

13 July 2015**Agenda Item: 12****REPORT OF THE SERVICE DIRECTOR, CHILDREN'S SOCIAL CARE****POLICY AND PROCESS GUIDANCE FOR DISCRETIONARY PAYMENTS
TOWARDS THE PROVISION OF MAJOR ADAPTATIONS TO SERVICE
USERS' HOMES****Purpose of the Report**

1. This report invites the Committee to comment on the proposed policy and process guidance document, attached as **Appendix 1**, which aims to support and manage discretionary payments towards the cost of major adaptations in a service users own home, where recommended adaptation works exceed the government's mandatory Disabled Facilities Grant (DFG) of £30,000. This will support the department in addressing its legal duties whilst ensuring resources are used fairly and equitably and targeted at those who are in most need. For the purpose of this report it should be noted the Housing Authority (HA) refers to the District Council, whilst Social Care will be the County Council (CC).
2. The Committee is also asked to recommend the proposed policy and process guidance document to Policy Committee for approval at its meeting on 9 September 2015.

Information and Advice

3. Many disabled children require adaptations to their homes to make them safe and reasonably accessible. Appropriate housing for a child with a disability is a fundamental foundation for the ongoing delivery of any essential care in a safe and dignified environment, supporting family life and a child's health and emotional well-being.
4. The main route for families with disabled children to secure adaptations to make their home accessible and safe to support appropriate and necessary care is through a DFG.
5. A DFG is a statutory grant that is awarded under Part 1 of the Housing Grants, Construction and Regeneration Act (HGCRA) 1996 and is administered by the Housing Authority. The current maximum grant that can be awarded towards an adaptation is currently £30,000. Where the adaptation is for a child with a disability no financial assessment is applied.
6. Children can be eligible for a DFG if they meet the definition of 'disabled' in s100 (1) of the HGCRA 1996 or they are a disabled child under part III of the Children's Act 1989.

7. The Housing Authority (HA) need to be satisfied that a DFG recommendation and application is '*necessary and appropriate*' to meet the needs of a disabled child and '*reasonable and practicable*' to carry out works with regard to the age and condition of the property.
8. The HA is not obliged to approve a DFG if they do not believe recommended works to be 'necessary or appropriate' or 'reasonable or practicable'
9. Under the Chronically Sick and Disabled Persons Act (CSDPA) 1970 s3, the HA are obliged to give specific regard to the needs of a disabled child when meeting their responsibilities with regards housing requirements. This duty is further exemplified in 'good practice' 2006. In order to address such duties and to understand if DFG works are '*necessary and appropriate*' the HA is required to consult with the relevant County Council's Children's Occupational Therapy Services.
10. The Council's OT service is required to assess a disabled child and their family's needs to understand if they are eligible for a DFG, and what adaptations are thought to be 'necessary and appropriate'. This decision must be made on 'assessed needs' and not families wishes.
11. If a disabled child has 'assessed needs' for adaptations that exceed the mandatory DFG of £30,000, the remainder should be met by both the HA and the Council by the exercising of discretionary powers under legislation. For the HA this discretionary power is underpinned by the Regulatory Reform Order 2002 and CDSPA. The Council is pursuant to this duty under the CSDPA (1970) and Children's Act (CA).
12. It is unlawful to refuse to make provision of adaptations that have been assessed as necessary solely by reason of cost.
13. Currently, if a recommended adaptation exceeds the mandatory DFG of £30,000 Nottinghamshire County Council offers a non-financially assessed Discretionary Top up Payment, up to a maximum of £10,000. Any Top up Payment over and above the maximum £10,000 is then considered following families evidencing that they are not in a financial position to contribute towards the cost of any works. Families are required to evidence their inability to contribute in one of two ways: (1) provision of two letters from financial establishments confirming the inability to secure a loan, or (2) Nottinghamshire County Council completing a financial assessment to determine if a family has any disposable income.
14. This process is a historical process, originally developed when OT posts were located in the structure of the Adult Social Care and Health (ASCH) department, and was introduced and amended when OTs were transferred to Children's Services in 2008.
15. Due to increased demands on the OT service and the Top Up Budget, it is felt that the current process requires formal approval to amend and update to ensure resources are targeted at those most in need.
16. The CSDPA (1970) places a duty on the Council to support families with a disabled child to ensure assessed housing needs are met, if a child is deemed eligible. Although a duty,

the act does allow the Council to execute discretionary powers, allowing support to be offered in any form, such as a loan, or an outright payment.

17. Any discretionary support does not affect a child or their family's entitlement to a mandatory DFG.
18. Any policy supporting discretionary support to fund adaptations should be implemented equitably, with each individual case being considered on its individual merits.
19. The current discretionary process does not support the Council in offering support in a rational and reasonable manner. The offering of an outright non-financially assessed payment of £10,000 to all families without consideration of a family's ability to contribute financially does not support the need to ensure resources are used fairly and equitably and targeted at those who are in most need.

Other Options Considered

20. The option to implement a financial assessment to all cases where recommended works exceed the mandatory DFG of £30,000 to assess a family's ability to make a financial contribution towards works exceeding the DFG ceiling .
21. The option of a fixed term 'interest free loan' to be offered to those families who are assessed as having disposable income.
22. Interest free loans to be offered with the option of a 'loan break', should a family's financial circumstances alter during the repayment term, for instance if a parent should lose employment status.
23. The option to place a 'charge' on the property on a sliding scale over a fixed period, for those families who are assessed as having no disposable income. This will offer the opportunity to recoup funds should a family choose to sell their property and move.

Reason/s for Recommendation/s

24. The Council's Children's Services retains a responsibility and legal duty to ensure that the housing needs of disabled children are met. This duty is detailed in the Children's Act 2004 s10 and the Housing Act 1996 s213. Furthermore the Council is obliged under the Chronically Sick and Disabled Persons Act 1970 (CSDPA) to assist and have regard to the needs of disabled children.
25. As detailed in **paragraph 16**, the CSDPA (1970) provides the Council with the opportunity to execute discretionary powers to support families in the provision of adaptations, where mandatory funding is exceeded.
26. The implementation of a policy that assesses a family's ability to contribute to works over and above the mandatory DFG ceiling, offers the opportunity for the Council to undertake its legal duties under the CSDPA (1970), whilst ensuring resources are targeted at those most in need. Furthermore the options suggested provide a cost neutral process for the Council, as parents would be required to re-pay the loan over a period of time.

27. The average cost of a Top up Payment is approximately £10,000 per case. In some instances this has been higher, with two recent cases requiring Top up Payments of £28,000 and £19,000.
28. Adult Social Care, Health & Public Protection department's OT services are progressing a formal process for managing Top up Payments for adaptations that exceed the DFG mandatory grant of £30,000. It is understood they are investigating a process where service users will need to evidence an inability to contribute towards the cost of an adaptation.
29. Taking account of **paragraph 28** the proposed attached policy document would support transition from Children's services into Adults services, by promoting a similar process.

Statutory and Policy Implications

30. 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

31. The budget for Top up Payments currently stands at £89,609. Due to the nature of the adaptations and the DFG process it is often difficult to forecast an over or under-spend on this budget, due to the adaptation process often crossing two financial years.
32. There may be administrative costs associated with the introduction of a formalised financial assessment and loan system. It is considered that the business support officers supporting the OT Service could absorb works around the financial assessment. This would require regular review, to ensure capacity remains viable.
33. It is not possible to quantify the number of families who may qualify for an interest free loan, as no previous data is available.

Human Rights Implications

34. A child's right to family life is enhanced when appropriate adaptations are provided.

Implications for Service Users

35. There should be minimal implications for service users and their families, as only those who are assessed as having a 'disposable income' would be required to contribute to the cost of works. The introduction of any such policy would need to ensure that Top up Payments previously approved on the current arrangements were honoured.

Public Sector Equality Duty implications

36. An Equality Impact assessment (EqIA) has been completed and shared with the Equality Officer and it is concluded that the proposed policy will have no negative affect on those with protected characteristics.

RECOMMENDATION/S

That the Committee:

- 1) comments on the proposed policy and process guidance document, attached as **Appendix 1**, to support and manage discretionary payments towards the cost of major adaptations in a service users own home, where recommended adaptation works exceed the government's mandatory Disabled Facilities Grant (DFG) of £30,000.
- 2) recommends the proposed policy and process guidance document to Policy Committee for approval at its meeting on 9 September 2015.

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Constitutional Comments (LM 23/06/15)

37. The Children and Young People's Committee has delegated authority within the Constitution to approve the recommendations in the report.

Financial Comments (SS 02/07/15)

38. The financial implications of this report are set out in paragraphs 31-33 above.

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.

Equality Impact Assessment.

Electoral Division(s) and Member(s) Affected

All.
C0601