Leicestershire County Council

CABINET – 19 APRIL 2016

FINANCIAL ASSESSMENTS FOR MEMBERS OF A COUPLE

REPORT OF THE DIRECTOR OF ADULTS AND COMMUNITIES

PART A

Purpose of the Report

1 The purpose of the report is to seek a change to the way the Council financially assesses members of a couple (including married couples, registered civil partners and co-habiting couples who would be treated as such by the Department of Work and Pensions [DWP] for benefits purposes) for charging for adult social care services.

Recommendations

2 It is recommended that the Council's Charging Policy be amended, to:

a) Include a revised approach to financial assessments for couples for all new assessments as outlined in paragraphs 19 to 21 of this report;

b) Confirm that the existing approach to financial assessments will be maintained for current service users who have a current couple's financial assessment.

Reasons for Recommendations

3 The statutory guidance for the Care Act 2014 revised the basis on which couples could be financially assessed. For some couples this means that it is possible for the Council to require that service users make a larger contribution to the costs of their care.

4 It is estimated that if the Council was to adopt a revised approach in line with the statutory guidance it could generate additional income. This income can be used to offset the requirement to make further budget reductions and support the delivery of the Council's Medium Term Financial Strategy (MTFS).

Timetable for Decisions (including Scrutiny)

5 Subject to the Cabinet's agreement, the revised approach to financial assessments for couples would be implemented from 1 May 2016 for all new assessments.

Policy Framework and Previous Decisions

6 The Council's existing Charging Policy for non-residential services was agreed by the Cabinet on 14 September 2012. The way in which couples were financially assessed was based on the statutory guidance in existence at that time.

7 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.

8 The Care Act received Royal Assent in 2014 and was enacted on 1 April 2015. The Council implemented most of the changes within the statutory guidance but maintained the previous approach to financial assessments for couples.

9 It is not proposed to go through a formal process of consultation and the reasons for this are outlined in paragraph 22 below.

Resources Implications

10 It is estimated that if the proposed approach is adopted, the change in financial assessments of couples will generate additional income of £80,000 in 2016/17, £240,000 in 2017/18 and £400,000 in 2018/19. This is set out in more detail in paragraphs 23-25 of this report. The final amount will be dependent upon the financial circumstances and care costs of service users who present themselves in this period and any changes to charging guidance issued by government.

11 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

12 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

13 Adult social care services are subject to a means test, with the amount that an individual is required to contribute determined by a financial assessment of people's income and assets. The framework for charging is set by statutory guidance but Councils have some local discretion to make arrangements that are more generous to service users and carers.

14 Prior to the implementation of the Care Act in April 2015, the statutory guidance for non-residential charging was the *Fairer Charging Policies for Home Care and other non-residential Social Services, Guidance for Councils with Social Services Responsibilities.* This guidance was first released in 2002 and was only slightly amended over the years.

15 A significant feature of this Fairer Charging Guidance was that when a member of a couple was to be financially assessed, two assessments had to be carried out and the lower of the results to be applied in setting the charge:

i. Half-couple assessment - considered only the income and capital (including an equal share of any jointly owned assets) of the member being assessed.

ii. Couple assessments - considered the income and capital of both members of the couple, so if the partner had little income it had the effect of reducing the assessment significantly. This ensured that a couple's protected income would not fall below their basic level of income support/pension credit (including any premiums except severe disability premium) multiplied by 125%.

16 Depending how the assets and income of any given couple are owned there can be a very significant difference in the contribution the chargeable service user is required to pay.

The Impact of the Care Act 2014

17 The Care Act 2014 and revised statutory guidance came into effect on 1 April 2015. This statutory guidance and regulations issued under the Care Act 2014 have no specific requirement for the secondary couple assessment to be carried out. The regulations include specific income protection amounts to be allowed for a member of a couple which take no account of the income of their partner. However, the guidance does comment that local authorities 'should also consider the implications for the cared-for person's partner'. Any change in Council policy needs to ensure that this element of the guidance is given due regard.

18 If the Council was to assess only the assets (including an equal share of any jointly owned assets) and income of the service user (half-couple assessment) it would result in a net increase in the average assessed charge. This would then lead to a net increase in the income for the Council, and make a significant contribution to the MTFS.

Proposed Change

19 It is proposed that the Council's Charging Policy should be amended with effect from 1 May 2016 so that only the assessment required in the statutory guidance is undertaken, i.e. only the assets (including a half share of jointly owned assets) and income of the service user are considered.

20 In order to ensure that due regard to the needs of the service user's partner is given, the financial assessment will ensure that, as a minimum, the couple's income will not fall below the basic level of income support/pension credit. This level of protection is less than that required under the existing Charging Policy. An illustrative example of how this would work in practice is set out below.

> Apply further protection to the level of basic Pension Credit (currently £230.85) or Income Support (currently £114.85).
>
> **Example:**
> Mr and Mrs Sample are over pension age and Mr is the service user.
>
> His income: State Pension £142.86; Occupational Pension £130
> Her income: State Pension £73
> Housing Costs: Council tax £23 (allow £11.50 each)
>
> The Minimum Income Guarantee [MIG] (statutory income protection) for Mr Sample = £144.30
>
> **His charge, using the new statutory assessment, would be his Income less the MIG and his housing cost -** £272.86 - £144.30 - £11.50 **= £117.06**
>
> This would leave the couple with £217.30 to live on (£144.30 MIG plus Mrs Sample's £73 pension), and after Mrs Sample's share of the housing costs (£11.50) are deducted this would leave them with £205.80.
>
> This is less than the basic level of Pension Credit for a couple so the difference between the two should be allowed as an expense or further income protection: £230.85 - £205.80 = £25.05.
>
> So the assessment for Mr Sample is reduced to **£92.01** (£117.06 - £25.05)
> (Under the Fairer Charging rules the assessment would have been **£34.30)**

21 The revised approach would not be implemented for current service users who have a current couple's financial assessment, i.e. they would be charged on the basis of the lower of the two existing methods of calculation. They would continue to be assessed on the existing policy for as long as they receive a continuous service without a break of more than six months. This would avoid any detriment to existing service users.

22 The proposed change arises as consequence of changes in charging regulations[1] which accompanied the Care Act 2014. Although there was no specific statutory duty to consult in relation to the implementation of the changes, there is a limited risk that a duty to consult may arise out of a legitimate expectation on the part of service

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[1] Care and Support (Charging and Assessment of Resources) Regulations 2014

users. However, it is not proposed to consult in this case mainly because the Charging Regulations themselves do not appear to offer any discretion over the terms upon which they should be implemented.

Expected Income Gain

23 As at 23 February 2016 there were 521 active cases that had a couple's financial assessment in place. A random sample of 52 (10%) cases was taken from these. Each case was re-assessed using the proposed policy and comparing it with the existing financial assessment and the package of care. From this it was determined that the average increase in actual income to the Department for these cases would be £34 per week.

24 Of the 521 cases, 115 were new assessments in the last year, suggesting a turnover of 22%. If the new policy was applied from April 2016 then the estimated income gain for the year 2016/17 would be approximately £100,000. Assuming that no changes are made to the rules set by the DH then the income gain would rise to approximately £300,000 for 2017/18, and £500,000 for £2018/19. However this is subject to risk:

- The average of £34 per week includes cases that would see no increase and cases with an increase of up to £157 on the sample tested.
- The turnover of 22% may vary, and may include cases that will already have been assessed under the new rules – this could supress the income gain.

25 In view of this, it is considered that the estimated income gains should be reduced to £80,000 in the first year, £240,000 in the second year and £400,000 in the third year. The additional income will allow the "Increased income from fairer charging and removal of subsidy/aligning increases" MTFS saving line to be exceeded, with a contribution made to the "Reduced cost and demand for social care" line. The non-residential service users' income budget for 2016/17 is £11,600,000.

Background Papers

- Report to the Cabinet: 14 September 2012 – Outcome of the Consultation on the Review of the Non-Residential Charging Policy for Adult Social Care http://ow.ly/ZT6D7
- Department of Health Care and Support Statutory Guidance to support local authorities to implement the Care Act 2014 – 24 March 2016 https://www.gov.uk/guidance/care-and-support-statutory-guidance

Appendix

Equality and Human Rights Impact Assessment (EHRIA)

Relevant Impact Assessments

Equality and Human Rights Implications

26 An EHRIA screening document has been prepared. This has taken account of work carried out within the Community Care Finance Team to establish the likely consequences of the proposed changes for protected groups, and following advice received from Legal Services.

27 This exercise has resulted in the following conclusions:

- There will be a differential approach between those assessed before and after 1 May 2016;

- This treatment must be justified to avoid a direct contravention of the Equality Act 2010. As the greatest potential impact falls on existing service users who will have made their financial and daily living arrangements on the basis of existing rules, this is the group we should provide protection for. In contrast, new service users will be aware of the basis of calculating charges from the outset.

- The old and new rules share a requirement not to charge people more than they can afford to pay. Both the current and proposed charging mechanisms comply with this test. In addition, we retain some discretion about how we apply the charging policy to individuals where exceptional hardship may result from the outcome of the financial assessment. This discretion is available to mitigate the impact on new couples where there is a clear need to do so.