

TITLE OF REPORT: Charging and Financial Assessment for Adult Care and Support Services

REPORT OF: Caroline O'Neill, Strategic Director, Children's, Adult's and Families

Purpose of the Report

1. Cabinet is requested to recommend to Council that the changes to policy on Charging and Financial Assessment for Adult Care and Support Services be implemented following consultation.

Background

2. The Care Act 2014 and the regulations made under it provide a legal framework for charging for care and support. It enables the Council to decide whether or not to charge an adult when it is arranging to meet an adult's care and support needs or a carer's support needs.
3. The charging policy provides a transparent, consistent and fair framework for the Council to use when assessing an individual's ability to pay towards any social care services they are assessed to receive. The actual charges for Adult Social Care Services are reviewed annually and are defined in the Council's Fees and Charges Report. The Policy was last updated in 2018, when the Disability Related Expenditure allowance was reduced from £15 to £10, and a range of other measures were enacted (charging for two carers, and removal of the overall cap on charges for community care packages).

4. This policy included a key change to the current charging policy:

To replace the automatic Disability Related Expenditure (DRE) allowance, which is to cover additional expenditure an adult may have due to their disability, and is currently set at £10, with the offer of an individual assessment of disability related expenditure. This change is in keeping with the Thrive agenda, as this will allow the service to ensure that those people who need an allowance the most (either through financial hardship or as a result of costs associated with their disability) are given one, as opposed to a blanket approach which saw some people receiving an allowance that they did not require.

5. Cabinet received a report on 19 January 2021 requesting approval to consult on a policy change in respect of Charging and Financial Assessment for Adult Care and Support Services. The outcome of this consultation has informed the proposed policy.

Proposal

6. The proposed policy change for Charging and Financial Assessment for Adult Care and Support Services is implemented with effect 1 June 2021.

7. It is proposed that we manage the change in a measured way so that in 2021/22 the automatic DRE will be £5 and in 2022/23 it will change to £0 but this change will happen automatically and will not be subject to a new consultation exercise. This will give an opportunity to understand the wider financial implications of the removal of £5 of the £10 allowance and balance additional costs with anticipated savings. Should it be evidenced that reducing the allowance has an adverse impact on either residents or costs more in terms of processing than it will raise, the option would be available to reverse this decision.

Recommendations

8. Cabinet is requested to recommend that Council approves the proposed policy change for Charging and Financial Assessment for Adult Care and Support Services.

For the following reasons:

- (i) To meet the statutory requirements of the Care Act 2014 and the regulations made under it.
- (ii) To provide a transparent, consistent and fair framework for the provision for charging and financial assessment for all adults receiving care and support services and is in line with the Thrive agenda and ethos.

Policy Context

1. The Care Act 2014, which provides a legal framework for charging for Adult Social Care:
 - Section 14 of the Care Act provides Local Authorities with the power to ask adults to make a contribution for the cost of their social care.
 - Section 17 of the Care Act allows Local Authorities to carry out a financial assessment to determine the amount a customer can afford to contribute towards the care services they receive.
2. The policy has been designed in line with Care and Support Regulation (Statutory Instruments) and Care and Support Guidance and Annexes issued under the Care Act 2014.
3. This update on the charging regime will support the aspirations set out in Thrive agenda, allowing the service to ensure that those people who need an allowance the most (either through financial hardship or as a result of costs associated with their disability) are given one, as opposed to a blanket approach which saw some people receiving an allowance that they did not require.

Background

4. The Council's, Adult Social Care provides a range of services for vulnerable people but is reliant on income from charges to help pay for them. Without this income, service levels could not be maintained.
5. The Council charges for services as, any authority, which recovers less revenue than its discretionary powers allow, is placing an extra burden on its population or is foregoing resources, which could be used to the benefit of the service.
6. This policy aims to be a transparent, consistent and fair framework for charging and financial assessment for all adults that receive care and support services, following an assessment of their needs and taking account of their individual financial circumstances.
7. Charges for care services are reviewed annually and are defined in the Adult Social Care Fees and Charges Schedule.
8. This proposal includes some key changes to the current charging policy:

To replace the automatic Disability Related Expenditure (DRE) allowance, which is to cover additional expenditure an adult may have due to their disability, and is currently set at £10, with the offer of an individual assessment of disability related expenditure.
9. There are circa 1500 clients who have a DRE allowance in their financial assessment.
10. Of these circa 200 full cost clients are unlikely to be impacted, leaving 1300 clients who may be impacted (including some who are currently nil charge).
11. The amount an adult is required to contribute towards the cost of their care is based on an assessment of ability to pay and therefore any increases in contributions will be limited to their assessable amount.

12. These changes can be implemented at the same time as the annual financial assessment uplift. There are concerns regarding the ongoing costs and wider financial impacts of the proposal (due to increased Financial Assessment officer time) should many clients request an individual assessment of their Disability Related Expenditure, and therefore how these costs will impact on the overall saving that can be achieved.
13. It is proposed that we mitigate the change so that in 2021/22 the automatic DRE will be £5 and in 2022/23 it will change to £0 but will not require a new consultation exercise. This will give an opportunity to understand the wider financial implications of the removal of £5 of the £10 allowance and balance additional costs with anticipated savings. Should it be evidenced that reducing the allowance has an adverse impact on either residents or costs more in terms of processing than it will raise, the option would be available to reverse this decision.
14. By removing the £10 DRE, there could be an increase of income of circa £8.5k per week (circa £440k per annum), without taking into consideration the costs of additional assessments, and the cost of the individual DRE's that would be allowed. A change to £5 per week would raise circa £200k per annum, with the same caveats.
15. Analysis has been undertaken with the following LA's:
 - Durham – do not have an automatic DRE allowance
 - Newcastle – currently have an automatic DRE of £5 which will be removed from 1 April 2021 as part of Budget proposals
 - North Tyneside – do not have an automatic DRE allowance
 - Northumberland – have a tiered structure for DRE allowance
 - South Tyneside – have a tiered structure for DRE allowance
 - Sunderland – do not have an automatic DRE allowance

Consultation

16. Consultation on the policy and the proposed changes took place between 20 January 2021 and 18 March 2021.
17. As would be anticipated, there were a range of responses to this proposal. Some people vehemently oppose it, citing that it is an attack on the most vulnerable in society, and that the Council should lobby the Government to receive more money and 'fight budget cuts'.
18. Some responses indicated that people were more comfortable with the proposal, if it was made clear to people that they can request an individual assessment.
19. Some comments made reference to means testing, which is already a key component of the financial assessment, and the principle that nobody is asked to pay more than they can afford to.
20. Some people agreed with the removal of the automatic disregard, (including some who attended the sessions for people who are going to be directly affected), with some commenting that clients should be charged more for PPE and that the Council should make sure benefit fraud is ceased.

21. Acknowledging that this is quite a technical area of legislation and policy, some comments reflected that people hadn't fully appreciated the proposal or its implications. However, of those people who attended the Teams Lives sessions, no concerns were raised regarding the clarity of the information shared, and comments were received thanking the presenters.
22. Nobody put forward a realistic alternative as to how the proposed saving (£250k) could be achieved elsewhere.
23. Overall, there was a strong sense that fairness should be intrinsic within the policy.
24. A range of consultation exercises have been undertaken in respect of this proposal:
 - Gateshead Council Budget Consultation
 - 2 x VCS leaders ASC Budget Consultation sessions
 - Gateshead Health and Care System Consultation session
 - 2 x Public Teams Live sessions with people affected/their representatives
 - Email/paper form/phone line consultation with people affected/their representatives
25. The Cabinet Members for Adult Social Care have been consulted.
26. A summary of responses can be found in appendix 2.

Alternative Options

27. The alternative option would be to continue with the current charging policy and not introduce any of the proposed changes but this not bring us in line with the position applied by most other local councils to assist in the ability to continue to provide services to those that need them most, and would be contrary to the Thrive Agenda.

Implications of Recommended Option

28. Resources:

- a) **Financial Implications** – The Strategic Director, Resources and Digital confirms that the financial implications are as follows:
 - (i) By removing the £10 DRE, there could be an increase of income of circa £8.5k per week (circa £440k per annum), without taking into consideration the costs of additional assessments, and the cost of the individual DRE's that would be allowed. A change to £5 per week would raise circa £200k per annum, with the same caveats.
 - (ii) There are concerns regarding the ongoing costs and wider financial impacts of the proposal due to increased Financial Assessment officer time should many clients request an individual assessment of their Disability Related Expenditure, and therefore how these costs will impact on the overall saving that can be achieved. It is proposed that we mitigate the change so that in 2021/22 the automatic DRE will be £5 and in 2022/23 it will change to £0 but will not require a new consultation exercise. This will give an opportunity to understand the wider financial implications of the removal of £5 of the £10 allowance and balance additional costs with anticipated savings. Should it be evidenced that reducing the allowance has an adverse impact on either residents or costs more in terms of processing than it will raise, the option would be available to reverse this decision

b) **Human Resources Implications** - There are no human resource implications directly arising from this report

c) **Property Implications** - There are no property implications directly arising from this report

29. **Risk Management Implication** – Consultation has mitigated the risk of legal challenge and the ability to change the policy as proposed. However, we would like to raise an associated further issue regarding the implications of a recent Court Case with respect to social care charges. The case (R (SH) v Norfolk County Council & Anor [2020] EWHC 3436 (Admin)) raised issues with respect to Norfolk County Council's decision to take into account the full enhanced rate of Personal Independence Payment (PIP) benefit as income available from which social care charges can be paid, leaving the service user with only a protected amount (the Minimum Income Guarantee or MIG) free from charges. This approach was found to be discriminatory in that it had a disproportionate impact on severely disabled people. Gateshead Council is currently considering the implications of this judgement. However, Gateshead Council considers that it is in a different position to Norfolk County Council in that its Charging Policy enables a Review to be undertaken where a service user considers it is not 'reasonably practical' for them to pay the assessed charges. Thus, where concerns such as those identified in the Norfolk case are raised, a mechanism already exists (via the Review process) which allows for the person's charging decision to be re-visited with a view to ensuring that the person in question is charged fairly and lawfully.
30. **Equality and Diversity Implications** – As this proposal impacts on people with a protected characteristic, disabilities, an integrated impact assessment has been developed by the service and revised following the consultation and engagement with public and service users. This is attached as appendix. 3.
31. **Crime and Disorder Implications** - None
32. **Health Implications** – contributions would be based on a person's ability to pay and are only levied following a full financial assessment. As such, charging has a limited negative effect on people's health and well-being
33. **Climate Emergency and Sustainability Implications** - None
34. **Human Rights Implications** - None
35. **Ward Implications** - the report relates to a policy which has a borough wide impact.
36. **Background Information**

Care Act 2014
Equalities Impact Assessment