

**27 April 2015****Agenda Item 5****REPORT OF THE SERVICE DIRECTOR FOR ACCESS AND PUBLIC  
PROTECTION****CHARGES FOR DEFERRED PAYMENT AGREEMENTS AND BROKERAGE  
OF COMMUNITY BASED SUPPORT FOR SELF FUNDERS – OUTCOME OF  
CONSULTATION AND RESPONSE TO CONSULTATION ON THE CARE ACT  
2014****Purpose of the Report**

1. To report on the views expressed in the public consultation on the introduction of charges for Deferred Payment Agreements (DPAs) and the introduction of charges for brokerage of community based support for self-funders.
2. To seek approval of proposed charges for Deferred Payment Agreements and brokerage of community based support for self-funders.
3. To provide a summary of the Council's response to the Department of Health's consultation on the Care Act 2014 on the way care and support is funded and the proposed appeals system.

**Information and Advice****Deferred Payment Agreements**

4. In 2014 it was estimated that there are 154,000 people over the age of 65 living in Nottinghamshire, and this is predicted to rise to 196,000 by 2025 (an increase of 27%). Available data indicates that at the end of March 2014 there were 2,840 older people in residential placements financially supported by the Council and a further 700 adults aged 18-64 years.
5. The Local Government Information Unit (LGIU) published a report in July 2013 which stated that over half the people living in residential or nursing care fund some or all of their own care.
6. At present, Nottinghamshire County Council operates a Deferred Payments Scheme (DPS) that allows people entering long term residential care to defer some of the costs of their care against the value of their property by entering into a Deferred Payment Agreement (DPA). The care costs incurred are ultimately recouped either when the DPA is terminated or the person dies and the property is sold. The legal (eg. land registry) and administration costs of a DPA are currently met by the Council.

7. The Care Act 2014 introduces a new Universal Deferred Payments Scheme, which will allow anyone with eligible needs who owns property or land, and cannot afford their residential fees, and has assets under £23,250, to apply for a DPA. There will be an increase in the number of DPAs that Nottinghamshire County Council enters into following national publicity about the scheme, with resulting increased costs to the Council. Current estimates are that DPA numbers will increase from the current 60 to 610 by 2017. Many other local authorities have made a charge to cover their legal and administrative costs for some time.
8. The Care Act allows local councils to charge the legal and administration costs to individuals entering a new DPA, and the consultation seeks views on the introduction of these charges. Previous reports to this Committee on 5 January 2015 are available as background papers.

### **Brokerage**

9. The Care Act expects local councils to have more involvement in arranging support for people who are able to pay the full costs of their own support whilst living in the community (called self-funders), and allows councils to charge an administration fee for this service – called Brokerage.
10. Brokerage could range from staff informing service users about what support providers are available and have capacity, to arranging visits, liaising between support providers and service users, confirming or negotiating costs, commissioning and invoicing for the support.

### **Response to the Department of Health's consultation on the Care Act 2014**

11. The Council provided a response to the Department of Health's consultation on the draft statutory guidance and regulations on changes to the way care and support is funded and the policy proposals for a new systems of appeals. These changes are due to come into effect in April 2016.
12. The Council also contributed to the East Midlands ADASS (Association of Directors of Adult Social Care) response following an East Midland's workshop.
13. The Council's response included concerns about the challenges of implementing the changes for April 2016 within a very short timescale and the potential for significant changes to the draft guidance and regulations between May and October 2015. The response also raised concerns about the uncertainty of costs for 2016/17 and how these costs will be adequately funded.
14. The consultation sought responses to specific consultation questions and there are three main areas. Firstly, there is an issue about how local authorities will calculate the independent personal budget, i.e. the amount that the local authority would pay to meet a person's eligible needs. There is a concern that local authorities would face a challenge about how to calculate this without undertaking a full assessment of eligible need and support plan. This would increase bureaucracy and assessment and care management costs. Secondly, there is a question about the cap on care for working aged adults. In the

consultation there are three models proposed, but in all three options there is a cliff edge at which people become significantly disadvantaged financially. The Council proposed an alternative model which included a reform of the minimum income guarantee (the minimum amount a person receiving care outside a care home must be left with each week after charging for care and support) to bring it into line with that for older adults, a review of the disregard for personal injury compensation and the introduction of a universal cap on care costs of £72,000 for all adults. Lastly, the Council responded to the question on a new appeals system to allow people to challenge care and support decisions. The Council's view is it would add a further level of bureaucracy and it would be more effective to enhance the current complaints process and issue good practice guidance.

15. The Department of Health consultation ran from 4<sup>th</sup> February 2015 to 30<sup>th</sup> March 2015. The government will publish a response along with the final statutory guidance and regulations. The final guidance and regulations is expected in October 2015.

### **The public consultation**

16. The consultation questionnaire is attached as **Appendix A**. The public consultation ran for 4 weeks, with 338 responses received. People were informed and invited to respond by a variety of communications – Twitter and Facebook, online information on the public website, communication to providers, charities and voluntary organisations and people who receive services, communication with the Citizens' Panel, information sent out in invoices, carers were contacted, and social work teams were emailed. Two focus groups were held which comprised social care staff and members of the public. Views were very different in each group, and all participants completed their own questionnaires. Responses could be online or by requesting paper copies – 26 paper copies were sent out. The results of the questionnaire are attached as **Appendix B**.

### **Proposals**

17. The following are proposed as a result of the consultation, and are based on the views of respondents.

### **Deferred Payments Agreements**

18. The following recommendations are based on the views expressed by consultation respondents, and refers **ONLY** to **new** Deferred Payment Agreements:
  1. a charge of £195 to cover legal costs should be introduced for all **new** DPAs
  2. a charge of £235 to cover administration associated with the set up of a DPA should be introduced for all **new** DPAs
  3. a flat rate annual fee of £25 should be introduced to cover costs of maintaining the DPA – including the production of regular statements for service users. The charge would only apply to **new** DPAs
  4. interest should be charged on the accruing debt for **new** DPAs based on the interest rate charged to the Council for borrowing money (currently 2.65%).

5. DPAs to be made available to people moving into supported living-type accommodation
6. DPAs should be available to people who do not own any property but own land.

#### **Brokerage for community based support**

1. regarding charges for brokerage for self-funders living in the community, an initial charge of £100 for brokerage of support to be introduced, however no further charges for brokerage if needs change

#### **Other Options Considered**

19. Not charging for Deferred Payment Agreements – this would increase costs to the Council in view of the projected increase in numbers.
20. Not charging for Brokerage of support – potential increase in brokerage for self-funders would increase current workloads, and may lead to the requirement for more staff.

#### **Reason/s for Recommendation/s**

21. Recommendations were based on the views of consultation respondents, with charging levels set to meet costs to the Council but not to profit from the charges.

#### **Statutory and Policy Implications**

22. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

#### **Financial Implications**

23. Introduction of these charges will require some re-design of processes to incorporate the charge amounts, which will be done within Adult Care Financial Services (ACFS). The charges, if introduced, will cover the costs of the re-design and the subsequent costs of administering the DPAs. A Brokerage charge will cover the costs of frontline workers undertaking this task for self-funders.

#### **Human Resources Implications**

24. As a result of resource modelling, ACFS was awarded an additional 6.5 fte posts with one of these, a Finance Assistant at Scale 4 (£18,376 - £20,840), to work on DPAs. Other posts were in view of other demands on ACFS such as the increase in work from referrals for self-funders, and these posts will be involved in new systems to charge for Brokerage.

## **Public Sector Equality Duty implications**

25. Equalities information showed that most respondents consider themselves to be unlikely to ever access the DPS, with 86.88% above the age of 46, and 40.94% over 65 years. There was a roughly equal number of male / female respondents, with 75.63% not having any long term health problem or disability. Respondents were mostly white (95.5%), heterosexual (96.52%) and either Christian (55.97%) or of no religion (40.96%).
26. An EIA has been undertaken and is available as a background paper. Decision makers must give due regard to the implications for protected groups when considering this report.

## **Implications for Service Users**

27. All charges for new DPAs will accrue against the value of the property, and so in spite of increasing their overall debt to NCC will not deplete the service user's savings or income. The Brokerage charge will involve an extra £100 payment for service users who have in excess of £23,250 in savings or investments.

## **RECOMMENDATION/S**

That the Committee:

- 1) notes the views expressed in the public consultation on the introduction of charges for Deferred Payment Agreements (DPAs) and the introduction of charges for brokerage of community based support for self-funders.
- 2). approves the proposed charges for Deferred Payment Agreements and brokerage of community based support for self-funders as detailed in paragraph 18.
- 3). notes the summary of the Council's response to the Department of Health's consultation on the Care Act 2014 on the way care and support is funded and the proposed appeals system.

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## **Constitutional Comments (CEH 14/04/15)**

28. The recommendations are within the remit of the Adult Social Care and Health Committee by virtue of its terms of reference.

### **Financial Comments (KAS 14/04/15)**

29. The financial implications are contained within paragraph 23 of the report.

### **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Charging provisions of the Care Act - report to Adult Social Care and Health Committee on 5 January 2015

Deferred Payment Scheme - report to Adult Social Care and Health Committee on 5 January 2015

Submission to the Department of Health on 2016/17 Care Act reforms

Equality Impact Assessment

### **Electoral Division(s) and Member(s) Affected**

All.