

SOCIAL SERVICES CHARGING POLICIES

**SOCIAL CARE, HEALTH & WELLBEING (COUNCILLOR SUSAN
ELSMORE)**

AGENDA ITEM: 13

Reason for this Report

1. To approve the implementation of Social Services Charging Policies, one for residential and nursing care, one for non-residential care, in line with the requirements of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”).

Background

2. These policies set out the responsibilities of Cardiff Council concerning charging for costs incurred when providing care and support in a residential, nursing or non-residential setting.
3. Cardiff Council are committed to giving people a stronger voice and real control over the support they need, to remove barriers to their well-being.
4. The Social Services and Well-being (Wales) Act 2014 places responsibility on individuals exercising functions under the 2014 Act, Local Authorities, and other public bodies for meeting needs and delivering outcomes, with the Local Authority being obliged to meet any eligible need and/or help deliver any relevant outcome under the 2014 Act, which would not otherwise (i.e. without intervention) be met.

Issues

5. The policy will ensure that charging, where it occurs, is consistent, fair and clearly understood. Individuals who are asked to pay a charge will only be required to pay what they can afford.
6. The policy proposes to take into account the principles set out in the charging and financial assessment framework introduced by the 2014 Act.
7. Information and advice about charging will be available in appropriate formats, which take account of individual communication needs, in particular for those with a sensory impairment, learning disability or for whom Welsh or English is not their first language. This is to ensure that

individuals are able to understand why they are being charged and how charges have been calculated.

8. Where an individual lacks capacity they will still be subject to a financial assessment in order to determine if they are required to contribute towards the cost of their care and support. Appropriately skilled staff will be able to communicate with an individual, taking into consideration their capacity as well as any medical condition or impairment they might have. Where possible the Local Authority will consult with family members who may have the legal authority to make financial decisions on behalf of an individual who lacks capacity. If there is no such person, then an approach to the Court of Protection may be required.

Charging for Care and Support in a Care Home (Residential Policy)

9. Support will be provided to the individual to identify how best to pay their assessed charge. This may include offering the individual a deferred payment agreement against the value of a property taken into account in the financial assessment (see Deferred Payments below and the Residential Charging procedure).
10. An individual who is self-funding their care and support because they have capital at or above the capital limit may choose to ask the Local Authority to arrange their care and support to meet their eligible care and support needs. Individuals in this position will be required to pay the full cost of their care and support in line with the 2014 Act and the relevant Regulations (see the policies at appendices 1 and 2).

Putting the Policies into Practice

11. These policies outline the key duties and requirements in relation to charging for residential, nursing and non-residential care and support across the region. More detailed guidance notes and procedures will be available to support and assist practitioners with the interpretation of this policy and the relevant sections of the 2014 Act.
12. Additionally, as part of this Cabinet Report, Social Services is seeking authority to amend the decision that was made at Cabinet on 20th September 2018 in relation to how it made payments to care homes. In the recommendations contained in the report entitled "Commissioning of Domiciliary Care and Procuring Care Home Services" authority was sought for the Council to implement Gross Payments to residential and nursing homes. Under this arrangement, the Council pays providers the gross cost of the placement (i.e. the Council's contribution plus any Health Board contribution, the service user contribution and any third party contribution), using its existing processes to collect funds from service users, third parties and the Health Board.
13. However, since this decision was made, there has been two key changes that impact on the way that the Council makes gross payments as set out in the Cabinet report:

- A decision was made by the Health Board that with effect from 1st April 2019, they would cease the administrative agreement with the Council and make their own payments of the FNC directly to Nursing homes. Therefore Council no longer pays the Funded Nursing Care (FNC) element of the nursing home contract rate and reclaims the amount retrospectively as part of an administrative arrangement between the Council and the Health Board.
 - The Council has agreed a Three Year Fee Setting Strategy for Care Homes which will be implemented from 1 April 2020. As part of the Strategy, a standard cost of care will be introduced. Where an individual chooses a care home whose charges are in excess of the set standard rate agreed by the Council, a third party may enter into a separate agreement directly between themselves and the home. It is therefore no longer appropriate for the Council to include Third Party payments in its Gross Payments to providers.
14. It is proposed that from 1 April 2020, gross payments to the provider, will only include the Council's and resident's contribution and this arrangement is reflected in recommendation 2 of this report.

Scrutiny Consideration

15. The Community and Adult Services Scrutiny Committee considered this issue on 8 January 2020. The letter from the Chair of the Committee is attached at Appendix 3

Reason for Recommendations

16. To ensure Cardiff Council is compliant with the requirements for charging under the Social Services & Well-being (Wales) Act 2014 and associated regulations.

Financial Implications

17. The report seeks approval for the implementation of charging policies for residential and non-residential care to ensure compliance with the Social services and Wellbeing (Wales) Act 2014.
18. It is anticipated that an estimated £11m of income will be received in relation to care charges in 2019/20.
19. There are no direct financial implications arising from this report.

Legal Implications

20. The first recommendation, put simply, is to authorise the proposed Social Services Charging Polices for residential and nursing care, and non-residential care.
21. There are no direct legal implications arising from the recommendations in this report. It is worth highlighting, the Directorate has had the benefit

of advice from external legal Counsel on the process followed and the recommendations set out in this report. Counsel's opinion, in short is, should the policies be adopted by the local authority, they would be lawful.

22. Legal services should be instructed again should there be any further consideration of areas where the Local Authority has discretion to charge and these matters may be subject to formal, public consultation.
23. The policies note that they need to be read in conjunction with the relevant legislation. In considering this matter, the decision maker must have regard to the Social Services and Well-being (Wales) Act 2014 ("the 2014 Act") and associated regulations and guidance. The 2014 Act provides the statutory framework for social services in Wales. In brief, the 2014 Act places a responsibility on local authorities, and other public bodies, exercising functions under the 2014 Act to meet any eligible needs of people who need care and support, and carers who need support, and delivering outcomes. Failure to have due regard to such statutory guidance could itself be a ground for a judicial review challenge.
24. Section 61 of the 2014 Act provides for regulations to set out the details of how charging arrangements are to operate in connection with the exercise of a power to impose a charge under section 59 of the 2014 Act (the "Charging Regulations").
25. The Local Authority must follow the Charging Regulations when undertaking financial assessments and determining any charges and when exercising its other functions in relation to charging.
26. The relevant Charging Regulations are:
 - The Care and Support (Financial Assessment) (Wales) Regulations 2015;
 - The Care and Support (Charging) (Wales) Regulations 2015;
 - The Care and Support (Choice of Accommodation) (Wales) Regulations 2015;
 - The Care and Support (Deferred Payment) (Wales) Regulations 2015;
 - The Care and Support (Review of Charging Decisions and Determinations) (Wales) Regulations 2015.
27. A Code of Practice on charging for social care services (Part 4 and 5 Code of Practice), also supports the Charging Regulations and is accessible using the link below:
<https://gov.wales/sites/default/files/publications/2019-04/social-services-and-well-being-wales-act-2014-part-4-and-5-code-of-practice-charging-and-financial-assessment.pdf>

Equality Duty

28. The Council has to satisfy its public sector duties under the Equalities Act 2010 (including specific Welsh public sector duties) – the Public Sector

Equality Duties (PSED). These duties require the Council to have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of 'protected characteristics'. The 'Protected characteristics' are:

- Age
 - Gender reassignment
 - Sex
 - Race – including ethnic or national origin, colour or nationality
 - Disability
 - Pregnancy and maternity
 - Marriage and civil partnership
 - Sexual orientation
 - Religion or belief – including lack of belief.
29. An Equality Impact Assessment has been carried and is attached at Appendix 3. The purpose of the Equality Impact Assessment is to ensure that the Council has understood the potential impacts of the proposal in terms of equality so that it can ensure that it is making proportionate and rational decisions having due regard to its public sector equality duty. The decision maker must have due regard to the Equality Impact Assessment that has been carried out in making its decision.
30. Where a decision is likely to result in a detrimental impact on any group sharing a Protected Characteristic, consideration must be given to possible ways to mitigate the harm. If the harm cannot be avoided, the decision maker must balance the detrimental impact against the strength of the legitimate public need to pursue the recommended approach. The decision maker must be satisfied that having regard to all the relevant circumstances and the public sector equality duties, that the proposals can be justified, and that all reasonable efforts have been made to mitigate the harm.

Well Being of Future Generations (Wales) Act 2015

31. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.
32. In discharging its duties under the Act, the Council has set and published well-being objectives designed to maximise its contribution to achieving the national well-being goals. The well-being objectives are set out in Cardiff's Corporate Plan 2019-22. When exercising its functions, the Council is required to take all reasonable steps to meet its well-being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well-being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.

33. The well-being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
- Look to the long term
 - Focus on prevention by understanding the root causes of problems
 - Deliver an integrated approach to achieving the 7 national well-being goals
 - Work in collaboration with others to find shared sustainable solutions
 - Involve people from all sections of the community in the decisions which affect them
34. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

General

35. The decision maker should also have regard to, when making its decision, to the Council's wider obligations under the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.

HR Implications

36. There are no HR implications for this report

RECOMMENDATIONS

Cabinet is recommended to

1. Approve the Social Services Charging Policies for Residential Care and Non-Residential Care.
2. Approve the proposed new approach to the payment of residential and nursing home care providers and note such approval shall amend the previous Cabinet decision (CAB/18-19/25) dated 20 September 2018, to exclude any Third Party payments and Funded Nursing Care payments from the gross payments process for residential and nursing home providers, from 1 April 2020 and is set out in detail within the body of the report.

SENIOR RESPONSIBLE OFFICER	Claire Marchant Director of Social Services
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The following appendices are attached:

Appendix 1 – Social Services Non-Residential Charging Policy

Appendix 2 – Social Services Residential Charging Policy

Appendix 3 - :Letter from Chair of Community & Adult Scrutiny Committee

The following background papers have been taken into account

The Social Services and Well-being (Wales) Act 2014