

CABINET - 12 JANUARY 2016

PROPOSAL TO CHARGE SELF-FUNDERS A FEE FOR ARRANGING CARE SERVICES - OUTCOME OF THE CONSULTATION

REPORT OF THE DIRECTOR OF ADULTS AND COMMUNITIES

PART A

Purpose of the Report

- 1 The purpose of this report is to advise the Cabinet of the outcome of the consultation on the proposal for the County Council to charge self-funders a fee for arranging care services and to seek approval to implement a fee. The Care Act 2014 gave the Council power to charge for all care services and it is proposed to introduce an 'arrangement fee' for self-funders; those people who have financial assets over the upper capital limit defined in the Act.

Recommendations

- 2 It is recommended that:
 - a) The outcome of the consultation on the proposed arrangement fee for self-funders be noted;
 - b) From 4 April 2016 an annual fee of £236 be charged for arranging care services to meet eligible needs for those people who have financial assets over the upper capital limit set by the Government;
 - c) It be noted that the fee will be reviewed annually to ensure that it covers the actual costs of arranging care;
 - d) It be noted that work will take place with service users affected by the changes to ensure that they are aware of their options and supported to make informed choices.

Reasons for Recommendations

- 3 Implementing an arrangement fee for self-funders is expected to generate in excess of £100,000 per annum additional income for the Council.
- 4 Although the expected additional income is relatively small in the context of the Adult Social Care annual service user income budget of £38 million per annum, it would enable the Adults and Communities Department to generate some income and to use its resources more effectively to assist vulnerable service users.

- 5 It is acknowledged that the majority of responses to the consultation did not agree with the proposal to implement an arrangement fee for self-funders. However, Section 14 of the Care Act 2014 allows the Council to charge self-funders for arranging non-residential care services, and the fee level is set to cover the Council's costs only and does not include any profit element.

Timetable for Decisions (including Scrutiny)

- 6 The proposals were noted by the Adults and Communities Overview and Scrutiny Committee on 3 November 2015.
- 7 Subject to the Cabinet's agreement the annual fee would be implemented from 4 April 2016.

Policy Framework and Previous Decisions

- 8 The Care Act received Royal Assent in 2014 with Phase 1 to be enacted in April 2015 and Phase 2 to be enacted in April 2016. On 17 July 2015, the Government advised that Phase 2 of the Care Act would be delayed until 2020.
- 9 The Department of Health (DH) issued Care and Support Statutory Guidance for the Care Act in October 2014 and the Council implemented Phase 1 of the Care Act in April 2015.
- 10 On 11 September 2015, the Cabinet considered a report on work undertaken as part of the implementation of the Care Act and agreed an eight week consultation exercise on the proposal to charge self-funders a fee for arranging care services.

Resources Implications

- 11 The introduction of a new charge for arranging care is expected to generate in excess of £100,000 additional income per annum. The total income gained will be dependent upon the number of people affected by the charge who continue to take the service. The proposed charge would require those people who are able to pay for their services to do so and would enable the Adults and Communities Department to use its resources more effectively. The fee has been calculated using the Council's actual costs.
- 12 The Director of Corporate Resources and the County Solicitor have been consulted on the content of this report.

Circulation under the Local Issues Alert Procedure

- 13 This report is being circulated to all Members of the Council via the Members' News in Brief service.

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PART B

Background

- 14 Section 18 of the Care Act 2014 imposes on the Council a duty to meet an adult's needs for care and support (where the adult has eligible needs and assets above the upper capital limit set by Government) if that person asks the Authority to meet his or her needs.
- 15 Section 14 of the Care Act 2014 allows the Council to charge for putting these arrangements in place. The Care and Support Statutory Guidance states that councils can charge an arrangement fee for providing non-residential care and support but not residential care. The fee must be set at a level that does not exceed the costs that the Council actually incurs and is limited to the costs of negotiating and managing the contract with a provider and the administration costs incurred. No charge can be made for undertaking care and financial assessments.
- 16 No charge is currently levied for arranging care services. The Council currently arranges non-residential care services for 729 people whose capital and assets are over the upper capital limit, currently set at £23,250. These people will be directly affected by the introduction of the arrangement fee.
- 17 The Council's Charging Policy requires those people who are able to pay for their services to do so; the proposed charge is an extension of this policy.
- 18 The Council also supports people whose capital and assets are under the upper capital limit but who have a sufficient weekly income to pay the full cost of their care, for example, their weekly assessed maximum charge may be £180, but their cost of care is £150 so they pay the full £150. The County Solicitor has advised that the Council does not have power to charge these people for arranging care services.

Consultation

- 19 A public consultation exercise on the proposal took place between 23 September 2015 and 18 November 2015.
- 20 A consultation questionnaire was sent to all those people who currently have non-residential services arranged by the Council and whose capital and assets are over the upper capital limit; the cohort directly affected by the introduction of the arrangement fee. The questionnaire was also made available to the general public on the Council's website.
- 21 Partner agencies, including voluntary organisations, service providers and NHS organisations were also invited to contribute their views to the consultation, together with Healthwatch Leicestershire (the independent organisation which helps represent the public).
- 22 The majority of the responses to the consultation exercise were against the proposal to introduce a fee for arranging non-residential care services for self-funders. Details of the responses are attached at Appendix A, but the main issues raised were:

- a) Implementing an arrangement fee will penalise those people who have saved for their old age. Responders felt that all service users should pay this fee.
- b) Self-funders will not receive any additional service for the arrangement fee and do not feel that they have sufficient contact from the Council to justify the charge.
- c) The Council's approach to raising charges. Responders were unhappy that:
 - i) They pay for care in advance whilst the Council pays providers in arrears;
 - ii) Charges are calculated on the commissioned service rather than the service which is provided;
 - iii) Charges are calculated using the average rate paid by the County Council rather than the actual amount paid to the service user's provider;
 - iv) Negotiating credits and reductions in invoiced amounts takes far too long.

23 Several responders commented that some users of Extra Care Services do not receive social care services and only receive Extra Care support services. As the Council is not involved in arranging social care services for these people the responders felt that it would be unfair to have to pay the arrangement fee.

Responses to issues raised during the consultation

Implementing an arrangement fee will penalise those people who have saved for their old age. Responders felt that all service users should pay this fee.

24 The Care Act 2014 requires the Council to complete a financial assessment (means test) for every person receiving social care services. The financial assessment is completed in line with the Care Act guidance and ensures that no-one is required to pay more than they can afford for their care service.

25 Sections 14 and 18 of the Care Act 2014 restrict the implementation of an arrangement fee to those people who have savings and capital in excess of the upper capital limit which is set by Government (currently £23,250). The Act does not permit Councils to charge an arrangement fee for those people who have savings below this limit.

Self-funders will not receive any additional service for the arrangement fee and do not feel that they have sufficient contact from the Council to justify the charge.

26 The proposed arrangement fee is calculated using the actual costs incurred by the Council now in negotiating and managing the provider contract and the administration costs incurred. These costs are generally unseen by individual service users as they are incurred when managing the provider's contract with the Council rather than the provider's contact with the service user.

27 The underlying principle of the Council's charging policy is that those people that can afford to pay for their care services should do so. This principle applies to all aspects of cost and not just the cost of care. The alternative would be to continue with a subsidised service for those people most able to pay.

The Council's approach to raising charges

- 28 Charges are calculated on an average rate paid by the Council to all providers rather than the actual amount paid to the provider delivering their care. Charges are currently calculated on the commissioned service, and a retrospective adjustment can be made if a full day absence is notified by the service user having given the 24 hour notice period. Consideration will be given to how charges are calculated in the future.

Proposal

- 29 A detailed estimate of the actual cost to the Council of arranging care and support has been calculated and an annual fee of £236 for arranging care and support other than in a residential setting is proposed. The proposed fee is set in accordance with the requirements set out in the Care and Support Statutory Guidance 2014 and will be reviewed annually to ensure it covers the actual costs of arranging care. This fee will be collected throughout the year as part of the regular 4-weekly invoices sent to service users.
- 30 Self-funders living within an Extra Care service, who are not receiving any social care services commissioned by the County Council, are not required to pay the arrangement fee.

Implementation

- 31 It is proposed that the fee is introduced from 4 April 2016 and that work takes place during February and March 2016 to inform those affected. A communications plan will be drawn up to ensure that self-funders are fully aware of their options and support will be offered to help users make informed choices.
- 32 It is expected that some self-funders will undertake to arrange their own care services. The proposed charge is based on the actual cost to the Council of arranging the services; if self-funders choose not to ask the Council to arrange their care then the expenditure associated with arranging services for those individuals will also be reduced by the amount of the intended charge.
- 33 The proposal to charge will ensure that the Council applies the principle that those who can afford to do so will pay for their service and where they can arrange their care themselves will also do so. Many people already pay for and arrange their own care. The Adult Social Care emerging strategy aims to encourage independence in order to allow resources to be focused on those who need the Council to help and assist them.

Relevant Impact Assessments

Equalities and Human Rights Implications

- 34 The introduction of a charge where none was previously levied represents a significant change to the people affected by it. An Equality and Human Rights Impact Assessment (EHRIA) screening exercise was completed as part of the report to Cabinet in September 2015 which assessed the likely impact on groups protected by the Equalities Act 2010 and the Human Rights Act 1998. A full EHRIA has been

completed to take account of the results of the consultation and put in place any mitigation required to comply with the duties under these Acts.

- 35 The public consultation has assisted the Cabinet with the excise of its Public Sector Equality Duty under the Equality Act 2010. The Equality Act 2010 imposes a duty on the local authority when making decisions to exercise due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people who have a protected characteristic and those who do not.

Partnership working and associated issues

- 36 The Care Act Programme Board engaged with partners including care providers, service users, carers and voluntary sector organisations to co-produce tools to implement the Care Act in Leicestershire. Communications and training plans were established to include all stakeholders, including partners.

Risk Assessment

- 37 The Care Act 2014 allows Councils to charge a fee for meeting the eligible needs for those people who have capital and savings in excess of the upper capital limit set by Government. If the Council does not implement a fee for this service it will have reduced funds available to provide services for other, less well off, vulnerable people.

Background Papers

Department of Health Care and Support Statutory Guidance: Issued under the Care Act 2014 – October 2014

<http://ow.ly/Rp13p>

Cabinet report 11 September 2015: Progress with implementation of the Care Act and request for consultation.

<http://ow.ly/W4TN6>

Adult and Communities Overview and Scrutiny Committee minutes 3 November 2015: Progress with implementation of the Care Act.

<http://ow.ly/W4W11>

Appendices

Appendix A: Consultation Responses

Appendix B: EHRIA