
Scrutiny Board 4
Cabinet
Council

17 February 2010
23 February 2010
23 February 2010

Name of Cabinet Member:

Cabinet Member (Community Services) – Councillor Mrs Johnson

Director approving submission of the report:

Director of Community Services

Ward(s) affected:

All

Title:

Personal Care At Home - consultation response to proposals for regulations and guidance

Is this a key decision?

No

Executive summary:

This report details the City Council's response to the public consultation on proposals for regulations and guidance under the Personal Care At Home Bill, published by the Government on 25 November 2009. The Personal Care At Home Bill will amend the *Community Care (Delayed Discharges etc) Act 2003* so as to remove the six week limit on the period for which personal care can be provided for free in a person's own home. The consultation questions seek views on the proposed regulations, guidance and funding allocation to support the Bill.

The Bill follows proposals announced in the *Shaping the Future of Care Together* Green Paper, published in July 2009, to create a new National Care Service for social care. This Green Paper was based on the premise that the current system of social care funding is unaffordable, unsustainable and nationally inconsistent and proposed that fundamental changes are required to be made to the social care system, which represents a broad political consensus, including its funding mechanisms

National demographic changes mean the number of older people and adults with disabilities who need care will increase, as will the complexity of their care, while there will be fewer people of working age to support them. As well as increasing demand for services, improved health and wellbeing into later life resulting in increased life expectancy, combined with the rising expectations of an informed population mean the current system needs radical reform. A significant part of this whole-system reform must encompass the funding and charging systems between central government, local government, users of social care services and the public, including the benefits system.

A range of early stage proposals have been put forward, across the political spectrum, to progress some of the Green Paper principles. This consultation considers the introduction of free personal care at home as the first and interim step in setting up a National Care Service. However the full scope and funding arrangements for a new social care system have not yet been developed and this proposal places significant additional costs on local authorities and the taxpayer on the basis of one element of a possible new system.

The Personal Care At Home Bill states that where appropriate, a council will provide a period of intensive intervention or re-ablement to build or re-build skills and functioning to support people's independence. Councils will also identify adaptations or interventions (e.g. assistive technology), which might be appropriate to reduce dependency. A community care assessment would then be undertaken to assess eligibility under Fair Access to Care Services (FACS). An individual assessed in the highest FACS Band, Critical, will then have an assessment of their personal care needs, and where they need help with four or more activities of daily living, will be offered free personal care to support them in their own home.

Recommendations:

1. Scrutiny Board 4 is asked to note the consultation response and forward any comments to Cabinet
2. Cabinet is requested to consider any comments from Scrutiny Board 4 and recommend that Council approve the consultation response.
3. Council is requested to approve the consultation response.

List of Appendices included:

Consultation response

Other useful background papers:

Personal Care At Home: A Consultation on Proposals for Regulations and Guidance (Department of Health) 2009

Shaping the Future of Care Together (Department of Health) 2009

Response to Consultation Shaping the Future of Care Together

Has it or will it be considered by scrutiny?

Yes- Health and Social Care Scrutiny Board (Scrutiny Board 4) – 17 February 2010.

Has it, or will it be considered by any other council committee, advisory panel or other body?

No

Will this report go to Council?

Yes – 23 February 2010

Report title:

Personal Care At Home - consultation response to proposals for regulations and guidance

1. Context

1.1 The Government is seeking views on its proposals for requiring councils in England with adult social services responsibilities to provide personal care free of charge in certain circumstances to people with the highest needs, from October 2010 – a step towards a National Care Service as outlined in the Green Paper, *Shaping the Future of Care Together*.

2. Options considered and recommended proposal

2.1 As detailed in the Council's response to the Green Paper, it is considered that universally accessible and social care free at the point of delivery has significant merit, however the costs may be considerable, and there are a range of complex issues to be resolved. There is recognition that this proposal is a potential step on the journey towards an overall National Care Service, although the long term funding of adult social care is not addressed within these proposals. The Government has made it clear that these proposals are aimed at adults and older people with the highest needs who live in their own home. The intention is to remove the current means test for those who need the highest levels of care, thereby benefitting people currently excluded on grounds of income and assets. Although the free provision would be made to all qualifying adults, regardless of age, the Government anticipates that older people will be the main beneficiaries as they are the principal demographic who receive social care. It is important to note that the financial implications described are based on a significant number of assumptions, and it would be preferable to be considering this proposal in the context of a broader range of proposals, together with an holistic approach to funding them.

2.2 The Government has stated that approximately two-thirds of the costs incurred by Councils in providing free personal care will be met by central budgets while the remaining third will be met by local government efficiency savings. The Council considers if these costs are to be met through efficiency savings it should be through existing and not additional efficiencies. It is considered that no further burden should be placed on local authority budgets as a result of these proposals.

2.3 As the Government brings forward its broader funding proposals an individual will be required to contribute according to their ability to pay. At the same time if they have care needs they may be entitled to 'free personal care at home' under these proposals, as well as other aspects of social care as described in the Green Paper (e.g. residential care). It is important to note that a key aspect of these proposals is the separation of the overall national funding mechanism from an individual's requirement for care.

2.4 In the longer term the cost of providing social care will increase because of expected demographic changes resulting in increasing demand for social care services. Based on recent Government statements it is expected that financial reforms will be proposed in the new parliament to address the overall funding of social care on a sustainable basis for future years.

2.5 Free personal care at home may be particularly beneficial to users who are in need of personal care support but are deterred by the charges involved. This may specifically apply to users with mental health needs who require personal care at home on a short term basis

but are reluctant to accept it. Removing the charge element would remove one of the barriers for this user group when engaging with support services. It may also encourage users, of any user group, to actively seek support for services from which they would benefit, if they know they will not incur charges. In these cases, free personal care would act as a positive and preventative measure.

- 2.6 This proposal represents only a partial implementation of Shaping the Future of Social Care Together, and consequently it is considered that it may not be fully aligned with the personalisation of social care. The potential to receive free personal care at home may act as a perverse incentive to remain at a 'critical' level of need (when assessed under FACS). It appears to re-enforce a model of dependency rather than more independence which the social care system has been working to achieve.
- 2.7 Free personal care poses a risk to the full implementation of personalisation. The personalisation agenda encourages and supports users to take positive risks to achieve their personal outcomes. Users, carers or family members may see the offer of free personal care at home as attractive, and therefore it may limit the incentives and opportunities for independence of the user.
- 2.8 The proposals contained within the consultation document may result in authorities effectively encouraged towards a model of mass provision of service and less personalised choice. The cost pressures of providing free personal care at home may result in authorities deciding to block purchase low-cost residential care rather than supporting people to remain in their own home. This potential outcome is counter to the principles of promoting independence and enablement, but may be the most affordable approach in the short term, until the overall national funding arrangements have been agreed and implemented. It may also be worth noting that some pressure or disruption of the market may occur as capacity struggles to meet demand in the short term.
- 2.9 It is, therefore, considered that there should be a strong focus and clarity on the significance of re-ablement within the Regulations and Guidance. This should allow the proposals to fit more closely with the personalisation agenda and limit the potential for it to become an 'expectation' to receive free personal care. In Coventry our promoting independence framework identifies that all people as part of their assessment should participate in time limited promoting independence (re-ablement).
- 2.10 Making free personal care at home available only to people assessed as 'critical' makes a further distinction between 'critical' and 'substantial' bandings of the eligibility criteria, and appears to make the 'critical' banding more attractive. FACS criteria can be interpreted subjectively and are difficult to qualify when challenges or appeals are made. This may mean that more people choose to make appeals when they are assessed as 'substantial' and this could lead to increased costs for the Council. It is considered that the distinction between 'substantial' and 'critical' is not sufficiently meaningful to ensure that a consistent approach to free personal care eligibility is achieved. Clear and detailed guidance will support consistent and comparable implementation by relevant authorities. Revised Guidance on the FACS criteria is expected to be published in February 2010. Guidance should also be consistent with the proposals put forward for a National Care Service in the White Paper due to be published shortly.
- 2.11 The full response to the consultation can be found in Appendix 1.
- 2.12 Cabinet and Council are asked to note the Personal Care At Home Bill and approve the consultation response.

3. Results of consultation undertaken

- 3.1 This response to the consultation is from the City Council and therefore wider consultation has not been undertaken.

4. Timetable for implementing this decision

- 4.1 Responses to the consultation are required by 23 February 2010.

5. Comments from Director of Finance and Legal Services

5.1 Financial implications

The financial implications of this proposal are expected to be significant and the cost is also difficult to predict accurately. Whilst proposals would reduce current income received from users, the majority of the financial impact is expected to come from people who are not current users of publicly funded care and who are likely to be currently purchasing care privately. The size of this group of potential new users is unknown.

The expected funding requirements modelled within the proposal, based on a number of assumptions, are identified from two sources. For the 6 months of 2010/11 reflecting the stated October 2010 implementation date, £210m will be made available nationally from central funding with £125m to be found from local government efficiency savings. Based on the proposals for allocating the central resources, Coventry can expect to receive between £1.2m and £1.3m of additional Area Based Grant representing this central funding. The balance of funding for this period which Coventry can be expected to find based on government assumptions surrounding the proposal are between £700,000 to £800,000.

The proposal that the balance of funding can be met from 'local government efficiency savings' effectively passes this element of cost onto the Council Tax payer. Coventry, like many authorities, has already set its budget for 2010/11 and has used all known identified efficiencies to achieve a balanced budget. This proposal will create an unfunded budgetary pressure in 2010/11 of, on the Government figures, between £700,000 and £800,000. The actual figure could be significantly higher. In 2011/12, the full year effect of the proposal will increase the unfunded gap, again based on Government figures, by between £1.4 million and £1.6 million – again the actual figure may be higher. There will also be additional resource requirements to meet the changes in data collection required, as well as additional transaction costs to disaggregate these specific elements of cost.

The Green Paper concluded that increasing social care costs should not fall on the general taxpayer, but that will be precisely the impact of this first proposal arising from it. It would be preferable from a financial point of view to understand the full range of proposals and the strategies to fund them, rather than having to respond to an isolated proposal that is not funded.

5.2 Legal implications

The Personal Care at Home Bill is currently progressing through the Parliamentary process. Its proposals have not yet been finalised or received Royal Assent and there is currently no firm date for commencement of the same.

The consultation seeks views on the contents of proposed Regulations and Guidance to be published once the Bill becomes law and in pursuance of its provisions. As yet there are no draft actual Regulations or Guidance available to consider.

It is also anticipated that revised Guidance on the FACS criteria will be published in February 2010 and that a national assessment tool for personal care needs will also be published in due course to support the proposals.

It is clear that the proposals under the Bill and consequent Regulations and Guidance will have a significant impact upon social care responsibilities for the provision of free personal care to certain individuals, potentially resulting in a longer assessment process, increased pressure on the availability of services and substantially increased funding pressures for Councils.

6. Other implications

6.1 How will this contribute to achievement of the council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / LAA (or Coventry SCS)?

N/A

6.2 How is risk being managed?

The principal areas of risk relating to this proposed policy development are financial and until the outcome of this consultation is published, the scale and nature of this risk is not known. However, based on initial planning assumptions, active consideration of the implications of any funding gap that may result to the authority is currently underway.

6.3 What is the impact on the organisation?

The funding of adult social care holds a significant interest to the Council and these changes are likely to impact significantly on the organisation, in terms of future funding and policy for service delivery models.

6.4 Equalities / EIA

An equalities impact assessment is included within the Government's proposals.

6.5 Implications for (or impact on) the environment

N/A

6.6 Implications for partner organisations?

The implications for health partners as well as independent sector care providers are likely to be significant. These will include a change in financial structures, expectations of adherence to national standards in both the commissioning and provision of services. In addition, commissioners and providers will need to respond to increased expectations of people requiring services.

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This report is published on the council's website:

www.coventry.gov.uk/cmis

Personal Care At Home- A consultation on proposals for regulations and guidance

Consultation Questions and Responses

Consultation question

1) Do you agree with the substance of the proposal as set out in the consultation document? If not, why not?

As detailed in the Council's response to the Green Paper, it is considered that universally accessible, funded social care system free at the point of delivery has significant merit, however the costs may be significant and unaffordable.

Free personal care at home may be particularly beneficial to users who are in need of personal care support but are deterred by the charges involved. This may particularly apply to users with mental health needs who may require personal care at home on a short term basis but are reluctant to accept it. Removing the charge element would remove one of the barriers to this user group engaging with support services. It may also encourage users, of any user group, who are deterred from receiving the full package of support that they have identified they would benefit from because of the charges they may incur. In these cases, free personal care would act as a preventative measure.

There is some concern that the proposal is not fully aligned with the personalisation of social care agenda as there is recognition that this is a potential step on the journey towards an overall National Care Service, although integration with personalisation is not part of this consultation. The potential to receive free personal care at home could act as a perverse incentive to remain at a 'critical' level of need. It may re-enforce a model of dependency rather than more independence which the social care system has been working to achieve. This could particularly be the case for existing users more than new users who will be encouraged to participate in a period of intensive re-ablement before their assessment of need and the potential for free personal care to be put in place.

Because of this potential 'perverse incentive' it is considered that there is a possibility of carers to 'care less' when the offer of free personal care at home is available.

The personalisation agenda encourages and supports users to take positive risks to achieve their personal outcomes. Users, carers or family members may see the offer of free personal care at home as attractive, and therefore it may limit the opportunities and incentives for

independence of the user.

It is, therefore, considered that there should be a strong focus and clarity on the significance of re-ablement. This should allow the proposals to fit more closely with the personalisation agenda and limit the potential for it to become an 'expectation' to receive free personal care. In Coventry our promoting independence framework identifies that all people as part of their assessment should participate in time limited promoting independence (re-ablement).

The financial elements of the proposal are not acceptable. Local Government is in no position to find £125m rising to £250m in additional efficiency savings – this proposal shift costs onto the Council Tax payer in a way that contravenes the spirit of the Green paper, and represents a New Burden that should be funded by central government. It would have been by far preferable to have seen a range of proposals and associated funding strategies in response to the Green Paper. It may also be worth noting that some pressure or disruption of the market may occur as capacity struggles to meet demand in the short term.

Consultation question

2) Are there any potential positive impacts on equalities of this policy? Similarly, are there any potential negative impacts?

It is recognised that a large proportion of users already receive free personal care at home. By offering free personal care at home to those who currently pay either the maximum charge or are, as yet, unknown to social care services because they fund their own care privately means that revenue will be lost and a number of 'new' social care users will be introduced and retained in a system already under pressure. The potential impact of this on the allocation of resources to other service areas is of significant concern.

It could be considered that by providing free personal care at home to those who can afford to pay, and are currently funding their own personal care, may be at the expense of other social care service provision and not based on a person's ability to pay.

The proposals in the Green Paper to fund social care by voluntary or compulsory insurance schemes would mean that these services would still be paid for at least in part by those who receive them, although there would be no direct relationship between the care people receive and the contribution they make. There is no such thing as 'free care' – the issue is 'who pays?' These proposals shift costs onto the Council tax payer or other users.

Consultation question

3) An Impact Assessment is available to accompany the consultation document. Do you have any comments on the perceived costs and benefits outlined in the Impact Assessment?

The Government has stated that approximately two-thirds of the costs incurred by Councils in providing free personal care will be met by central budgets while the remaining third will be met by local government efficiency savings. The Council has already used all known efficiency savings in setting its 2010/11 budgets. These costs represent a new unfunded pressure, created by removing means tested charging. This is a New Burden and should be funded by central government.

In the longer term, the cost of providing free personal care will increase because of expected demographic changes resulting in increasing demand for social care services. The consequence of this will be that existing funding streams will be used to meet the additional costs incurred by delivering free personal care. The impact may be that funding is diverted from other social care and wider Council services leading to an overall reduction in all services for people with 'substantial' needs as well as reduced services provided for people with 'critical' needs outside of the scope of the four activities of daily living.

Consultation question

4) Is the level of detail proposed for the regulations appropriate? If not, why not?

Making free personal care at home available only to people assessed as 'critical' makes a further distinction between 'critical' and 'substantial' bandings of the eligibility criteria, and appears to make the 'critical' banding more attractive. FACS criteria can be interpreted subjectively and are difficult to qualify when challenges or appeals are made. This may mean that more people choose to make appeals when they are assessed as 'substantial' and this could lead to increased costs for the Council. It is considered that the distinction between 'substantial' need and 'critical' need is not meaningful enough to ensure that a consistent approach to free personal care eligibility is achieved.

The regulations contained within the consultation document may result in authorities effectively encouraged towards a model of mass provision of service and less personalised choice. The cost pressures of providing free personal care at home may result in authorities deciding to block purchase low-cost residential care rather than supporting people to remain in their own home. This potential outcome is counter to the principles of promoting independence and enablement, but may be more affordable

Consultation question

5) Is the balance right between regulations and guidance? If not, why not? Is there anything that you feel should be in the guidance rather than regulations and vice versa?

The regulations, in their current form, appear to be 'high-level'. If the regulations remain in their current form, a significant amount of guidance will be required to accompany them. Clear guidance will support consistent and comparable implementation by authorities.

Guidance should also be consistent with any proposals put forward for a National Care Service in the White Paper.

Consultation question

6) Has anything been omitted from the document that should be included in either the regulations or the guidance?

There are no proposals in the consultation document that outlines what kind of initial assessment should be conducted to determine if a reablement package is appropriate. The document states that this is the first step but provides no detail

Consultation question

7) Which of the 3 options do you feel would be most appropriate for allocating the amount needed for personal care needs to eligible individuals?

Option two – an indicative range of between £x and £y per week- is considered to be the most appropriate option for allocating the amount needed to meet eligible individuals personal care needs. This option should allow market forces to operate, influencing price and quality with the personal care market.

Consultation question

8) Do you have any further comments on the allocation of the amount needed for personal care needs to eligible individuals?

Coventry City Council do not operate a 'points' system when allocating resources and working out a user's personal budget, choosing instead to work with users to formulate their support plan and identify resources based on their identified outcomes. Allocating a set amount to meet an individual's personal care needs is not consistent with assessing a person's outcomes.

Consultation question

9) Do you have any comments on the aspects of the implementation outlined in the consultation document?

No

Consultation question

10) Do you have any comments on the collection of new data and its relation to existing information?

No

Consultation question

11) Which of the three options do you prefer for the funding formula for the Free Personal Care Grant?

Option One is the preferred funding formula.

Consultation question

12) Do you have any specific comments about the 3 funding formula options?

The funding formula in option one takes into account levels of deprivation within the local population. This is a significant characteristic of Coventry's local authority area. It is therefore considered that the characteristic should be a considerable factor in predicting relative need for the provision of adult social care.