


Non-Executive Report of the: Overview and Scrutiny 21/7/16	 TOWER HAMLETS
Report of: Denise Radley Director of Adult Services	Classification: Unrestricted
Implementation of Charging Policy for Community Services in Adult Social Care	

Originating Officer(s)	Helen Donnellon Project Manager
Wards affected	All wards

Summary

A decision was made in February 2016, as part of the Council's budget setting process for 2016/17, to introduce charging for community adult social care services. Public consultation on Charging for Adult Community Social Care is now being undertaken to support the assessment of the impact of the policy on service users and identify ways to mitigate any adverse impacts. Consultation commenced on 20th June 2016 and will continue until 19th August 2016.

A communications plan has been developed to enable effective management of communications with all stakeholders. Appendix A contains copies of the plan, the information booklet, survey and the letter which has been sent to individual customers who receive one or more of the services which are covered by charging. Feedback from the consultation will be collated and will form part of the report on charging which will go to cabinet in October prior to implementation of the scheme

Recommendations:

Overview and scrutiny is recommended to:

1. Comment on the proposals for community care charging arrangements as part of the consultation process

1. REASONS FOR THE DECISIONS

1.1 N/A for comment only

2. ALTERNATIVE OPTIONS

2.1 N/A

3. DETAILS OF REPORT

3.1 See the summary

4. COMMENTS OF THE CHIEF FINANCE OFFICER

4.1 The financial implications of the proposed community care services charging policy was reported as part of the budget report to Cabinet on 2nd February 2016 and is reflected in the Council's medium term financial strategy. Its implementation is estimated to provide a net annual investment of £1.080m. This is based on 52% (1,400) of the community care client base of 2,400 being assessed as chargeable using an average weekly contribution, therefore providing a gross investment of £2.4m. Comparisons to other boroughs have led to a more prudent approach to estimation, thereby halving the total annual gross investment to £1.2m. The net annual investment of £1.080m allows for an annual cost of £0.120m for the additional resources required to carry out the income assessments.

4.2 The implementation timetable at Appendix 3 indicates that charging is expected to commence in January 2017. This will affect the phasing of the reported investment in the first year from £0.540m (half year) to £0.270m (quarter year) in 2016/17 and consequently adds a £0.270m pressure on the remaining Adults Social Care budget for 2016/17.

4.3 It is to be noted that these estimates are based on the policy as presented. The full impact on users and therefore the estimated contributions depend on the outcome of the individual income assessments and if the outcome of the consultation significantly changes what is included or excluded from the policy, these estimates may need to be revisited.

5. LEGAL COMMENTS

5.1 The Council is required by section 9F of the Local Government Act 2000 to have an Overview and Scrutiny Committee and to have executive arrangements that ensure the committee has specified powers. Consistent with this obligation, Article 6 of the Council's Constitution provides that the Overview and Scrutiny Committee may consider any matter affecting the area or its inhabitants and may make reports and recommendations to the Full

Council or the Executive in connection with the discharge of any functions. It is consistent with the Constitution and the statutory framework for the Executive to provide a response and it is reasonable for the Committee to be provided with progress updates.

- 5.2 Most provisions of the Care Act 2014 (“the Act”) came into force on 1 April 2015 and replaced the existing duties and powers in respect of assessing and meeting an individual’s eligible care needs. Local authorities previously had a duty to charge for residential care in accordance with regulations and statutory guidance; however section 14 of the Act introduced a power, rather than the previous duty, to charge for residential care in certain circumstances. The previous power to charge for non-residential care remains, subject to the new regulations and statutory guidance.
- 5.3 Section 8 provides that those eligible needs may be met in a number of ways, including accommodation in a care home. Section 14(1)(a) of the Act provides that a local authority may make a charge for meeting needs under the Act, whether these needs are met pursuant to the Council’s duty or power to meet those needs. This power to charge applies to all types of care provision, whether through the provision of residential care or domiciliary care, though this can only cover the cost incurred by the local authority in meeting those needs (section 14(4)). Sections 14(6)-(8) provide that regulations may prohibit a local authority from making a charge in specified circumstances; and set an amount beyond which a person’s income cannot fall after paying any charges.
- 5.4 The Care and Support (Charging and Assessment of Resources) Regulations 2014, (“the 2014 Regulations”) were made under section 14(5)-(8) and section 17 of the Act. Part 2 of the 2014 Regulations governs the power of local authorities to charge for care and support, and identifies services which cannot be charged for. Regulation 6 specifies the personal expenses allowance for residents provided with accommodation in a care home. Regulation 7 sets out the minimum income guarantee for adults and carers whose needs are being met other than in a care home.
- 5.5 Part 3 of the Regulations is concerned with the assessment of financial resources. Regulation 12 prohibits the Council from paying towards the cost of care home accommodation for an adult whose financial resources exceed the capital limit. However, no such prohibition applies to the cost of care provided other than in a care home. The upper capital limit is currently set at £23,250 and the lower capital limit, below which the Council cannot take capital into account when undertaking a financial assessment, is currently £14,250.
- 5.6 Chapter 8 of the Care and Support Guidance released in October 2014 (“the Guidance”) provides guidelines on charging and financial assessments under sections 14, 17 and 69-70 of the Act and associated regulations. The Guidance sets out in paragraph 8.2 the principles that the Council should take into account when making decisions on charging. The Guidance has subsequently been updated, most recently on 9 May 2016.

- 5.7 The Guidance sets out that the Council must consider the need to meet daily living costs, and describes the Minimum Income Guarantee and treatment of disability benefits. 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.
- 5.8 Paragraph 8.46 of the Guidance specifically refers to the need to consult before exercising the discretion to charge for non-care home fees. It states that:-
- “Local authorities should consult people with care and support needs when deciding how to exercise this discretion.”*
- 5.9 Paragraph 8.46 then goes on to set out various factors that a local authority should consider when deciding how to exercise the discretion, including how to protect a person’s income, whether to set a maximum percentage of disposable income to be taken into account in charges and whether it is appropriate to set a maximum charge.

Consultation

- 5.10 Section 14 of the Act does not set out an express statutory duty to consult before exercising the power to charge for either residential or non-residential care. However, section 78 of the Act requires that local authorities act compatibly with the Guidance unless they have clear reasons for not doing so.
- 5.11 Paragraphs 8.45 and 8.46 of the Guidance requires the Council to have a policy on how it wishes to exercise the discretion to charge for non-residential care; and to consult people with care and support needs when deciding how to exercise the discretion. These do not set out a specific expectation in respect of consulting on charging for residential care.
- 5.12 However, chapter 23 of the Guidance sets out the expectations for transitioning to the new legal framework. Para 23.14 refers to financial assessment and states:

“Local authorities should review the operation of their local charging regime ... should consider the need to consult with their local population, but should not be expected to consult formally if their approach has not changed as a result of the Act.”

- 5.13 Any consultation will be required to:
- a. Be proportionate to the changes proposed, bearing in mind the impact on those potentially affected and the extent to which these may be controversial
 - b. Give sufficient reasons for any proposal to permit intelligent consideration and response

- c. Set out the realistic alternatives to the policy chosen and the reasons these have not been selected in sufficient detail to enable consultees to make proper representations on the issue
- d. It should be at a time when proposals are still at a formative stage
- e. Provide a reasonable period for consideration and response, allowing that these policies will need to be in place by 1 April 2015. A 4 week consultation is likely to be appropriate.
- f. The product of consultation must be conscientiously taken into account and may require inviting and considering views about possible alternatives, including other areas in which savings may be made.
- g. Give due regard to the Council's equality duties.

Equality Duty

- 5.14 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 properly discharge this duty and in some cases, such as where savings are made which impact on individuals with care needs, consultation will be required to inform the equality analysis. The duty to act fairly applies and this may require a greater deal of specificity when consulting people who are economically disadvantaged.
- 5.15 The obligation on the Council is that it should take all necessary steps to ensure that it properly understands how the change to services affects people who have protected characteristics. In the circumstances not only should the Council perform an Equality Analysis prior to any changes being made but it should consider consultation with affected services users if it considers it necessary to show that it has taken due regard of the impact on those Service Users. The duty is for the Council to take appropriate steps to fully understand the needs of the people affected by the changes. This also includes the families and carers of the individuals with care needs, who may also be affected.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 Equality Impact assessment to be completed as part of the charging report

7. BEST VALUE (BV) IMPLICATIONS

The combined effect of rising demand for adult social care services and inflation will result in estimated budget pressures of approximately £4m per annum over the three year period from 2016 to 2019. In addition, as a result of the government's austerity regime the Council as a whole will have to make an estimated £63m savings over the same period. The Council therefore has to

consider how to make funding for adult social care sustainable in this context, to ensure that adults with care needs continue to receive the support they require.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 N/A

9. RISK MANAGEMENT IMPLICATIONS

9.1 N/A

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 N/A

Linked Reports, Appendices and Background Documents

Linked Report

- MAB June 2016
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Appendices

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- Communications Plan
- Copy of public information booklet
- Survey
- Individual letter to customers who receive one or more of the services which are covered by charging

Officer contact details for documents:

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