

**Decision Maker:** Care Services Policy Development and Scrutiny Committee

**Date:** 21 January 2015

**Decision Type:** Non-Urgent Executive Key

**Title:** **CHANGES TO THE NON RESIDENTIAL CHARGING POLICY AND DEFERRED PAYMENTS SCHEME**

**Contact Officer:** Lesley Moore, Deputy Director of Finance

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**Chief Officer:** Terry Parkin, Executive Director Education & Care Services

**Ward:** N/A

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1. Reason for report

- 1.1 To consider the impact on the Councils Charging Policy as a result of the Care Act 2014 and to outline the proposed changes to the Non-Residential Charging Policy and Deferred Payments Scheme.
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2. **RECOMMENDATION(S)**

2.1 The Portfolio Holder is asked to

- a) Agree the new charges as a result of the Care Act 2014 as set out in paragraph 3.3 to 3.6.1 for 2015/16 be approved.
- b) Agree to engage with service users, their families and carers about the proposed new standard allowances for Disability Related Expenditure as set out in paragraph 3.7 to 3.7.5 of this report.

### Corporate Policy

1. Policy Status: N/A.
  2. BBB Priority: N/A.
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### Financial

1. Cost of proposal: No cost -
  2. Ongoing costs: Recurring cost. - £ 200k p.a. saving
  3. Budget head/performance centre: Care Services Charging
  4. Total current budget for this head: £ 3,898,000
  5. Source of funding: Charging
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### Staff

1. Number of staff (current and additional):
  2. If from existing staff resources, number of staff hours:
- 

### Legal

1. Legal Requirement: No statutory requirement or Government guidance.
  2. Call-in: Call-in is applicable
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments:

### **3. COMMENTARY**

- 3.1 As part of the budget process officers always review income budgets to ensure that income is maximised or reflects changes that have occurred to services that ultimately impact on our charging policy.
- 3.2 This report considers the impact of the Care Act 2014 on the current Charging Policy and also explores income opportunities.

#### **THE CARE ACT 2014**

##### Universal Deferred Payments

- 3.3 The Council currently operates a deferred payment scheme in accordance with the Health and Social Care Act 2001.
- 3.3.1 The Care Act 2014 establishes a universal deferred payment scheme which means that from April 2015, local authorities are required to provide a deferred payment scheme for anyone who they assess as having eligible needs which should be met through a care home placement and whose capital (excluding the value of their property) is below £23,250.
- 3.3.2 Under Sections 34-36 of the Care Act 2014, local authorities must have a deferred payment scheme which:
- Includes a set of national criteria governing eligibility
  - Allows some local discretion, for example on the amounts that can be deferred
  - Permits a local authority to charge interest and administrative fees to offset the costs of the scheme
- 3.3.3 The London Borough of Bromley's deferred payments policy has been designed to comply with the Care Act 2014 and the Department of Health's Care and Support Statutory Guidance. Its aim is to provide flexibility for when and how a person pays for their care and support by delaying the need to sell their home, during a time that can be challenging for them and their loved ones as they make the transition into care.

The principles underpinning the scheme are:

- To ensure that those who have been assessed as needing care may not need to sell their property to pay for care subject to meeting the criteria
- To ensure that residents are fully informed about deferred payments and eligibility
- That the scheme is self-financing and sustainable

##### Services covered by this policy

- 3.3.4 The Act gives local authorities discretion to enter into deferred payment agreements with people whose care and support is provided in supported living accommodation (e.g. Extra Care Housing).
- 3.3.5 It is not proposed that deferred payment agreements are extended to service users in Extra Care Housing because it could take years before the money is ever recovered by the Council. The proposal is that the Council's deferred payment policy will only cover residential and nursing care.

### Obtaining Security

- 3.3.6 Under the Care Act 2014, a local authority must have adequate security in place when entering into a deferred payment agreement. The regulations state that a first legal mortgage charge must be accepted as adequate security, however it also provides wider discretion for local authorities to accept other forms of security as they see fit.
- 3.3.7 The proposal is the Council will consider other forms of security such as a second legal charge and each case will be considered on its own merits, whilst ensuring that the Council is not exposed to financial risk.

### Administration fees and interest charges from 1 April 2015

- 3.3.8 Prior to the Care Act 2014, local authorities were **not allowed** to recover the administration costs of running a deferred payment scheme from service users. The Care Act now permits councils to run this scheme on a cost-neutral basis and charge for any administration costs incurred providing the deferred payment scheme.
- 3.3.9 It is therefore proposed that from April 2015 the following charges are introduced:-
- Set up charge                      £750 (plus VAT)
  - Annual charge                      £300 (plus VAT)
  - Termination Charge              £325 (plus VAT)
  - Independent valuation of property – Actual cost
- 3.3.10 The Care Act **now** also permits the Council to charge interest on the deferred payment amount to cover the cost of lending and the risks associated with lending, for example the risk of default. However, local authorities are not permitted to charge interest at a rate higher than the nationally set maximum rate.
- 3.3.11 The national maximum interest rate will change every six months, on 1st January and 1st June to track the market gilts rate specified in the most recently published report by the Office of Budget Responsibility. This is currently published in the Economic and Fiscal Outlook, which is usually published twice-yearly alongside the Budget and Autumn Statement.
- 3.3.12 It is proposed that the Council charge the nationally set maximum interest rate for all deferred payment agreements. On the basis of the current gilt rate (2.5 per cent), the interest rate applicable from the scheme's inception on 1 April 2015 to 30 June 2015 will be 2.65 per cent.
- 3.3.13 The Department of Health will develop a tool to aid local authorities in assessing sustainability of a deferred payment however local authorities retain final responsibility and have discretion over decisions taken about the agreements they enter into.
- 3.3.14 The Care Act repeals all current legislation including the right to place a unilateral charge against someone's property. This means that any debt which the Council has secured with a charge under Section 22 of the Health and Social Security and Social Services Adjudications Act 1983 will not be permitted to accrue any further care fees from 1<sup>st</sup> April 2015. These cases will be reviewed prior to 31<sup>st</sup> March 2015 and a deferred payment agreement will be entered into where possible. There are currently 53 service users where a charge has been placed against their property.

### 3.3.15 The new policy is attached in Appendix 1

#### Current Contributions Policy for Non-Residential Care

3.4 Charges are currently calculated in line with the Fairer Charging Guidance 2013. The Care Act 2014 provides a single legal framework for charging for care and support under sections 14 and 17. The new framework is intended to make charging fairer and more clearly understood by everyone.

3.4.1 Under the new legislation local authorities still have a duty to meet the eligible needs of a person who has above the upper capital limit (currently £23,250) and has been assessed as requiring non-residential care. However local authorities **may now apply** an administration fee to cover its costs where they have been asked to arrange the persons care and support on their behalf.

3.4.2 The arrangement fee must not be higher than the cost the local authority has incurred in arranging that care and support. It is proposed that the arrangement fee from 1 April 2015 is £240.

#### Charging for Support to Carers

3.5 Where a Carer has eligible support needs of their own, and the local authority is meeting the needs of a Carer by providing a service directly to them, it **now** has the power to charge the carer. Where a local authority takes the decision to charge a Carer, it must do so in accordance with the non-residential charging rules.

3.5.1 The proposal is that carers will be charged the full cost for the service they receive subject to a financial assessment.

#### Backdated Charges

3.6 Under the current legislation local authorities can only charge for non-residential care services from the date the service user is notified of their charges. This will not be the date that the service commences as a financial assessment will need to be undertaken, which is usually about 5 days after the service commences.

3.6.1 There is no provision in the new legislation which states local authorities must inform the service user of their assessed charge before the charges can commence and the Department of Health has confirmed that it would expect the local authority to **backdate** any charges to when it started meeting the person's care and support needs.

### **OTHER PROPOSED CHANGES**

#### Disability Related Expenditure (DRE)

3.7 In addition to the various allowances that are taken into account in assessing a service user's charge, people with specific expenses in excess of standard living costs may receive a further reduction in their charge for disability related expenses. These may include items such as laundry costs, fuel and heating costs or servicing and maintenance costs of specialist disability equipment.

3.7.1 Currently the Council gives the following standard DRE allowances:

- £5.50 - where the service user is receiving the low rate of disability living allowance (DLA).
- £11.00 - where the service user is receiving the middle rate of DLA, the standard rate of personal independence payment (PIP) or the low rate of attendance allowance (AA).
- £16.48 - where the service user is receiving the higher rate of DLA, AA or the enhanced rate of PIP.

3.7.2 Given the need to review all areas of the Council's budget over the next four years, it is proposed to revise the standard DRE allowances as follows:-

- £5.50 - where the service user is receiving the low or middle rate of disability living allowance (DLA), the standard rate of personal independence payment (PIP), or the low rate of attendance allowance (AA).
- £11.00 - where the service user is receiving the higher rate of DLA, the enhanced rate of PIP or the higher rate of AA.

If the new proposal moving from 3 standard rates to 2 standard rates for DRE is agreed, there will be £200k p.a. additional income generated in a full year.

3.7.3 Currently there are 1,766 service users who receive a DRE allowance, of which approximately 1,000 will be affected by up to £5.50 a week. Service users who have disability related expenses above the standard allowance can receive an individual assessment by submitting an appeal and evidence of their expenses.

3.7.4 It is proposed to engage with service users, their families and key organisations in Bromley on the change to DRE allowances commencing from the publication of this report. The period of engagement will be for 4 weeks commencing on the 29<sup>th</sup> January and ending on the 25 February 2015. It is anticipated that, subject to any changes being made as a result of the responses received, the new standard rates will be implemented for the commencement of the 2015/16 financial year.

3.7.5 In 2013/14 we received 58 appeals which resulted in a reduction in charges of £700 a week.

#### Equalities Impact Assessment

3.8 An initial equality impact assessment is being undertaken to assess the impact of the policy changes on current service users this will be available at the consultation web page <http://bromley.mylifeportal.co.uk/consultations>

3.8.1 A follow up assessment will be undertaken during the implementation phase to reassess the impact. This will include contributions from a range of stakeholders to ensure that issues and risks are identified and actions are put in place to minimise.

## **4. POLICY IMPLICATIONS**

4.1 These proposals impact on the Council's Building a Better Bromley aim of promoting independence by ensuring that resources are available to meet increasing demand from an increasing elderly population and adults with disabilities and care needs.

## 5. FINANCIAL CONSIDERATIONS

- 5.1 All service users will have a means tested assessment of their finances under the Care and Support Statutory Guidance. The calculation of the assessment will show how much the service user can reasonably afford to contribute toward the cost of their care (the client contribution).
- 5.2 The proposed new charges as a result of the Care Act 2014 have all been assumed in the paper to the Care Services PDS Committee 2 October 2014. If these are not agreed then the net cost of the Care Act on the Councils bottom line will increase by £15k p.a.
- 5.3 The proposed changes to DRE will generate additional income of £200k p.a. in a full year

## 6. LEGAL CONSIDERATIONS

- 6.1 The changes in the law have been set out under Policy Implications.

<b>Non-Applicable Sections:</b>	Personnel
Background Documents: (Access via Contact Officer)	Files held in Finance & Exchequer Teams