

Report for: Cabinet: 12<sup>th</sup> November 2019

Title: Charging for Managed Accounts 2018/19 MTFs Proposal:  
Consultation findings and feedback report

Report  
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Ward(s) affected: All

Report for Key/  
Non Key Decision: Key Decision

## **1 Describe the issue under consideration**

- 1.1 Following the decision taken by Cabinet in June 2019 and the subsequent consultation, this report seeks Cabinet approval for the introduction of annual management fees for the administration of accounts for clients who are self funders and those for whom the Council has Department for Work and Pensions (DWP) Appointeeship.
- 1.2 The consultation took place between 22<sup>nd</sup> July and 8<sup>th</sup> September 2019. The consultation findings are summarised in section 7 of the report.

## **2 Cabinet Member Introduction**

- 2.1 Following consultation, I present this set of proposals which standardises the Council's approach to the application of management fees where the Council acts on behalf of users to arrange care or to manage their affairs. The proposals set out here, if agreed, build on the principle that clients will contribute fairly and equitably to the cost of their care, within a structured approach.

### **3 Recommendations**

#### 3.1 Cabinet is asked to:

- 3.1.1 Consider the findings of the consultation, the equalities impact assessment of the proposal on protected groups and the actions proposed to mitigate the impact.
- 3.1.2 Approve the introduction of an annual management fee of £650 for the administration of accounts of clients who are self-funders.
- 3.1.3 Approve the introduction of an annual management fee of £650 for the administration of accounts of persons to whom the Council act as Department of Works and Pensions Appointee. Where the person net savings are below £16,000, the annual fee will not exceed 3.5% of the net savings.

### **4 Reasons for decision**

- 4.1 As part of the MTFS [Medium Term Financial Strategy] for 2019/20 the Council agreed to take forward the proposals made to introduce a fee for the administration of accounts, which would generate income of approximately £120K p.a. in relation to self-funders and the management of Department for Work and Pension (DWP) Appointeeship clients.
- 4.2 The number of self-funders who approach the Council for support in arranging their care has been increasing and, it is anticipated, will increase further over the coming years. There is currently no arrangement fee in place to cover the Council's administrative costs which therefore are met by the Council and to ensure there is a sustainable arrangement in place to deliver this service for the future. It is notable that self-funders currently benefit from the preferential rates for care which the Council is able to negotiate on their behalf.
- 4.3 As the number of clients on behalf of whom the Council has DWP Appointeeship also increases, the Council notes that the administrative costs of managing appointee client accounts are growing and that there is no income stream to off-set these costs currently.
- 4.4 The Council already charges administration fees to clients (as set out by the Court) when appointed by the Court of Protection as Deputies to manage their Property & Affairs. The level and type of service provided to Appointeeship clients is similar to that provided to Deputyship clients. The proposal to introduce fees for Appointeeship clients that are comparable for Deputyship client fees would address the current disparity in approach.

### **5 Alternative options considered**

- 5.1 The alternative not to charge was considered but would leave the service unsustainable given the increasing number of clients requiring the service and the commitment to the continued delivery of high-quality service provision that supports the needs of clients.

5.2 The option to charge at different rates from those rates applied to Deputyship clients was also considered but it was felt to be more equitable to apply comparable rates of administration for all clients and which would also enable recovery of the costs of the service supplied.

## **6 Background information**

6.1 Consultation was carried out on a set of proposals presented to Cabinet in June 2019 for the introduction of annual management fees for clients who are self-funders and those for whom the Council has Department for Work and Pensions Appointeeship.

6.2 A self-funder is a person who has eligible needs and approaches the Council to arrange their care – and has savings above the upper capital limit, which is currently £23,250.

6.2.1 The Council provides an arrangement service for people who are self-funders. The Council currently supports approximately 85 people who are self-funders and who are therefore charged the full cost of their care. Where care is arranged by the Council, there is no administration fee for arranging that care although all other costs associated with the care are met by the self-funder.

6.2.2 The Care Act 2014 introduced a new duty for local authorities to meet the needs of self-funders and the power to charge an arrangement fee. The consultation carried out proposed that the fee is set at £650 per annum for the current year and is payable annually.

6.3 DWP Appointeeship is where the Council acts for someone, by collecting their state benefits, maximising benefit income and making payments from these monies for care charges, personal allowance or other items considered to be in the person's best interests. There is currently no allowance made for carrying out these functions. The Council recognises the importance of having a sustainable arrangement in place supporting vulnerable adults to manage their finances and to protect them from potential or actual financial abuse.

6.3.1 The consultation proposals were that the charging arrangements for Appointeeship would mirror the approach already in place for Deputyship clients under the Court of Protection. On this basis, therefore, the proposed annual management fee, where the Council acts as corporate appointee for DWP income/benefits, would be £650 per annum for the current year. In order to protect a client's savings to an agreed level, the fee would not be more than 3.5% of the client's net savings where these were below £16,000. The level of savings would be assessed on the anniversary of the date the DWP appointed the council as appointee.

6.3.2 The service currently supports over 180 individuals to manage their DWP income. The service is in high demand and it is important that the council continues to provide this service for people who need the support. The current service comprises of two full time posts at a cost of over £80K per year with

additional costs for management and supporting services. If the proposal is approved, the income generated to support the service and support improvements, will be in the region of £50K to £60K per year.

## 7 Consultation Approach and Outcomes

7.1 The public consultation was open from 22<sup>nd</sup> July 2019 to 8<sup>th</sup> September 2019 and comprised a dedicated webpage explaining the consultation and access to an online version of the survey.

7.1.1 Two separate questionnaires were produced, covering:

7.1.1.1 Consultation on the introduction of an annual management fee for the administration of accounts for clients who are self-funders

7.1.1.2 Consultation on the introduction of an annual management fee for managing Department for Work and Pensions (DWP) Appointee Accounts.

7.1.2 3150 service users were sent a hard copy of both questionnaires and a free post envelope in which to return them.

7.1.3 Three drop-in sessions for service users to complete the questionnaires and ask questions about the two proposals were held at Marcus Garvey Library, Wood Green Library and Hornsey Library to ascertain the views of current users and their carers. A direct telephone number for service users to call and ask questions or to ask for support to complete the questionnaires was also provided.

7.2 The consultation for introduction of an annual management fee for the administration of accounts for clients who are self-funders yielded 331 responses. This is a 11% response rate.

7.2.1 The proposal to introduce an administration fee was not supported by two thirds of the people who responded.

As the council looks to make the necessary savings required whilst still supporting the most vulnerable, do you agree with the proposal to charge self-funders for arranging their care?	Total % of the 331 people who responded to this question
Strongly agree	4%
Agree	13%
Disagree	14%
Strongly disagree	55%
Don't know	14%

7.2.2 Of the 171 who responded to the question about the method of collecting charges, over half of the responses preferred the fee to be collected on a 4-weekly basis.

If the charges were agreed, how do you prefer the charges should be collected? Select ONE only.	Total % of the 171 people who responded to this question
Weekly (£12.50)	33%
4-weekly (£50)	54%
Yearly (£650)	12%

7.2.3 The consultation also allowed for further comments on the proposals to be made, and the table below collates the 58 comments into groupings of similar views:

If you have any further comments regarding our proposal to introduce a self-funders fee, please tell us below.	Number of people
Cannot Afford/Will create financial hardship	17
Concerning to charge disabled/elderly/vulnerable people	15
Council should look for savings elsewhere/more efficient	6
Charge is too high	6
Charge is unfair	7
Feels like another penalty for those that have worked hard/saved	5
Should be percentage of Care cost/reviewed case by case	1

7.3 The consultation on the introduction of an annual management fee for the administration of Department for Work and Pensions (DWP) Appointee Accounts yielded 307 responses. This is a 10% response rate.

7.3.1 The proposal to introduce an administration fee for DWP Appointeeship clients was not supported by the majority of people who responded.

As the council looks to make the necessary savings required whilst still supporting the most vulnerable, do you agree with the proposal to introduce charges for this service?	Total % of the 307 people who responded
Strongly agree	2%
Agree	11%
Disagree	13%
Strongly disagree	60%
Don't know	14%

7.3.2 The following table is based on the 60 comments which were received during the consultation and which have been grouped into similar views:

If you have any further comments regarding our proposal to introduce an annual management fee for its DWP Appointee clients, please tell us below.	Number of people
Cannot Afford/Will create financial hardship	22
Concerning to charge disabled/elderly/vulnerable people	20
Council should look for savings elsewhere/more efficient	6
Charge is too high	5
Charge is unfair	4
Feels like another penalty for those that have worked hard/saved	3

7.4 The responses to the consultation on the introduction of administration fees for self-funders and for those for whom the Council has Appointeeship were in the main not favourable. People were most concerned about the affordability of the charges and the risk of financial hardship and about charging vulnerable people for fees relating to their care.

7.4.1 In mitigation, for self-funders, however, it should be noted that:

7.4.1.1 Self-funders benefit financially to a significant degree when they involve the Council in arranging their care as the Council will negotiate much better market rates for care with care providers than they would be able to negotiate as a self-funding individual.

7.4.1.2 Self-funders will be able to decide if they wish to continue and pay the arrangement fee or to make other arrangements for their support that do not involve the Council, meaning that the fee would not be required. This could include arranging care directly with their care provider or asking a relative or friend to do this on their behalf. The self-funders fee is proposed to be collected annually however the council will consider alternative frequency including monthly payments.

7.4.2 For the Appointeeship administration fee, mitigation actions will also be taken, as follows:

7.4.2.1 The Council will have the discretion to reduce or waive the fees for those individuals who are unable to afford them. The Council will monitor the implementation of the fee to ensure that people are not put at risk of financial or other hardship by the introduction of the fee.

7.4.2.2 In addition, the Appointeeship administration fee will not be applied where a client has £3000 or less in savings and there is therefore a risk of financial hardship for the individual.

## **8 Contribution to strategic outcomes**

8.1 Maximising the Council's resources, in particular in the current financial climate, is a key part of the Council's Medium Term Financial Strategy in order to enable the Council to deliver its wider, partnership objectives as set out in the Borough Plan. The overarching vision for the People priority in the Borough Plan is "a Haringey where strong families, strong networks and strong communities nurture all residents to live well and achieve their potential".

## **9 Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)**

### **9.1 Finance**

9.1.1 This proposal was formally agreed as part of the 2019/20 Medium Term Financial Strategy.

9.1.2 Income of £120k p.a. will be generated by this initiative.

## 9.2 Legal

9.2.1 The proposals for consultation and for decision by Cabinet (i.e. charging a management fees for DWP appointee and self-funders) are within the legal powers of the Council.

9.2.2 Under Regulation 33 of the Social Security (Claims and Payments) Regulations 1987, the Secretary of State may appoint the Council to exercise, on behalf of a person entitled to benefit who is unable to act, any right to which that person may be entitled and to receive and deal on his behalf with any sums payable to him. The Council is not obliged to act as an appointee on behalf of persons unable to act for themselves. This is a voluntary discretionary arrangement.

9.2.3 Under Section 93 of the Local Government Act 2003, the Council has the power to charge for providing discretionary services. The recipient of the service must have agreed to its provision. The Council must ensure that for the financial year, the income from charges does not exceed the costs of service provision.

9.2.4 Section 1 of the Localism Act 2011 gives the Council the power to do anything that individuals generally may do. This gives the Council power to charge for the provision of discretionary services. The recipient of the service must have agreed to its provision. The general power is subject to a duty to secure that, taking one financial year with another, the income from charges allowed does not exceed the costs of provision.

9.2.5 Under Section 14 of the Care Act 2014, the Council has the power to charge for meeting the care and support needs of adults. The Care and Support Statutory Guidance, which the Council is obliged to have due regards to, sets out certain principles that local authorities should take into account when making decision on charging.

“8.2 The principles are that the approach to charging for care and support needs should:

- ensure that people are not charged more than it is reasonably practicable for them to pay
- be comprehensive, to reduce variation in the way people are assessed and charged
- be clear and transparent, so people know what they will be charged
- promote wellbeing, social inclusion, and support the vision of personalisation, independence, choice and control
- support carers to look after their own health and wellbeing and to care effectively and safely

- be person-focused, reflecting the variety of care and caring journeys and the variety of options available to meet their needs
- apply the charging rules equally so those with similar needs or services are treated the same and minimise anomalies between different care settings
- encourage and enable those who wish to stay in or take up employment, education or training or plan for the future costs of meeting their needs to do so
- be sustainable for local authorities in the long-term

9.2.6 Under Section 17 of the Act, where the Council exercises its discretion to charge, it must carry out a financial assessment of the adult's resources. The Care and Support (Charging and Assessment of Resources) Regulations 2014 sets out the limits on the Council's power to charge for meeting needs and makes provision in relation to financial assessment. Regulation 5 provides that the charge for putting in place the arrangements to meet needs must be no more than the cost incurred by the Council. Regulation 12 specifies the financial limit for charging. If the financial resources of an adult who is provided with accommodation in a care home (a permanent resident) exceed (in terms of capital) £23,250, the Council is not permitted to pay towards the cost of the provision of that accommodation. In any other case where the financial limit exceeds (in terms of capital) £23,250, the Council may (but need not) pay towards the cost of care and support. For adults (i.e. self-funders) with assets and saving above the financial threshold, the Care and Support Statutory Guidance 2018 provides that:

"8.58 Where the person's resources are above the financial limit, the person's entitlement to local authority support in meeting their needs may be dependent on the request having been made. Therefore it is important that the person, and any carer, advocate or other person they wish to involve, are aware of this ability and the consequences for their care and support. The local authority **must** make clear to the person that they may be liable to pay an arrangement fee in addition to the costs of meeting their needs to cover the costs of putting in place the care and support required.

8.59 Arrangement fees charged by local authorities **must** cover only the costs that the local authorities actually incur in arranging care. Arrangement fees should take account of the cost of negotiating and/or managing the contract with a provider and cover any administration costs incurred.

8.60 Local authorities **must not** charge people for a financial assessment, a needs assessment or the preparation of a care and support plan.

8.61 It may be appropriate for local authorities to charge a flat rate fee for arranging care. This can help ensure people have clarity about the costs they will face if they ask the local authority to arrange their care. However, such flat rate costs **must** be set at a level where they do not exceed the costs the local authority actually incurs.

9.2.7 There is a common law duty on the Council to consult with service users, carers, providers and other stakeholders that are likely to be affected by the

proposed fees. The consultation must take place at a time when the proposals, as with the recommendations, are still at their formative stages. The Council must provide the consultees with sufficient information to enable them properly to understand the proposals being consulted upon and to express a view in relation to it. The information must be clear, concise, accurate and must not be misleading. The consultees must be given adequate time to consider the proposals and to respond. The report at section 7 above sets out how the Council has discharged this common law duty. The Council must give genuine and conscientious consideration to the responses received from the consultees before making its final decision on the proposals.

9.2.8 As part of its decision-making process, the Council must have “due regard” to its equalities duties. Under Section 149 Equality Act 2010, the Council in exercise of its adult care and support functions, must have “due regard” to the need to eliminate discrimination, advance equality of opportunity between persons who share a protected characteristic and those who do not, foster good relations between persons who share a relevant protected characteristic and persons who do not share it in order to tackle prejudice and promote understanding. The protected characteristics are age, gender reassignment, disability, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In line with its equalities duties, the Council must undertake an Equality Impact Assessments (EIA) of the proposals on the protected groups. The Council is required to give serious, substantive and advance consideration of the what (if any) the proposals would have on the protected group and what mitigating factors can be put in place. This exercise must be carried out with rigour and an open mind and should not be a mere form of box ticking. These are mandatory consideration. In line with its equalities duties, the Council have undertaken Equality Impact Assessments (EQIA) of the proposals on the protected groups and are set out in Appendices 1 and 2 and in summary at section 9 of the report together with the steps to mitigate the impact of the proposals.

9.2.9 The responses to the consultation on the proposals, the EQIA of the proposals and the steps being taken to mitigate the impact, the general duties of the Council under the Care Act and the Statutory Guidance referred to above, all must be considered before Cabinet makes its decision on the proposals. Cabinet members must ask themselves a) whether it is justifiable to seek to make financial savings in the way proposed; b) whether the mitigating steps proposed are sufficient or whether more needs to be done; and c) whether the proposals ought to be adopted or discarded.

### **9.3 Equalities**

9.3.1 The Council has a public sector equality duty under the Equalities Act (2010) to have due regard to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act

- Advance equality of opportunity between people who share those protected characteristics and people who do not
- Foster good relations between people who share those characteristics and people who do not.

9.3.2 The three parts of the duty apply to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

9.3.3 A full equality impact assessment has been completed for each proposal. For the DWP appointee management fee it is recognised that the proposal will impact negatively on people who share the protected characteristics. This should be expected as those affected will be either current or future users of adult social care services and this care is provided to people as a result of long-term health conditions, disability or age.

9.3.4 However, the council like other authorities across the country need to make significant budget savings and at the same time continue to provide vital services for its vulnerable residents. Introducing the DWP management fee will help ensure that the service is sustainable for the future and continue to support vulnerable people to help manage their finances and prevent financial abuse.

9.3.5 The equality impact assessment undertaken identified potential impact and sets out the mitigating actions the council will take to prevent financial hardship.

9.3.6 For the self-funding administration fee, it is recognised that this is likely to have a negative impact on individuals who share the protected characteristics. However, this will only be applied to people with savings above the upper charging limit for care, currently over £23,250. People with savings below this figure will not be required to pay the administration fee. This means that people in lower income groups who also have protected characteristics will not be required to pay the proposed fee. The impact on the most vulnerable service users is therefore likely to be limited.

## **10 Use of Appendices**

10.1 Appendix 1: Equality Impact Assessment: Self Funder proposals

10.2 Appendix 2: Equality Impact Assessment: DWP Appointeeship proposals

## **11 Local Government (Access to Information) Act 1985**

None