

Report for: Cabinet – 18 June 2019

Title: Charging for self-funders and managed accounts

Report authorised by : Beverley Tarka, Director of Adults and Health

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Ward(s) affected: All

**Report for Key/
Non Key Decision:** Key Decision

1. Describe the issue under consideration

1.1 This paper proposes a period of statutory consultation on the plans to introduce fees for the administration of accounts for clients who are self-funders and those for whom the Council has appointeeship. This proposal is put forward as part of the Medium Term Financial Strategy (MTFS) for 2019/20.

2. Cabinet Member Introduction

2.1 This proposal is to agree a period of consultation on the introduction of fees for the administration by the Council of accounts for clients who are self-funders and those for whom the Council has appointeeship. As part of ensuring the long-term sustainability of administrative support to these clients, these measures are being consulted on before Cabinet takes a view as to whether they should be implemented. I would like to encourage stakeholders to respond to the consultation to inform Cabinet's decision on the outcome of the consultation findings.

3. Recommendations

3.1 Cabinet is asked to approve the following recommendations:

(a) Approval for consultation with service users, carers and other stakeholders the proposal to introduce administration fees for self-funders and the management of Department of Work and Pensions (DWP) appointeeship clients.

(b) Agree that a report on the findings of the consultation and the proposed recommendation be brought back to Cabinet for a decision.

4. Reasons for decision

4.1 As part of the MTFS [Medium Term Financial Strategy] for 2019/20 the Council has recommended 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. In order to take forward these proposals, a period of consultation with users, carers and other stakeholders is required to inform a Cabinet decision on any proposal to implement.

5. Alternative options considered

5.1 The Council has a statutory duty to consult on these proposals and there is therefore no alternative to the proposals to consult set out here.

6. Background information

6.1 The Council currently supports approximately 85 people who are self-funders and who are therefore charged the full cost of their care. Care is arranged by the Council, but there is no administration fee for arranging the care although all other costs associated with the care are met by the self-funder. A self-funder is defined as a person who has eligible needs and savings over and above the upper capital limit, which is currently £23,250.

6.1.1 The number of self-funders who approach the Council for support in arranging their care is expected to increase over the coming years and the Council considers it prudent to introduce an arrangement fee to cover its administration costs and to ensure there is a sustainable arrangement in place to deliver this service for the future. Such an arrangement is in line with that in place in other local authority areas.

6.1.2 The Care Act 2014 introduced both a new duty for local authorities to meet the needs of self-funders and the power to charge an arrangement fee. These were introduced in April 2015 and apply to clients who ask the Council to help arrange their care and support needs. The Council has not previously charged self-funders an arrangement fee.

6.1.3 The Care and Support Statutory Guidance, published in October 2014, sets out that the fee should include the cost of negotiating and managing contracts with the providers and cover administration costs. By following the terms of the Statutory Guidance, an annual administration fee of £650 is being proposed, which subject to the conclusion of the consultation proposed in this paper, would be introduced in autumn 2019 and applied to self-funders receiving care and support.

6.1.4 A number of authorities have been approached for details of the fees set by local authorities in respect of arranging care for self-funders. The fees in place range from £65 to £1,304 annually, with some authorities also charging an initial arrangement fee.

6.1.5 In Haringey, it is proposed that a flat weekly fee of £12.47 which equates to an annual arrangement charge of £650 is introduced. The fee could be charged in arrears and collected on a monthly, quarterly or annual basis.

6.2 In addition to self-funders, the Council, usually as a last resort, can manage the finances of people who are unable to manage their financial affairs themselves, and have no one else who is willing or able to do this for them. Most local authorities equally provide a money management service for adult social care users who are unable to manage their own financial affairs. The Council in these cases offers 'Appointeeship' for people living in residential care or in the community. Appointeeship is where the Council acts for someone, by collecting their state benefits, maximising benefit income, making payments from these monies for care charges, personal allowance or other items considered to be in the person's best interests. Appointeeship is granted by the Department for Work & Pensions (DWP) upon application by the Council.

6.2.1 The Council already charges when appointed by the Court of Protection to be a Deputy.

6.2.2 It is proposed that the charging arrangements for Appointeeship would mirror the approach already in place for deputyship clients under the Court of Protection. 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, subject to the conclusion of the proposed consultation described in this paper. Where the net savings of an individual are below £16,000 an annual management fee not exceeding 3.5% of the client's net assets on the anniversary of the DWP appointing the council as corporate appointee would apply.

6.2.3 Data analysis shows there are 200 DWP appointeeship clients who are likely to be charged the administration fee and the arrangements would mirror the approach for Court of Protection clients.

6.2.4 The table below sets out the fees currently levied some other local authorities with social services responsibilities in respect of Appointeeship. A number of local authorities do not currently charge although may be considering implementation at this point.

LA Name	Fee charged for DWP Appointeeship	Details of Fee
Enfield	Yes	3.5% under 16K and £650 per year for above £16k

Bromley	Yes	Fee: £775 for first year £650 for second year and subsequent years For balances below £16K then 3.5% charged on balance held.
Croydon	Yes	Fee: £775 for first year £650 for second year and subsequent years For balances below £16K then 3.5% charged on balance held.
Camden	No	N/A
Islington	No	N/A
Hackney	No	N/A
Waltham Forest	No	N/A
Ealing	No	N/A
Reading	Yes	Fee: £775 for first year £650 for second year and subsequent years For balances below £16K then 3.5% charged on balance held.
Hertfordshire County Council	Yes	Use bands 1 to 5: 1. £0 to £500 No fee charged 2. £501 to £2,999.99 Fee: £50 per year 3. £3,000 to £9,999.99 Fee: £260 per year (£5 per week) 4. £10,000 to £15,999.99 Fee: 3% of cash funds held 5. £16,000 + Fee: £585 per year
Huddersfield	Yes	£10 per week for non-residential clients and £5 per week for residential clients. Clients with assets below £1K are not charged.
Nottingham	Yes	Fee: £12.00 every four weeks based on a full assessment of what the service costs the council to run.
Buckinghamshire	Yes	Fee: £2.50 per week

6.3 The Council has an existing policy for charging where a user has been assessed as able to contribute to the costs of their community based care: the Fairer Charging Policy. This Policy ensures a consistent approach to assessing the financial contribution of users to the costs of their care, by clarifying the income and expenditure which can be taken into account. The proposals for introducing an administration fee as set out in this paper are in line with the principles and scope of this Policy. The proposed fee is equivalent to a weekly charge of £12.47.

- 6.4 The service is proposing putting in place a number of mitigations to the introduction of an administration fee, whether for self-funders or for Appointeeship, as set out below.
- 6.4.1 In line with the Fairer Charging Policy, any fees set will not reduce a service user's income below the 'Minimum Income Guarantee Levels' which are set by the Department of Health.
- 6.4.2 The service will have the discretion to reduce or waive the fees for those individuals who are unable to afford them.
- 6.4.3 The service will take into account the circumstances of users in determining the payment terms for the charge, including consideration of a monthly, quarterly or annual charge.
- 6.4.4 The implementation of the fee will be monitored to ensure that people are not put at risk by the introduction of the fee.
- 6.4.5 Where there is a dispute, the Council will not withdraw the DWP appointee service but contact the relevant care management team to discuss. If clients and or their representatives want to take back the appointeeship, this will be considered with the service and the Council will not relinquish its role until the Council is satisfied that sufficient protection is in place to ensure that no client will be subject to financial abuse or put at risk because of a lack of support to meet their financial commitments.
- 6.4.6 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 making an arrangement with their care provider or asking a relative or friend to do this on their behalf.
- 6.5 In recognition of the impact the above proposals will have on some adults who receive services and support through the Council, and the proposed change in current practice, a period of statutory consultation on the proposals with service users, carers and other stakeholders is being undertaken. The findings of the consultation will be reported back to Cabinet before any decision on implementation of these proposals is taken.
- 6.5.1 Through the consultation, the Council aims to obtain the views of key stakeholders on the proposals as detailed in this report. The key stakeholders will include existing service users and self-funders. The consultation will be fully publicised to ensure potential future service users are also made aware of the proposals and their feedback will also be considered as part of this process. Through the process, the consultation will set out three core commitments:
- A commitment to meet statutory responsibilities to continue to provide services that meet the needs of adults assessed as requiring services.
 - A commitment to safeguard adults at risk.

- A commitment to take the views collected through the consultation to test and shape the proposal prior to any decision by Cabinet to implement

6.5.2 The consultation will be for a period of 60 days with current and future users of the service, their family/carers and other stakeholders and will get underway in July 2019 subject to approval by Cabinet as requested in this report. Feedback from this consultation will inform a proposal to Cabinet on whether to proceed with the introduction of administration fees from autumn.

6.5.3 Where required, independent advocacy will be supplied to people who use the affected services, to ensure that they are able to fully take part in the consultation process.

6.5.4 The Council will use a combination of online questionnaires, paper questionnaires and face to face sessions in order to seek the views of stakeholders on the proposed changes. The consultation process will seek to gather opinions, views and attitudes on the proposals, with a view to changing these in a way that is fair and continues to support people who most need it.

6.5.5 The consultation will be publicised on Haringey Council's social media platforms and the Haringey People Extra newsletter.

7. Contribution to strategic outcomes

7.1 The Borough Plan sets out the Council and local partners' commitments to working with communities and engaging with users and other stakeholders on the issues which matter most to them.

7.2 The proposals set out here for consultation, will enable a sustainable approach to the arrangements for organising care for self-funders and for those for whom the Council has Appointeeship. This will support a wider agenda of maximising the Council's resources, in particular in the current financial climate, as a key part of the Council's Medium Term Financial Strategy.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

8.1 Finance

8.1.1 The savings plan for 2019/20 assumes that there will be a £60k saving due to Charging for Managed Accounts in 2019/20 and the full year effect of £120k in future years.

8.1.2 It is estimated that there are 85 self-funders and around 200 Appointeeship clients. The 85 self-funders would pay an annual fee of £650, giving income of £55,250 to the council. It is estimated that the Appointeeship clients would pay an average of £350, as some may have assets below £16,000, which would give income of £70,000 to the council. The total income would be £125,250 and if half of this was received in 2019/20, the council would receive £62,635, which is close to the estimated saving.

- 8.1.3 It is assumed that there will not be an additional cost for administering the fee. However, the administration is likely to be time consuming initially.
- 8.1.4 These figures form part of the financial strategy and are therefore an existing part of the council's plan to deliver a balanced budget. If this proposal were not to proceed, alternative savings would need to be sought.

8.2 Procurement

- 8.2 There are no procurement comments on this report.

8.3 Legal

- 8.3.1 The proposals for consultation (i.e. charging administration fees for DWP appointee and self-funders) are within the legal powers of the Council.
- 8.3.2 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.
- 8.3.3 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.
- 8.3.4 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.
- 8.3.5 Under Section 14 of the Care Act 2014, the Council has the power to charge for meeting the care and support needs of adults. Under Section 17 of the Act, the Council is under a duty to carry out a financial assessment of the adult. 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 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 provide that:

8.58 “People with eligible needs and financial assets above the upper capital limit may ask the local authority to meet their needs. .. Where the person asks the local authority to meet their eligible needs, and it is anticipated that their needs will be met by a care home placement, then the local authority may choose to meet their needs, but is not required to do so. In other cases, where the needs are to be met by care and support of some other type, the local authority must meet those eligible needs.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... 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...”

8.3.6 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 charges. 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 Council must give genuine and conscientious consideration to the responses received from the consultees before making its final decision on the proposals.

8.3.7 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. The outcome of the consultation on the proposals together with the analysis of the EIA must be considered before reaching a final decision on the proposals..

8.4 Equality

8.4.1 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.

8.4.2 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.

8.4.3 An initial equality impact assessment was undertaken as part of the MTFs, and was submitted to Overview and Scrutiny on 30 January 2017. An updated EqIA, which also takes into account the planned consultation, is attached separately.

8.4.4 The EqIA identifies that the proposal will have a particular impact on people with the protected characteristics of disability, age and ethnicity, though it is expected that the process of making financial assessments and allocating contributions based on affordability should minimise this risk.

8.4.5 To explore the potential impact further, a 60-day consultation is planned. Post-consultation, the equality impact assessment will be updated and will include recommendations for any further mitigating actions.

8.4.6 In undertaking the consultation itself, consideration will be needed to make reasonable adjustments for residents who may have accessibility requirements, so that they may also take part in the consultation. Examples of this include having easy read versions of consultation documents for people with Learning Disabilities.

9. Use of Appendices

9.1 There are a number of appendices to this report:

9.1.1 Draft Equality Impact Assessment for Self-Funders – Appendix 1

9.1.2 Draft Equality Impact Assessment for Managed Accounts - Appendix 2

9.1.3 Draft Consultation questions for Self-Funders – Appendix 3

9.1.4 Draft Consultation questions for Managed Accounts – Appendix 4

10. Local Government (Access to Information) Act 1985

None