

Health and Social Care Scrutiny Board (Scrutiny Board 5)
Cabinet
Council

25 September 2013
8 October 2013
22 October 2013

Name of Cabinet Member:

Cabinet Member (Health and Adult Services) – Councillor Gingell

Director Approving Submission of the report:

Executive Director, People

Ward(s) affected:

All

Title:

Caring for our future – Consultation On Reforming What And How People Pay For Their Care And Support – Consultation Response

Is this a key decision?

No.

The provision of Adult Social Care is City wide; this is a consultation response and does not in itself significantly affect residents.

Executive Summary:

This report details the City Council's response to a Department of Health (DH) consultation on reforming what and how people pay for their care and support. The Department of Health published the White Paper 'Caring for our future: reforming care and support' (Care and Support White Paper) in July 2012.

Subsequent to this, in February 2013, the Government announced historic reforms to give more certainty and peace of mind over the costs of old age, or of living with a disability and committed to reforming the funding of care and support to ensure:

- Everyone receives the care they need and more support goes to those in greatest need
- We end the unfairness of, and fear caused by, unlimited care costs
- People will be protected from having to sell their home in their lifetime to pay for care.

The Government is now consulting on the implementation of these significant reforms. The consultation covers a number of issues including assessment of care, how this care is met, how this care is paid for, the impact of the reforms on the care market and the required changes to local authorities to deliver this change. These proposals represent the biggest changes in adult social care since 1948 and will affect Local Authorities, Health partners and providers of care and support.

The consultation is focused on how practical details of the changes to social care should be managed. The consultation included eleven consultation questions and five implementation questions.

Overall, the Council welcomes the proposals as a significant step forward in improving and simplifying the charging framework for adult social care. The introduction of a standardised approach across all settings will provide the local authority, and public, with much needed clarification.

Recommendations:

Health and Social Care Scrutiny Board (5) are asked to:

1. Consider the proposed response to the consultation and advise Cabinet of their agreement/endorsement of the response and/or submit any further additions to the response to Cabinet for their consideration.

The Cabinet is asked to:

1. Consider comments from the Health and Social Care Scrutiny Board (5).
2. Recommend that Council to approve the consultation response.

Council is asked to:

1. Approve the consultation response.

List of Appendices included:

Appendix 1 - Consultation response

Other useful background papers:

None

Has it been or will it be considered by Scrutiny?

Yes – Health and Social Care Scrutiny Board (5) – 25 September 2013

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

Yes – Council 22 October 2013

Report title: **Caring for our future – Consultation on reforming what and how people pay for their care and support – Consultation response**

1. Context (or background)

- 1.1 Since May 2010, the Government has published a range of policy documents in relation to adult social care aimed at shaping and affirming the direction for the sector, and addressing the funding arrangements for care and support.
- 1.2 In February 2013, the Government announced the reform of the funding for care and support with the aim of providing more certainty and peace of mind over the costs of old age or living with a disability.
- 1.3 The Government is now consulting on the implementation of these significant reforms. The consultation covers a number of issues including assessment of care, how this care is met, how this care is paid for, the impact of the reforms on the care market and the required changes to local authorities to deliver this change. These proposals represent the biggest changes in adult social care since 1948 and will affect local authorities, health partners and providers of care and support.
- 1.4 The Care Bill, currently before Parliament, will be the legal framework on which this social care reform will be based. This includes the introduction, from April 2015, of new charging rules, new regulations for adult social care assessments, and a requirement to offer deferred payments so that homeowners in need of residential care do not need to sell their home during their lifetime.
- 1.5 From April 2016, it is proposed that local authorities will assess the care and support needs of people who fund their own care. For people who meet the eligibility criteria for social care and support, the local authority will calculate valid expenditure against the cap of £72,000 and once cap is reached it is proposed that the local authority takes responsibility for payment.
- 1.6 The consultation contains eleven consultation questions, five implementation questions plus an additional forty questions in the form of a 'call for evidence'. In the consultation response the Council responds to the consultation and implementation questions. The Council will engage separately with regards to the forty calls for evidence questions through its links with the Local Government Association (LGA) and The Association of Directors of Adult Social Services (ADASS). By responding to the call for evidence in this way the Council will ensure that it contributes to understanding the implications and practicalities of social care reform to enable sustainable delivery of these reforms.

2. Options considered and recommended proposal

- 2.1 The consultation covers a range of topics relating to social care reform. These are:
 - How to help people make more informed choices over care through information and advice and assessments and help local authorities meet the demands of these.
 - How the capped cost system should work with assessments, personal budgets, charging, and care and support planning.
 - The design of the new charging framework for care and support and the choices around how the capped cost system should work for working age adults.
 - How deferred payment agreements should be managed and administered.
 - The process for providing redress and resolving complaints.
- 2.2 The consultation document states that the current charging framework is unfair, poorly understood and differs based on different care settings. The Government intends to

introduce regulations to establish a single overarching charging system, although local authorities will still be able to choose not to charge.

- 2.3 A key aspect of funding reform is the need to raise awareness amongst the general population of how care and support works and to assist people to plan for how they might pay for their care and support. It is currently estimated that 40% of people are unaware that they might need to pay for their care and support. The Care Bill will give local authorities a duty to arrange for the provision of independent advice for people who need care and support.
- 2.4 In 2016, additional demands will also be placed on social work teams to carry out care assessments for people who fund their own care and support in order to determine eligibility. There could also be increased contact from people with lower level needs enquiring as to whether they are eligible for social care. The Care Bill will also give additional assessment rights to an increased number of informal carers, due to proposed changes in the carer assessment criteria. How these additional demands on social work teams are managed will require careful consideration.
- 2.5 The consultation and implementation questions contained within the consultation document are focussed on the technical details of how these changes should be managed in practice. These include:
- Rules relating to different care caps for adults at various ages under 65, to reflect different abilities to build up assets
 - Systems for measuring what counts towards the cap and the management of care accounts, including greater use of online transactions
 - Administrative fees that local authorities could charge self-funders if the local authority arranges their care and support
 - How deferred payment agreements could be managed and administered
 - The process for providing redress and resolving complaints
- 2.6 The eleven consultation questions and five implementation questions along with proposed City Council responses are included in the appendix to this report.
- 2.7 Overall, the Council welcomes the proposals as a significant step forward in improving and simplifying the charging framework for adult social care. The introduction of a standardised approach across all settings will provide the local authority, and public, with much needed clarification.
- 2.8 As part of the consultation, the Government is also proposing to extend free care for eligible needs to young people up to age 25 to support the transition from children's to adult care. The Council believes the Government should reconsider this proposal as; it is potentially unfair to younger adults with a disability who may not have received support from children's social care.
- 2.9 The Council fully supports the proposal that local authorities should have the discretion to introduce reasonable safeguards to ensure deferred payment agreements can be repaid.
- 2.10 One of the consultation proposals is that a period of three months is allowed to elapse following death before the Council can seek repayment. The Council disagrees with this proposal and considers that an earlier claim could be registered with the Executor of the estate without causing undue distress to families. It will be important within the publicity material for deferred payments for care that this should be considered as part of the normal process for settling a deceased estate.
- 2.11 The Council agrees with the overarching principles for redressing complaints. The Council would recommend the terminology around independence is clarified to explain that

decisions can be reviewed by someone within the local authority, as long as they are independent of the original decision maker. The current wording may create an unrealistic expectation that reviews will be undertaken from outside the local authority

- 2.12 The Government is proposing a new funding formulae to implement these reforms, this formula is not covered in the current consultation and independent experts have been commissioned to identify the new formulae by spring 2014. A period of consultation will follow in summer 2014 which the Council will have an opportunity to respond to.
- 2.13 The Council urges the Government to appropriately fund local authorities to meet the legal requirements of the Care Bill; the Council welcomes the Government commitment to provide additional resources to local government to cover the costs of implementation of the cap and the requirement to offer deferred payments for residential care. However, whether these additional resources are sufficient to meet the additional demands is unclear.
- 2.14 The timelines for implementation are particularly challenging. In order to assist local authorities to plan, prepare and implement changes, the Government should ensure the timely release of regulations and guidance that will provide the legal basis for these wholesale reforms.

3. Results of consultation undertaken

- 3.1 The consultation response 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 25 October 2013.

5. Comments from Director of Finance and Legal Services

5.1 Financial implications

5.1.1 There are no direct financial implications arising from responding to this consultation.

5.1.2 The financial implications from this level of reform will be significant, and due to the quantity and complexity of the scale of change involved, also difficult to predict with any certainty. The changes and associated costs relate to increased assessment requirements, reduced income due to new exemptions and the application of the funding cap, the associated potential impact on the provider market, as well as the infrastructure requirements to implement the changes.

5.1.3 Some new burden funding is available to contribute towards these costs, however as this will be formulae based and also at a time where other funding is reducing, it is not likely to meet the full cost of these changes.

5.2 Legal implications

5.2.1 The Care Bill is currently proceeding through the House of Lords before moving to the House of Commons. The Bill includes proposals to reform the law relating to care and support for adults and the law relating to support for carers. It is envisaged that the new care support framework will be implemented in 2015 moving into 2016.

5.2.2 The consultation exercise that is the subject of this report is to inform regulations and processes required around the implementation of the new proposed framework.

6. Other implications

6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

These proposals support the continued provision of a range of statutory social care services to the people of Coventry. This may contribute to people living longer, healthier lives.

6.2 How is risk being managed?

There are no specific risks relating to the consultation response itself.

6.3 What is the impact on the organisation?

The consultation response itself will have no specific impacts on the organisation.

6.4 Equalities / EIA

A Social Care Funding Reform Impact Assessment has been produced by the Department of Health.

6.5 Implications for (or impact on) the environment

N/A

6.6 Implications for partner organisations?

The consultation response itself will have no specific impacts on partner organisations.

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Councillor Gingell	Cabinet Member (Health and Adult Services)		30.08.13	02.09.13

This report is published on the council's website: www.coventry.gov.uk/meetings

Appendices

Appendix 1

Caring for our future – Consultation on reforming what and how people pay for their care and support – Consultation response

Consultation and implementation Questions and Responses

Consultation questions

Fairer and more consistent charging – the charging framework

Question 1: Do you agree the future charging framework should be based on the following principles?

The principles are to be:

- Comprehensive
- To reduce variation in the way people are financially assessed; be transparent, so people know what they will be charged
- Promote wellbeing and support the vision of personalisation, independence, choice and control and enables delivery of funding reform
- Be user-focused reflecting the variety of care journeys and the richness of options available to meet their needs
- Encourage and enable those who wish to take up employment, or plan for the future costs of meeting their needs to do so; support carers and not place additional burdens on them, in recognition of the invaluable contribution they make to society
- Minimise anomalies and perverse incentives in choices between care settings
- And be sustainable in the long term

The principles are sound. Any changes to the current arrangements would need to reflect any new financial burden brought about by the changes. The proposed principles would also need to feed into the development of any financial services models that would potentially assist people to plan for future care needs.

Fairer cap for working age adults – varying the levels of cap

Question 2: Do you agree that the decision on the level of the cap on care costs set for working age adults between the ages of 18 and state pension age should be based on the following principles?

The principles are:

- People in similar circumstances should make a similar contribution
- Reflect people's ability to plan, prepare and build up savings
- Be simple for people to understand and feasible to implement
- Support integrated care and effective transitions between services
- Help people to live independent lives

Principles are sound but the Council considers more information is needed to fully understand the implications of the proposed principles.

Question 3: Do you agree in order to support transitions from children to adult care and support we should extend free care for eligible needs to young people up to age 25? Or are their alternatives we should consider such as through integration between child and adult care and support and the guidance provided on how to set the level of the cap?

The Council disagrees with this proposal. There would be an adverse financial impact for local authorities. 18 to 25 year olds could potentially have a chargeable income or other financial resources, such as inheritance, which could make them a self-funder and therefore no costs would initially be incurred by the Council.

This proposal is also potentially inequitable for young adults who may have a disability but did not received support from Children's Social Care. For example, they acquired a disability following an accident at the age of 18.

This proposal would also create the need for dual budgets across children and adult social care.

The Council considers that in order to support integration between child and adult care it is important that social care practitioners are also able to work together well in advance of transition to support future financial planning.

Aligning contributions in different care settings – daily living costs

Question 4: Do you agree the contribution a person makes to daily living costs should be calculated on the same basis as financial assistance with care costs, taking into account both income and assets?

Agree. The Council welcomes a standardised approach to the charging framework for both residential and non-residential care packages. The Council considers it is imperative to ensure equitability across care settings, so that people in receipt of support in their own homes are not financially worse off in paying these costs than if they were in receipt of residential care or vice versa.

Who will qualify for a deferred payment

Question 5: Do you agree our criteria for determining who qualifies for a deferred payment should be? The criteria include people who would benefit from residential care and people with less than £23,250 in assets excluding their home.

Are there any examples of where greater flexibility might be necessary to ensure people do not have to sell their homes in their lifetime to pay for care?

Whilst the principles proposed are appropriate to ensuring deferred amounts can be repaid, it does restrict the availability of this opportunity. Any promotional material relating to the reforms needs to be very clear on who can or cannot benefit from this to ensure people are clear and can plan accordingly.

In the example given where someone may have "slightly more" than the £23,250 and it is preferred to offer the option upfront, it may be more appropriate to look at the length of time before the deferred payment option arises rather than a value of how much they are over the £23,250 as otherwise another level is set which someone else may be just over.

If a service users assets fluctuated above and below £23,250 it would be inappropriate to agree to defer then stop then agree to defer then stop in line with the fluctuations. A balance needs to

be struck between ensuring amounts are paid, at the same time as minimising the administrative burden for both the service user and the local authority.

What fees can someone defer

Question 6: Do you agree with the principle that local authorities should have the discretion to introduce reasonable safeguards to ensure deferred payment agreements can be repaid? If so how can this be done in a way to support people's choice of care home?

The Council agrees that local authorities need to retain decision regarding agreeing a deferred payment, as some properties will not have sufficient equity to be able to reach the capped amount. Clarification of approach when a property is jointly owned would be welcomed, including valuing of a part share and the Land Registry's approach to registering a charge against the property.

Any discussions regarding care funding options should include an honest and open dialog about personalisation and choice. There is a need to ensure that where people choose a high cost residential home as a self-funder, that they understand, that once the cap is reached they may be required to move when the local authority funds their care.

How long can the deferred payment last?

Question 7: Do you agree local authorities should normally wait at least 3 months after someone has died before actively seeking repayment? Are there circumstances in which the Local Authority should wait longer?

The Council disagrees with this proposal. Repayment needs to be considered part of the normal process for dealing with someone's financial affairs after death. The Council considers that the local authority should be able to register an early claim with the Executor of a client's estate. This can be pursued sensitively without causing undue stress to families.

Wider flexibility to offer deferred payments

Question 8: Do you agree that local authorities should have additional flexibility to go beyond what they would normally cover and allow people to defer care charges to help them get the care they want in wider circumstances such as domiciliary care?

From an equality perspective, it would seem fair, to offer deferred payment schemes to all irrespective of types of care provided. The difficulty in offering deferred payments schemes to people in receipt of domiciliary care is they often have spouses and children living with them. This could potentially mean the Council could be waiting a generation to make a financial claim against the property.

Therefore it is imperative that the financial implication of this proposal is understood in advance to ensure that it is not an unfunded new burden to the local authority.

An alternative would be enabling equity release from a property to be able to pay care costs upfront.

Calculating what counts towards the cap

Question 9: Do you agree with the proposed principles for calculating the independent personal budget and personal budget?

The principles are:

- To support the overall outcome of promoting a person's wellbeing
- Be equitable to everyone who accesses local authority support, no matter whether they pay for their own care, or where they live
- Ensure consistency in the outcome of the calculation of the costs of meeting a person's needs according to their individual circumstances as if the local authority was under a duty to meet them
- Be transparent over the calculation and the basis for it
- Where needs are being met by a carer, reflect the carer's ability and willingness to care
- And the impact of continuing to provide this support, and reflect what it may reasonably cost a local authority to meet a person's needs according to their particular circumstances

The Council agrees with the principles, if they are consistently applied to both the independent personal budget and personal budget.

Question 10: Do you agree that local authorities should have flexibility on providing annual updates where a person has not had care needs for many years, or they have already reached the cap? In what other circumstances should discretion be given?

The Council agrees that local authorities should have flexibility on providing annual updates for people currently receiving care. Updates for others, should be available on request. It will be important for people to be able to receive annual updates online.

Providing redress and resolving complaints

Question 11: Do you agree that the following principles should underpin dispute resolution mechanisms?

The principles are:

- To be clear and easy to understand, be locally accountable
- Be fair and effective and should therefore have public confidence
- Resolve issues in a timely, effective and cost-effective way
- Have an independent element; and promote local resolution, minimising the need for more formal challenge mechanisms which could be costly and time-consuming

The Council agree with the overall principles but rather than having a footnote to explain "independent element" suggest that it is reworded to "Decision is reviewed and/or considered by someone other than the original decision maker." The word independent gives an immediate feel that it will be someone totally independent of local authority/organisation.

However it must be noted that in the consultation document heading refers to "providing redress and resolving complaints" It therefore does not allow for initial concerns to be raised before going into a formal process.

Responses need to be proportionate to the complaint and deal with the people initially rather than the system. Preventing simple requests, questions or expressions of concern escalating into complaints is critical, hence the need for initial concerns before formal complaint. This is very much like the triage system that the Local Government Ombudsman currently use.

It would also be a mistake to add extra layers to the complaints system, the public want simplicity, effectiveness and speed in complaint handling, as well as to be listened to.

This has to be particularly considered, as in the “Caring for our future” document it indicates that “more people will be brought into contact with the local authority by the reforms to care and support funding.”

Also the lines are going to be more blurred in relation to who to complain to. At the moment with joint services and commissioned services people are unsure with the advent of more personal budgets and direct payments that will be even more blurred especially with self-funders who may now come to the council to arrange packages of care.

Whatever system is adopted, it is about attitude towards concerns and complaints, and willingness by the organisation to listen and shift away from defensiveness. The system whereby they can complain to the Local Government Ombudsman does give that independence line and reassurance in that local authorities know that this could happen.

One of the major areas of concern, is what people can complain about, for instance with regard to schools admission it is very clear what they can complain about is that the process has not been followed, not the decision.

Also there is no mention of the role of The Health and Well-being Board or relevant scrutiny board within local authorities to look at complaints. The Government may wish to redress this as complaint information can provide a valuable insight of people’s experience and can be useful for identifying emerging trends which may require further investigation to safeguard individuals.

Implementation questions

Transition to the introduction of the cap

Implementation Question 1: Do you agree local authorities should conduct assessments of people who are funding their own care and support up to 6 months before the introduction of the cap on care costs?

The Council considers that conducting assessments six months before the implementation of the cap is too far in advance. People’s circumstance and care needs can change greatly over that period. Therefore the Council would recommend starting three months prior to the introduction of the cap. It will be important, at the start of this process, that local authorities are very clear on what the local authority would fund in the future once cap is reached.

Local authorities will need to be supported by care providers to increase knowledge of self-funders in their local area, to support appropriate planning for the increase in the demand for care assessments and support planning.

Implementation Question 2: How could local authorities use reviews they have planned with individuals throughout 2015 to prepare for introduction of the cap on care costs in 2016?

Local authorities will need to be supported by national promotion of the planned changes by both Central Government and national 3rd sector organisations. This information can then be tailored to meet local needs as required by either the Council or local providers of information and advice.

It is therefore important that promotion material is made available in 2015 to support the social care and health professional to play a supportive role in providing timely information about care costs to those people who come into contact with the local authority, our health or 3rd Sector partners.

There must be a shared approach to the promotion of the cap on care costs. Promotion cannot be the sole responsibility of the local authority.

Workforce Development

Implementation question 3: We welcome views on the implications for commissioners and workforce leads from the potential use of partners' resources to help manage the demands on local authorities from the introduction of the cap on care costs and how this should be addressed within the workforce development strand of the implementation programme.

The proposed changes are fundamental and wide-ranging and have enormous implication for workforce development of a range of stakeholders including care management and financial assessment staff, providers, and commissioners and ranging from awareness training in relation to new systems through to detailed training and development for those required to implement the detail of the expectations dependent on job role.

This in itself will require a fuller training and development needs analysis. There will also be a need to examine whether new/revised job roles are required.

Local authorities would certainly need to work closely with partner organisations including ADASS and Skills for Care on both a national and regional basis.

Market Shaping and oversight

Implementation question 4: We welcome views on how local authority commissioning and care and support provider provision should adapt to take advantage of the opportunities provided by the introduction of funding reform and respond to the challenges it may present.

One opportunity would be that local authorities would be required to understand the whole market including self funders. This would enable a more holistic approach to market shaping in local areas. Information about self funders is currently often patchy but the new approach would require more robust information upon which to base commissioning plans.

A risk in the new system would be the transparency of costs charged by providers. Currently providers tend to cross subsidise local authority customers through charging higher rates to self-funders. Shining a light on this practice, may lead to some equalisation of rates building cost pressures for local authorities. Engagement with providers might assist to some extent but it would be naive to think that providers would not see this as an opportunity to put upward pressure on local authority rates.

Another risk might be that self funders reaching the cap might not be able to remain with their current services, if they do not accept the price that local authorities are able to pay. A contingency to this would be to engage private payers at an early stage to ensure that they are aware of limitations around choice that would need to be in place.

Implementation question 5: We welcome views on how funding reform and increased transparency will affect the shape of local markets for types of care and support, and evidence to understand how the demands on local authorities to arrange care on behalf of people who arrange their own care and support may change.

The local market for self-funded provision will reduce. More people will become reliant on local government, which is a reversal of policy to enable people to be more independent of local authorities. There would need to be more provider/ local authority engagement as providers who hitherto catered exclusively or mainly for self-funders will no longer do so.

Some providers may exit the care market and elect to specialise in catering for non- eligible self-funded services e.g. domestic services.

The provider market for information and advice may need to expand to cater for the reforms.