in the Adult Social Care Charging Policy.</p>
3	<u>08.07.19</u> <u>Action:</u> Officers to provide the Committee the Framework for the Charging Waiver Panel, details of the support provided to help people avoid debt and county court judgements. <u>02.09.19</u> <u>Update</u> <u>Action:</u> Numbers of people involved and more		<p>A copy of the '<i>Adult Social Care Charging Social Care Report Form – Debt Recovery Cases</i>' was circulated to Committee members. A copy of the <i>Adult Social Care Community Services Charging Appeals – Social Care Report Form</i> was also circulated to Committee members.</p> <p>A range of work is in place to help prevent people accruing debt. In the first instance, Social Workers are expected to identify and support people who have difficulties with the financial assessment process. At this stage or if problems start to occur, social work teams utilise the services of Local Link, Money Mentoring (based at Toynbee Hall), the Citizens Advice Centre and Job Centre Plus, where advice can be provided on managing finances and/or assistance with benefits claims. There are also charitable organisations that can assist with the provision of information to support service users and carers to manage budgets.</p> <p>If people are struggling with payments, we can and do look at alternative, cost effective ways of managing these scenarios. For example, a one-off purchase of a washing machine can avoid the need for frequent visits to a local laundrette to wash bedding, providing a cost-effective option for the local authority and service user, whilst avoiding the need for ongoing payments.</p> <p>If debt occurs, the Debt Recovery team issue reminder letters, contact people by phone and offer to carry out home visits in order to resolve issues at an early stage. People are also signposted to independent support services such as Age UK and Real where staff can provide support and guidance with this. The Charging Waiver Panel has a role in this and reviews cases where people may be at risk. We have a Debt Recovery Panel in adult social care where discussions are held in cases where no payment plan can be agreed or where there is a wilful refusal to pay. A plan of action is agreed, and at every stage the case is returned to the panel to monitor and agree next steps. County Court Judgements are pursued as a last resort when there is an assurance that this is an appropriate course of action.</p>

¹ Provisional figure

	<p>information on the support provided prior to CCJs requested.</p> <p><u>05.11.19</u> <u>Update</u> <u>Action:</u> More information on what the framework looks like and how decisions are made requested.</p>	<p>As of 25th September 2019, 711 adult social care users had a charge identified as being in the 'recovery' stage. This means that 711 individuals had an outstanding invoice that had not been paid after 21 days (21 days after an invoice is sent out, a reminder notice is sent). If the reminder notice is sent and there is no response, this is then followed up with the individual via things like phone calls or via contact with a Social Worker.</p> <p>As of August 2019, the local authority has three accounts that have been issued a County Court Judgement against them. One of these relates to an individual in residential care. Two relate to people in receipt of community-based services. Please note that in line with our statutory duties, we never reduce or end a person's support due to debt or disputes over charging.</p> <p>A formal system has been put in place to safeguard adults who want to end or reduce their support due to charging, if doing so would put them at significant risk of harm. Their request to end or reduce support is essentially interpreted as an appeal against the charging decision, and it is discussed at a Charging Waiver Panel that meets every four weeks. The Panel formerly began in June 2018.</p> <p>The Committee were provided with case studies for service users issued with a County Court Judgement and case studies in relation to the Charging Waiver Panel.</p> <p>Practitioners alert the service user if a case is going to be considered at the debt recovery /charging waiver panel. In order for a case to be discussed at the panel, a Social Worker is required to submit a social care report which is submitted to the panel administrator. In preparing the report, they would have been required to speak with the service user.</p> <p>Once the panel has made a decision, this is recorded on our main social care system (Framework-i). The Financial Assessment then alert the service user if a decision has been made regarding a waiver decision. If the decision has been made to pursue the debt, the debt recovery team will then follow this action up.</p>
4	<p>HASSC 08.07.19 Item 7</p> <p><u>08.07.19</u> <u>Action:</u> Officers to provide the Committee with the number of people</p>	<p>We are unable to provide a report on the number of people getting Attendance Allowance (or other disability-related benefits) before and after a charging invoice is received due to the way information is recorded on our system. However, there is information that provides an indication of this:</p> <p>In terms of the process, as noted above, Social Workers utilise the services of organisations that can assist people with benefits claims. As noted in the original response, 2463 people were supported with a benefits claim by Local Link in 2018/19, though it is not possible to identify the type of benefit or the link to charging. A reminder for people to check their eligibility for Attendance Allowance or Personal Independence Payments is included in the letter than</p>

		<p>claiming Attendance Allowance and Personal Independence Payments.</p> <p><u>02.09.19</u> <u>Update</u> <u>Action:</u> Actual numbers of people getting attendance allowance prior to and after charging requested.</p>	<p>confirms the outcome of the completed financial assessment.</p> <p>Two snap-shots give an indication of how many people are in receipt of disability-related benefits: As of 23rd July 2018, 942 people being charged an amount of money towards the cost of community-based care services were in receipt of a disability-related benefit. This represents 82% of the 1154 people being charged at that time. As of 25th September 2018, this figure had increased to 985.</p>
5	HASSC 08.07.19 Item 7	Officers to provide the Committee with the survey results from REAL.	<p>The results of the survey were circulated to Health Scrutiny Committee members in 2019 following authorisation from Real.</p> <p>Health Scrutiny Committee were asked to note the following when viewing the results:</p> <ul style="list-style-type: none"> i) This survey was carried out independently by Real in autumn 2018. Overall, there were 72 responses. ii) Question 3 in the survey asked “Are you now paying a charge for your social care support?” Approximately half (33) the respondents answered yes. 24 respondents answered no, 11 were unsure, and four people skipped the question. The attached results show the response for each group, i.e. those marked ‘yes’ are the group who have said they are being charged. It is unclear if or how many of the respondents who said they were not being charged had been so previously. iii) The results were discussed at a meeting with Real in December 2018 and informed the action plan developed as a result of the October 2018 impact assessment (which was overseen by the Stakeholder Reference Group, of which Real was a member). For example, communication linked to understanding charging is flagged as a significant issue in the survey results, and was a key part of the action plan that was subsequently carried out. In terms of the issue of people having to use their savings: The survey doesn’t capture the level of savings of respondents, but we agreed with Real that it would be useful to include explicit communication from the council to service users to say that people should inform us if their

			<p>iv) savings are heading towards the threshold. This is to mitigate the risk of someone's savings dropping below the threshold before their annual review.</p> <p>Please note that respondents were informed to get in contact with Real about any safety concerns, and these have been followed up.</p>
7	HASSC 08.07.19 Item 7	Officers to provide the Committee with information on the charging policy approach to spouses and debt recovery in relation to spouses.	<p>Section (12) of the Adult Social Care Charging Policy explains our approach to spouses, charging and community-based services</p> <p>12. Couples</p> <p><i>12.1 The definition of a couple for the purposes of this policy is:</i></p> <ul style="list-style-type: none"> - Married or in a civil partnership and living in the same household; or - Living together as a couple in the same household <p><i>12.2 When carrying out a financial assessment, we will only look at the income, capital and expenses of the person receiving care. To do this when assessing one member of a couple as a single person, the following will apply in line with statutory guidance:</i></p> <ul style="list-style-type: none"> - 100% of solely owned and 50% of all jointly owned capital will be taken into account, unless evidence can be produced to show the exact allocation of funds. - All assessable income appropriate to the individual will be taken into account. Where benefits are paid at the couple rate, the benefit will be apportioned - 50% of the couple's total joint household expenditure will be allowed for - The minimum income guarantee will be as set out in statutory guidance. <p>The approach to debt recovery is explained in an earlier response.</p>
8	HASSC 08.07.19 Item 7	<u>08.07.19</u> <u>Action</u> Officers to provide the Committee with the financial data showing the amount being raised from charging and the amount	<p>For the financial year 2018-19 invoices were raised to the value of £2.3m for community-based charging. It should be noted that a proportion of this amount will be invoices to people who have not yet filled in a Financial Declaration form and are being charged the full amount (up to the maximum weekly limit of £250 per week) pending this form being returned.</p> <p>The cost of administering charging for community-based adult social care is estimated to be £142,000 per year. This amount funds staff posts in the Financial Assessment team. The team predates the introduction of charging for community-based services as the team administers charging for residential and nursing homes and other related functions. In 2018-9 the cost of running the service was £603,000: Higher than usual because of costs associated with initial implementation. Before this, the annual cost of the team was approximately £330,000 per year. For 2019-20, the budget is £330,000 with an additional £142,000 to draw on.</p>

	<p>being spent to administer charging since the inception of the charging policy.</p> <p><u>02.09.19</u> <u>Update</u> <u>Action:</u> Further breakdown of figures to show where the costs of charging are coming from and the number of people paying what amounts requested.</p>	<p>The impact assessment carried out in October 2018 set out the number of people paying and the amount being paid as of 30th June 2018. This information is summarised below and was circulated in more detail to Health Scrutiny Committee members:</p> <ul style="list-style-type: none"> - 43% of adult social care users in community-based services were being charged an amount of money towards the cost of their care as of 30th June 2018, equating to 1154 people². - 240 of the 1154 people who were being charged as of 30th June had not completed a Financial Declaration form and were being charged the maximum amount as a result. - 947 people had been assessed as paying nil charge. - 57% are being charged up to 25 per cent of the total cost of their care package. - The average weekly amount being paid is £54³.
9	HASSC 08.07.19 Item 7	<p>For officers to involve the Committee in the Medium Term</p> <p>The Adult Social Care Charging Policy currently states that carer services are free. Respite and replacement care are interpreted as a service for the cared-for person, as the cared-for person is the direct recipient of that service.⁴ The position that has been put forward by the Stakeholder Reference Group for consideration is for respite and replacement care to be reinterpreted to be a carer service where those services have been put in place primarily to meet the needs of carers, as evidenced in a Carer Needs Assessment.</p>

² This includes the 240 people being charged as a result of not completing a Financial Declaration form.

³ This excludes people being charged as a result of not completing a Financial Declaration form.

⁴ Section (6.7.1) of the Charging policy states: “*Support services for carers that are provided or commissioned by adult social care are free. This includes information, advice and preventative service that all carers can access, as well as care packages for carers who meet the national eligibility threshold*”.

Section (6.7.2) states: “*In line with statutory guidance, it should be noted that “replacement care” (which is often in the form of respite care) is part of the cared-for person’s care package, even if it is put in place primarily to support the carer. We charge for replacement care in the form of replacement respite care or replacement home care*”.

		Financial Strategy discussion around financial modelling for respite.	<p>It should be noted that as part of the Medium Term Financial Strategy, there is a proposal to change the Charging Policy in terms of the weekly maximum amount (or 'cap') service users are charged, the level of the Standard Utilities Allowance that is disregarded in financial assessments, and a change in terms of respite or replacement care put in place primarily to meet the needs of a carer following a carer assessment. These changes are due to be consulted on in Spring / Summer 2020. Providing respite and carer relief free of charge has an estimated cost to the council of £36,000 to £343,000 per annum. These figures are based on the data currently available in the system. A range is provided to try and account for the assumption that not all cases of carers relief are currently correctly flagged within the social care data.</p>
10	HASSC 05.11.19 Minutes	Officers to provide the full charging impact report with scope outline	<p>This was circulated to Health Scrutiny Committee members in December 2019.</p>

4. EQUALITIES IMPLICATIONS

- 4.1 The report does not include an equalities analysis. However, the original impact assessment in 2018 found that:
- Older people were more likely to be paying the full cost of their care (up to the maximum amount)
 - People with a learning disability were less likely to be paying a contribution towards the cost of their care.
 - People of a White ethnic background were more likely to be paying the full cost of their care (up to the maximum amount). People of an Asian ethnic background were less likely to be paying full cost, and were more likely to be paying no charge.
 - There was no noticeable trend in terms of charging and gender.

Given that the last impact assessment was relatively recent and that the proportion of adult social care users being charged has changed little since then, it is likely that the trends described above are still in place. The report generally suggests that charging processes have improved, which would have a positive impact on the groups identified as being most affected.

5. OTHER STATUTORY IMPLICATIONS

- 5.1 The legal framework for charging in adult social care is articulated in the 2014 Care Act.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 For the financial year 2019-20 it is forecast income of £2.6m will be generated from community-based charging, £300,000 above the budgeted expectation.
- 6.2 At Council on 19 February 2020 the 2020-21 Budget and Medium Term Financial Strategy were formally agreed. This included a savings proposal to make amendments to the charging policy, including changing the weekly maximum amount services users can be charged, the standard utilities allowance and changes to respite care charging put in place primarily to support the carer. These changes are estimated to have a net benefit to the council of £264,000 per annum. Public consultation on the proposal and potential options is due to begin shortly.

7. COMMENTS OF LEGAL SERVICES

- 7.1 The Council has a duty to arrange care and support for those with eligible needs and a power to meet both eligible and non-eligible needs. In all cases Section 14 of The Care Act 2014 ("the Act") provides that a local authority may make a charge for meeting any such needs, and this applies to all types of care provision, whether through the provision of residential care or domiciliary care.

- 7.2 Section 14(7) of The Care Act 2014 states that a local authority may not make a charge if the income of the adult concerned would, after deduction of the charge; fall below such amount as is specified in The Care and Support (Charging and Assessment of Resources) Regulations 2014. This is further confirmed in Section 15 of The Care Act 2014 which stipulates that the Local Authority may not make a charge for meeting an adults needs if the total of the costs accrued in meeting the adult's eligible needs exceeds the cap on care costs, which is the amount a person's income cannot fall below, after paying charges; which acts as a safeguard to residents.
- 7.3 Where the Local Authority decides to charge, under Section 17 of the Care Act 2014, the Local Authority is required to assess the level of the adult's financial resources and the amount they would be liable to pay towards the cost of meeting their needs where it thinks it will charge that adult for meeting at least some of their needs. The same requirement applies to carers to assess the level of the carer's financial resources and the amount they would be likely to be able to pay to meet at least some of their needs for support. In carrying out the financial assessment the Local Authority must have regard to the Care and Support Statutory Guidance and The Care and Support (Charging and Assessment of Resources) Regulations 2014 which sets out how both capital and income should be treated.
- 7.4 The Council has some flexibility in respect of setting charges, for example the flexibility to disregard certain sources of income, set maximum charges, or charge a person a percentage of disposable income and the Care and Support Statutory Guidance sets out more detail in this regard.
- 7.5 The Equality Act 2010 requires the Council in the exercise of its functions to have due regard to the need to avoid discrimination and other unlawful conduct under the Act, the need to promote equality of opportunity and the need to foster good relations between people who share a protected characteristic and those who do not (the public sector equality duty). A proportionate level of equality analysis is required in order to enable the Council to properly discharge this duty and the duty to act fairly applies. The Council should ensure there is sufficient information and advice available in a suitable format for the person's needs, in line with the Equality Act 2010 (in particular for those with a sensory impairment, with learning disabilities or for whom English is not their first language), to ensure that they or their representative are able to understand any contributions they are asked to make to their care.

Linked Reports, Appendices and Background Documents

Linked Report

- <http://democracy.towerhamlets.gov.uk/documents/s151340/Charging%20Follow-Up%20Impact%20Assessment%20Report.pdf>

Appendices

- NONE

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- NONE

Officer contact details for documents:

N/A