

Cabinet

16 December 2014

Report of the Cabinet Members for Health & Community Engagement
and Finance & Performance

Care Act Policy Framework (Finance)

Summary

1. The purpose of this paper is to provide Cabinet with a financial policy framework for consideration in respect of the Care Act. The policies requiring approval are deferred payment (Annex A), direct payment (Annex B) and a revised charging policy (Annex C).

Background

2. The Care Act will come into force on the 1st April 2015 and will be the largest change in Adult Social Care experienced by the Local Authorities in England. The Care Act 2014 is intended to make a difference to some of the most vulnerable people in society. It places care and support law into a single statute for the first time using the principle of individual wellbeing as the driving force behind it.
3. The Act also delivers reform to the way that care is paid for. The reforms set out how people will pay for care so they get more financial support from the state. The universal deferred payment scheme will provide support so that qualifying customers may not be forced to sell their home during their lifetime to pay for care. The Act also intends to make the care and support system clearer and fairer for those who need it.
4. The three policies are set out in a way that future proofs them in respect of the various financial limits and fees which will vary over time. The recommended fees are set out in the body of this report and with the various financial limits currently available at Annex D. This information will be made available on the council website and

will be included in communications with customers. The final guidance information in respect of the Act was provided to local authorities in late October 2014. The policies in this paper are worded in line with Act and guidance received from Government. It is the intention that easy read versions along with simple information sheets will be provided to customers as part of the Adult Services communication programme in respect of the Care Act. The policy framework to support the financial changes within the Care Act is set out in the following paragraphs.

Deferred Payment Policy

5. The establishment under the Act of a universal deferred payment scheme is intended to mean that people should not be forced to sell their home in their lifetime to pay for their care. By taking out a deferred payment agreement, a person can 'defer' or delay paying the costs of their care and support until a later date, so they do not have to sell their home at a point of crisis.
6. The Act sets out details of the universal deferred payment scheme which are more stringent than those of the councils existing scheme. This will limit the number of customers who could genuinely benefit from the intention of the Act. York is one of very few local authorities in the region who have provided a deferred payment scheme opportunity for customers so they do not have to sell their home at the point of crisis. This paper recommends retaining the councils existing scheme alongside the universal scheme but that the deferred scheme is reviewed biannually to ensure its financial viability and if not sustainable the council will use its discretionary powers to remove the scheme for new customers. The reasons for retaining the local deferred scheme are:
 - Where a person is narrowly ineligible for the universal deferred payment agreement scheme, because they have slightly in excess of the upper capital limit (£23,250) and the likelihood is that the customer would reach this threshold in the near future;
 - Where there is adequate equity that the council can safely be the second charge using the calculation at 8.1 of the deferred payment policy (Annex A);
 - Where we have a legal agreement to recover against a substantial life policy;

- Where the customer has a high value asset against which we have a legal charge but the sale may take some time e.g. A work of Art;
- Where the customer may have shared equity in a property below the capital limit but wishes to top up their care costs.

7. A key change is that from April 2015 the council will be able to charge interest on deferrals from inception along with a reasonable administration fee for setting up a deferred payment scheme. The council is not allowed to profit from the administration fee or interest charged to the customer. The initial administration cost is recommend to be based upon the following incurred costs:

Deferred Payment Agreement Costs	£
Document Preparation, signing and return copy to customer	8
Land Registry Title Search Fee	3
Land Registry Charge Registration	40
Legal Team Costs (Registration)	20
Initial Professional Valuation Cost	150
Initial Costs	221

8. There will be further ongoing costs in the region of £90pa and these are set out in Annex D. The full deferred payment scheme details are set out in the policy at Annex A.

Direct Payments Policy

9. The personal budget is the amount of money that the council has worked out it will cost to arrange the necessary care and support for the customer. It includes any amount that the council is going to pay itself towards those costs (which might range from all, to none). The personal budget helps the customer to decide how much control they want to have over arranging their own care and support.
10. Using the information from the personal budget, the customer can ask the council for a direct payment. The council must provide it to any customer who meets the conditions unless the Act or regulations provide otherwise. City of York Council will actively support customers to find the support which suits them which may often be outside of traditional models of service delivery.

11. A direct payment is a payment of money from the council to either the person needing care and support, or to someone else acting on their behalf, to pay for the cost of arranging all or part of their own support. The local authority could make a direct payment instead of arranging or providing any services itself, if the adult asks them to do so. This ensures the adult can take full control over their own care.
12. Annex B to this paper sets out the council's Direct Payment Policy in detail the key points include:
 - Ensuring the customer are provided with relevant and timely information;
 - Assessing capacity and making direct payments available to customers with and without capacity;
 - The administration, monitoring and reconciliation of direct payments;
 - The use of Cashplus accounts;
 - What direct payments can be used for;
 - Discontinuation and termination of direct payments.

Revised Charging Policy

13. Care and support is not a free service like the NHS. Customers have always had to pay something towards the cost of their care and support. Whilst some types of care and support are provided free (for instance, information and advice), many types will be subject to a charge. Customers will only be asked to pay what they can afford. Sometimes the customer will pay the full cost, or sometimes the cost will be shared between the customer and the Council.
14. To decide what a customer can afford to pay, the Council will carry out a financial assessment. The council will consider the person's income, and any assets they own, like investments or a house. The council will then calculate how much the customer can afford to pay towards their care and support costs.
15. The Care Act sets out a clearer approach to charging and financial assessment. It will work with the cap on costs (April 2016) to make clear what customers have to contribute towards their care and support costs. The Act provides the Council with the power to charge for care and support. However, the Council may not

charge for those services which the regulations say must always be provided free. After the financial assessment, the local authority will tell the customer whether they need to pay for all, some or none of their care costs.

16. The council already have a charging policy that sets out the charges made to customers. The Act has required that this is revised. The detailed revised policy is set out at Annex C however the key changes are:
 - The council can charge an annual fee for arranging and administering personal accounts for all customers that are able to meet the full cost of their care. The cost of negotiation, contracting and contract management (Including invoicing and the customer payment to the care provider) is £280 pa.
 - The Care Act also provides the council with the power to charge for support for carers where they have an eligible support need in their own right, whether or not, and providing the adult they care for also meets the eligibility criteria for care and support.
17. The council will need to make a decision as to whether it wishes to charge for support to carers. Whilst the Act provides the power to do this it acknowledges that this may well act as a deterrent to existing or future carers. The council wish to encourage and support carers and it is not therefore its intention to implement charging as a part of its policy framework. It does however reserve the right to consider a charge in certain circumstances based upon a means tested approach and where this is the case will set out in detail on its website and in any communication where such a charge may arise.

Options

18. There are 6 options associated with this paper:
 - Option 1** - Approve the revised policies set out at paragraph 5 - 17 and Annex A, B & C;
 - Option 2** - Do not approve the revised policies set out at paragraph 5 – 17 and Annex A, B & C;
 - Option 3** – Implement an administration fee for self funders who request that the council administer their personal account £280 (Paragraph 16);

Option 4 – Implement a deferred payment fee as set out in detail at paragraph 7 and Annex D of £221;

Option 5 – Implement a charge for support to carers (Paragraph 17)

Option 6 – Do not implement a charge for support to carers but reserve the right to consider a charge in certain circumstances based upon a means tested approach (Paragraph 17)

Analysis

19. The new Direct Payment Policy along with the revised Charging Policy need to be in place by 1st April 2015 and in respect of the Deferred Payment policy 12 weeks prior to this date. These policies provide the Councils policy framework for the financial elements of the Care Act to provide a transparent, consistent and fair approach to the financial support that customers can expect. There is little latitude within the Act to vary the policies and it is recommended that members approve the policies set out at Annex A, B, and C of this paper.
20. The Policies may need minor amendments over time. It is recommended that the power to make minor amendments that do not conflict with the intention of the Care Act is delegated to the councils Chief Financial Officer (Director of CBSS) in consultation with the Director of Adult Services.

Consultation

21. The council has been involved in the national consultation exercise with Government in respect of the Care Act and the final guidance reflects this consultation. This does not mean that the Act reflects what council's may have wanted but that consideration has been given to the issues raised by local government in the final guidance.
22. The final Care Act guidance was only issued at the end of October 2014 so there has been limited consultation between authorities on how they intend to implement their policies. In terms of information around the finance policy framework 6 local authorities let us know their view on charging carers 4 said it was not their intention to do so with 2 considering the issue. Three of the 6 said they would implement discretionary deferred payment schemes 3 are still undecided.

Communication

23. City of York Council is leading the regional work stream for Care Act customer communication. A strategy is underway to adopt National tools for local use as they become available. This will include providing clear, concise and customer friendly versions of all documentation and policies associated with the Care Act including those at Annex A – C of this paper.

Council Plan 2011 - 15

24. The impact of the policies recommended for approval in this paper impact directly on two of the council's priorities that create the Council Plan 2011 - 15.
 - a) Building strong communities
 - b) Protect Vulnerable People

Implications

25. **Financial** – The financial implications of the policies at annex A - C are as follows:

Deferred Payment Policy – The retention of the current deferred payment scheme provides a potential financial risk. This scheme has been in place since 2003 and nothing within the Act itself should give rise to a substantial increase in new customers. The scheme is to be reviewed bi-annually and the council can remove access to the scheme to new customers following these reviews mitigating the risk of the scheme becoming financially unsustainable. The Universal scheme is quite restrictive and in isolation should not create any financial risk.

Direct Payment Policy – The council already provides Direct Payments to customers. The policy sets out the qualifying criteria and administration details. There are no financial pressures generated by this policy.

Charging Policy – This policy sets out what can be charged for under the Act it is not a discretionary policy. The main financial consideration associated with the policy is whether the council chooses to charge carers. The policy and the Act allow this but there is the discretion not to.

- (a) **Human Resources (HR)** - There are no implications

- (b) **Equalities** – The Care Act is a Government Policy that has already been through a thorough equalities impact assessment. The council has no power to amend the Act.
- (c) **Legal** – There are no direct implications
- (d) **Crime and Disorder** - There are no implications
- (e) **Information Technology (IT)** - There are no implications
- (f) **Property** - There are no implications

Risk Management

26. The key risk is a financial one as it is not possible to control the number of customers who may be eligible to deferred payments. The scheme is regularly monitored to ensure that any large variation can be flagged up as early as possible and the scheme will require this constant monitoring to be maintained. As most customers who are eligible for deferred payments are already claiming it is not envisaged that there will be much change.

Recommendation

27. Cabinet are asked to consider and approve:

- i) the three policies set out at Paragraph 5 – 17 and set out at Annex A, B and C;

Reason: To provide a policy framework to comply with the Care Act 2014 and the Acts objectives for the residents of York.

- ii) the administration fee for self funders set out at Option 3 and paragraph 16;

Reason: To cover the costs of the council carrying out this work.

- iii) the deferred payment fee set out at Option 4 and in detail within Annex D;

Reason: To cover the costs of the council carrying out this work.

- iv) the delegated power to make minor policy amendments in line with the Care Act to the councils Chief Financial Officer in consultation with the Director of Adult Services (Paragraph 18);

Reason: To ensure the policies are kept up to date and are accurate.

- v) that the council does not adopt the universal opportunity to charge carers but reserves the right to do so in certain cases (Para 17 & Option 6).

Reason: The administrative cost would likely be higher than any gain and it may send a negative message to carers.

Contact Details

Author:	Cabinet Members and Chief Officers responsible for the report:		
David Walker Head of Financial Procedures Phone No. 01904 552261	Cabinet Member for Health & Community Engagement	Cabinet Member for Finance and Performance	Ian Floyd Director of Customer & Business Support Services Telephone: 01904 551100 Guy Van Dichele Director of Adult Services Telephone 01904 554045
	Report Approved	√	Date 19/11/2014
Specialist Implications Officer(s) Sharon Calline Income Services Manager			
Wards Affected: All			√

For further information please contact the authors of the report

Background Papers

Annexes

Annex A – Deferred Payment Policy
Annex B – Direct Payment Policy
Annex C – Revised Charging Policy
Annex D – Schedule of Fees Charges and Allowances

Glossary

DIA – Disposable Income Allowance
DLA – Disability Living Allowance
DoH – Department of Health
DRE – Disability Related Expenditure
DWP – Department of Works and Pensions
EMI – Elderly Mentally Infirm
EPA – Enduring Power of Attorney
EPH – Elderly Persons Homes
FNC – Free Nursing Care
GP – General Practitioner
LPA – Lasting Power of Attorney
NHS – National Health Service
PEA – Personal Expenditure Allowance
PIP – Personal Independence Payments