

North Tyneside Council

Report to Cabinet

10 August 2015

ITEM 6(c)

**Charging Policy for Care
and Support Services**

Portfolio(s): Adult Social Care

Cabinet Member(s): Councillor Alison Waggott-Fairley

Report from Service

Adult Social Care

Area:

Responsible Officer:

Jacqui Old, Head of Adult Social Care

Tel: 0191 643 7317

Wards affected:

All

PART 1

1.1 Purpose:

The Care Act 2014 which came into force on 1 April 2015 sets out new requirements for how councils charge for adult social care and support services. As a result the Authority's current approach to charging for adult social care and support services needs to be updated to reflect this change in legislation.

The purpose of this report is to seek Cabinet approval for:

1. the ratification of the revised North Tyneside Contributions Policy;
2. the implementation of changes to existing charges; and
3. the introduction of new charges that formed part of the Creating a Brighter Futures budget savings for 2015/16.

1.2 Recommendation(s):

It is recommended that Cabinet agree:

1. the revised policy, which is attached at Appendix 1 to this report;
2. the changes to existing charges for services as set out in paragraphs 1.5.3.1, 1.5.3.2, 1.5.3.4 1.5.3.5 and 1.5.3.6; and
3. the implementation of new charges as set out in paragraph 1.5.3.3.

1.3 Forward Plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 9 July 2015.

1.4 Council Plan and Policy Framework

This report relates to the following priorities in the 2014/18 Our North Tyneside Plan:

Our People will

- Be listened to by services that respond better and faster to their needs.
- Be supported to achieve their full potential, especially our children and young people.
- Be supported to live healthier and longer lives.
- Be cared for and kept safe if they become vulnerable.

1.5 Information:

1.5.1 Background

Prior to April 2015 the legal framework governing charging for adult care and support services involved a mixture of duties and powers. Councils were under a duty to charge for residential care under section 22(1) of the National Assistance Act 1948 and had a power to charge for non-residential services under section 17 of the Health and Social Services and Social Security Adjudication Act 1983. These powers and duties ceased in April 2015 and were replaced by a power to charge under the Care Act 2014.

1.5.2 The new Charging Framework

- 1.5.2.1 The Care Act 2014 (Sections 14 and 17) provides a single legal framework for charging for care and support. The Act provides local authorities with the power to charge adults and carers in receipt of care and support services, where the Authority is permitted to charge for the service/s being provided, and where the Authority has agreed to apply charges.
- 1.5.2.2 The rules around means-testing, i.e. deciding how much an individual is eligible to pay are set out in the Care and Support (Charging and Assessment of Resources) Regulations 2014 and the accompanying Statutory Guidance. They are broadly the same as the previous regulations.
- 1.5.2.3 The overarching principle of the new framework is that individuals should only be required to pay what they can afford. Individuals will be entitled to funding from their local authority based on a means-test, which will mean that some people have to pay the full cost of their care and support service; some people will make a contribution towards the cost; and some will be entitled to free care.
- 1.5.2.4 Under the Care Act, local authorities will no longer have a duty to charge for residential and nursing care, but will have the power to charge instead. Therefore charging for residential and nursing care is now discretionary, rather than mandatory.
- 1.5.2.5 Under previous regulations, the Authority was empowered to charge for residential and nursing care from the date of entry into the care home. However for non-residential care the previous regulations prevented the Authority from doing this and only permitted charges to be applied from the date the financial assessment was completed and the customer was notified of their charging liability. The Care Act addresses this anomaly and permits the Authority to charge for all services from the date that they are first provided.

- 1.5.2.6 The Authority should ensure there is sufficient information and advice available in a suitable format for the person's needs to ensure that they or their representatives are able to understand any contributions they are asked to make. The Authority should also make the person or their representative aware of the availability of independent financial information and advice.
- 1.5.2.7 A summary of the key changes to the existing charging arrangements is provided below in paragraphs 1.5.3.1 – 1.5.3.6, together with recommendations for Cabinet's consideration, and a full copy of the revised policy is attached to this report as Appendix 1.

1.5.3 Key changes

1.5.3.1 Charging Carers

Under previous legislation as well as under the Care Act 2014, if the Authority is meeting the needs of a Carer by providing a service directly to that Carer, it is discretionary whether the Authority charges the Carer an assessed contribution.

In recognition of the valuable role that carers play in terms of supporting those they care for to continue to live independently, the current policy in North Tyneside exempts Carers in receipt of Carers' services from charging. It is proposed to maintain this position and continue to provide Carers' services free of charge from April 2015. However, given the changes to the Authority's duties towards Carers as set out in the Care Act, it is proposed to review this decision before the end of March 2016.

Recommendation

Cabinet is recommended to agree to continue with the existing arrangements which exempt Carers receiving services in their own right from charges and for this decision to be reviewed before the end of March 2016.

1.5.3.2 Replacement Care

Replacement care is care delivered to an individual which replaces care that is usually provided by a family member or other informal carer e.g. respite care, short-breaks, day care etc.

The current policy in North Tyneside is to charge the cared for person for replacement care services in recognition that the services are themselves directly provided to benefit the cared for person but that as an added benefit they also provide the Carer with a break from their caring role.

Up until now the exception to this has been charging for sitting services, for which no charge has been applied.

Recommendation

Cabinet is recommended to agree that to address this anomaly, under the new Contributions Policy that charges are applied for all replacement care services, including sitting services and that the adult receiving the services is asked to make a contribution based on their ability to pay.

1.5.3.3 Arrangement Fee for people who fund their own care

The Care Act 2014 has introduced a new discretion, whereby an individual assessed as having eligible needs, who is being supported in a community based setting, but has over £23,250 in capital (and therefore classed as self-funding), can ask the Authority to make arrangements for those needs to be met. This would entail the Authority making the appropriate arrangements with providers, paying the provider and invoicing the customer. The Care Act also allows the Authority to apply an arrangement fee for this service which must not amount to more than the cost the Authority has incurred. A flat rate fee of £260 is proposed.

Recommendation

It is recommended that Cabinet agree to the introduction of an arrangement fee of £260 per annum to cover those costs.

1.5.3.4 Changes to existing charges for domiciliary care support

In addition to the changes outlined above emanating from the implementation of the Care Act, the Authority as part of the 2015/16 budget setting process agreed to review the charge applied for the 'Support to Live at Home' service (domiciliary care), following the competitive tendering exercise and the award of new contracts, which were effective from 1 June 2015.

As a result of the procurement exercise and the contract award, the new hourly rate for the service has been agreed as £14 per hour.

Recommendation

It is recommended that Cabinet agree that the charge to customers receiving domiciliary care support is also increased to £14 per hour, to align it with the cost of commissioning the service.

1.5.3.5 Increasing the maximum charge for care and support

Currently the maximum amount that anyone is required to pay for their care and support services in North Tyneside is £200 per week.

Adult Social Care has benchmarked this against the charges applied by other councils across the region and also nationally.

As a result, North Tyneside currently has the lowest maximum charge in place regionally, with many councils having moved to having no maximum ceiling and others setting the maximum charge at the level equivalent to the cost of residential care.

It is proposed that for 2015/16 that North Tyneside increases the maximum charge that anyone with sufficient resources is required to pay to £400 per week, with a view to moving to having no maximum charge in 2016/17 and requiring those with sufficient resources to fund the full cost of their care.

Recommendation

Cabinet is recommended to agree to increase the maximum charge for care and support services to £400 in 2015/16 and that this amount is reviewed in 2016/17 with the proposal that North Tyneside moves to a position of having no maximum charge.

1.5.3.6 Respite Care

Up until now respite care provided in a care home setting has been charged using the Charging for Residential Accommodation Guidance (CRAG).

However, over recent years the numbers of people accessing respite care who have chosen to take a Direct Payment, which is charged as a community based support service, has increased and this has resulted in some inconsistency in terms of charging for respite care.

Following the introduction of the Care Act and the single charging framework, it is proposed that moving forward charges for respite care, for all customers, are calculated in the same way as other community based support and the individual is asked to make a contribution towards the total cost of his/her Personal Budget.

This will ensure a consistent and equitable approach to charging for this service.

This approach will not however apply to short-term residential placements, which will continue to be charged as for permanent residential care.

Recommendation

It is recommended that Cabinet agree that respite care is charged on the same basis as community based support.

1.6 Consultation

The Authority has undertaken extensive consultation in relation to the financial charging system and the Care Act 2014.

The proposals for consultation were developed in the context of the Care Act Statutory Guidance, the need for the Authority to use its resources effectively and the aim of ensuring that all people are treated equitably.

The consultation ran from 28th January 2015 to 25th March 2015.

Questionnaires were sent out to all of our current customers and there was an on-line version of the survey which was on the Authority's main homepage to maximise the number of people who could access the survey. The link then took visitors to a summary of the proposals and where the survey could be launched and submitted.

The consultation covered the following areas:

- To increase the hourly rate for Support to Live at Home (domiciliary care);
- To introduce charges for sitting services (replacement care);
- To increase the maximum weekly charge to £400 per week; and
- To introduce an 'arrangement' fee for those self-funders for whom the Authority makes the necessary arrangements to meet their care and support needs.

Consultation also took place in respect of charges for Deferred Payments; however these have been previously considered and agreed by Cabinet in April 2015.

The results of the consultation were co-ordinated by the Community and Health Care Forum (CHCF) and are summarised below.

1.7 Consultation Response

In total approximately 1,200 questionnaires were sent out to existing customers, the questionnaire was available on the Authority's main web site homepage and 4 public meetings were held across the borough. The varied consultation methods provided additional opportunities for people who would not normally engage with us to make sure their views were captured and represented. The online survey and public meetings were advertised not only on the Authority's website, but also that of key partners including Healthwatch North Tyneside and Community Health Care Forum. Details of the consultation were included in Healthwatch North Tyneside's newsletter, which currently has over 400 subscribers from a variety of backgrounds.

243 questionnaires in total were completed representing a 20% response rate.

The survey included an optional section on equality monitoring for respondents to complete. 228 of the 243 respondents (94%) completed the equality monitoring form.

North Tyneside Council has a population of 202,000 people, with 37,000 over the age of 65 (ONS Mid 2012 Population Estimates). The majority of respondents did complete all or elements of the equality monitoring in relation to the consultation. 31% of respondents were of working age, 60% were aged 65 years and above, with the remaining 9% not completing the section or preferring not to say. The main target audience for the survey was current Adult Social Care services users, which accounts for the higher age group of respondents.

Within North Tyneside, we have a gender gap of 14% between the number of male and female residents over 65 in the borough. This gap doubled with 63% female and 31% male respondents. This reflects the gender split of our homecare service which is predominantly delivered to females, at 66%.

The ethnic profile of North Tyneside is largely White British (95%), with 5% of residents from a black and minority ethnic (BME) communities. 91% of survey respondents classified themselves as White British, with the remainder preferring not to state their ethnic group or not completing the section.

An estimated 1% of North Tyneside residents are gay or lesbian and 0.5% bisexual. Of the 202 survey respondents which completed the sexual orientation section of the survey, 2% were bisexual and 0.5% gay or lesbian.

One of the survey questions asked respondents to identify what situation best described themselves.

- Someone who receive care and support funded by the Council (42%)
- A family member or friend (22%)
- Member of the public, who is assessed as a self funder, but who gets help from the council to arrange their care and support (15%)
- An unpaid carer (6%)

- A member of the public who is arranging or paying for their own care and support, without and help from the council (5%)
- Other (5%)
- Not completed (5%)

Respondents represent a varied cross section of the Authority's key stakeholders. The majority of which come into contact directly and indirectly with Adult Social Care and the services we provide.

During the time that the consultation on charging was taking place, the annual Personal Social Services Adult Social Care Survey (ASCS) 2014/15 was also underway. With some cross over of target respondents, consultation fatigue may have led to a lower return rate for the charging consultation.

A summary of the responses is as follows:

Proposal	High level result overall	Emerging comments
Increasing the hourly rate for domiciliary care	Agree	Overall there was agreement that the charge should increase. A number of respondents however thought that it was a large increase in one go. Respondents wanted to ensure that care workers would receive an increase in wages. Some respondents thought that the increase should have been linked to the rate of inflation.
Increasing the maximum charge	Disagree	Overall respondents did not agree with this proposal. Respondents thought that it was too much of an increase in one go and thought that an incremental approach would be more realistic
Charging for sitting service	Agree	Overall respondents thought that charges should be made for sitting services, as this is equitable. Charges should reflect ability to pay, Respondents thought that the Authority should recognise that it is saving money where Carers provide the care
Applying an 'arrangement fee' for self-funders.	Disagree	Overall respondents did not agree with this proposal. Respondents considered that the charge was unfair and too much for customers to pay.

1.8 Decision options:

The following decision options are available for consideration by Cabinet

Option 1

Cabinet may accept the Policy and the recommendations as set out in paragraphs 1.5.3.1, 1.5.3.2, 1.5.3.3, 1.5.3.4, 1.5.3.5 and 1.5.3.6.

Option 2

Cabinet may reject the Policy, the changes to existing charges and the implementation of new charges and request that further work is done.

Option 1 is the recommended option.

1.9 Reasons for recommended option:

Option1 is recommended for the following reasons:

- The Care Act 2014 has repealed previous guidance and therefore the previous policy is no longer fit for purpose;
- The Authority will be at risk of legal challenge if it does not have a Care Act compliant contributions policy in place;
- The Authority will be at risk of losing income from charging; and
- The Authority will lose the opportunity for income generation.

1.10 Appendices:

Appendix: North Tyneside Council – Contributions Policy

1.11 Contact officers:

Sheila Watson, Strategic Commissioning Manager Adults and Older People, People Based Commissioning

Tel: (0191) 643 7007

Sandra Lillford, Manager Financial Services, Adult Social Care

Tel: (0191) 643 7789

Alison Campbell, Senior Business Partner

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Allison Freeman, Solicitor, Law and Governance

Tel: (0191) 643 5453

1.12 Background information:

The following background papers/information has been used in the compilation of this report and are available at the office of the author:

(1) The Care Act 2014 – Primary Legislation

<http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

(2) The Care Act 2014 – Regulations

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366048/43738_2902999_Regs_Affirmative_Accessible.pdf

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/376204/2903119_Care_Act_Negative_Regulations_Master.pdf

(3) Care and Support Statutory Guidance, issued by the Department of Health

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366104/43380_23902777_Care_Act_Book.pdf

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The Authority's revenue budget for 2015-16 was prepared on the basis that the Authority would make increases to charges that would generate circa £0.105m of additional income in year. If no changes to the charging framework are made then this income will be at risk.

Fee levels

Under the Care Act 2014, charges must be set at a level that would cover only the costs incurred in arranging the care and support (cost recovery basis).

The level of charge proposed for Support to Live at Home has been set in line with national guidance on what constitutes 'cost recovery'. This charge will be reviewed periodically and adjustments made to take account of any changes to the cost of the service.

The cost of the 'arrangement fee' for self-funders has been set at a level that is consistent with the charges applied for similar services by support providers for people who receive Direct Payments.

The recommendation to apply this charge is consistent with the Authority's financial strategy, of which income generation is a key part.

2.2 Legal

The Care Act 2014 provides the legal framework for charging for care and support. Section 14 of the Act enables local authorities to charge a person in receipt of care and support services where it is permitted to charge and Section 17 of the Act permits local authorities to undertake an assessment of an individual's financial resources to determine the amount, if any, that they will be required to pay towards the cost of their care.

The Care Act, together with the supporting regulations and statutory guidance sets out a single framework model for charging people whose eligible needs are met within a care home setting, and also requires local authorities to develop and maintain a policy for charging people with care and support needs that are met in settings other than care homes. These form the basis of the Authority's contributions policy, except where the Authority exercises its power of discretion.

In accordance with the Local Government Act 2000 and the regulations made under that Act in relation to responsibility for functions, Cabinet is responsible for determining this matter.

2.3 Consultation/community engagement

2.3.1 Internal Consultation

Managers and officers within Adult Social Care and Legal Services have been involved in the development of the policy.

2.3.2 External Consultation/Engagement

The Authority has undertaken extensive consultation in relation to the financial charging system and the Care Act 2014.

The consultation ran from 28th January 2015 to 25th March 2015.

Questionnaires were sent out to all of our current customers and there was an on-line version of the survey, which was within the Care Act section of the Authority's web site.

In addition we held 4 public engagement sessions, where proposals relating to Deferred Payments and with other implications of the Care Act 2014 were discussed. These were held in early February 2015 and the average attendance at each of the sessions was around 10 people, with a mix of Learning Disability carers, care providers and a few members of the general public.

The sample size can not be taken as representative of the Borough with 243 respondents, but their profile does reflect the demographic profile of the Borough. The respondents do stand for a wide cross section of Adult Social Care customers, their representatives, Carer's and members of the public. The different funding statuses minimises bias amongst the findings and can be used alongside regional and national charging trends to support the proposals within this report to Cabinet.

2.4 Human rights

The policy ensures that the Authority will uphold the Human Rights Act.

2.5 Equalities and diversity

The policy will ensure that the Authority will uphold the Equality Act. An Equality Impact Assessment was undertaken and reviewed and acted on following the consultation.

2.6 Risk management

If the Authority does not operate a contributions policy that is compliant with the requirements of the Care Act 2014, then it will be unable to charge for care and support services and would be at risk of losing £9.3m of income.

Additionally the Authority would be at risk of legal challenge.

2.7 Crime and disorder

There are no crime and disorder implications arising from this report

2.8 Environment and sustainability

There are no environment and sustainability implications arising from this report

PART 3 - SIGN OFF

- Deputy Chief Executive X
- Head(s) of Service X
- Mayor/Cabinet Member(s) X
- Chief Finance Officer X
- Monitoring Officer X
- Head of Corporate Strategy X