Nottinghamshire County Council

Adult Social Care & Health Committee

5 January 2015

Agenda Item: 5

REPORT OF THE SERVICE DIRECTOR FOR ACCESS AND PUBLIC PROTECTION

CHARGING PROVISIONS OF THE CARE ACT

Purpose of the Report

1. To identify, consider and set out options related to charging provisions within the Care Act, to be implemented in April 2015, and to seek permission to consult on those which are recommended for the authority to introduce.

Information and Advice

2. The Care Act brings about unprecedented changes to adult social care from 2015, including putting carers on an equal footing with service users, new duties relating to prisoners and the introduction of a universal deferred payments system. From 2016 the reforms go even further, introducing a cap of £72,000 on the cost of care in a person’s lifetime and raising the asset threshold for support with residential care from £23,250 to £118,000.

3. This paper sets out provisions relating to charging within the Care Act, considers their application in Nottinghamshire, and sets out options for ASCH Committee.

4. The resulting proposals would be subject to robust consultation with service users, carers, families, and stakeholder organisations.

Universal Deferred Payments

5. Sections 34-36 of the Care Act cover the new Universal Deferred Payment Scheme. Nottinghamshire County Council has been offering deferred payments to home owners who enter permanent residential or nursing care since the scheme was first introduced in 2001. The new scheme allows local authorities to charge interest on the amount that is deferred and to charge an administration fee.

6. Service users who have already entered into a Deferred Payment under the existing scheme would not transfer over to any new scheme as they have already signed up to the current terms and conditions.

7. The maximum interest rate is laid down nationally, and has been set at 0.15% above the weighted average interest rate on conventional gilts (which based on the December 2014 Economic and Fiscal Outlook Report would give 2.65%). The Department of Health have confirmed that compound interest will be applicable and that interest should be compounded at the same frequency that the local authority pays its care home providers.

8. The draft guidance states that the scheme should be run on a cost-neutral basis and along with the interest charges, local authorities can recoup administrative costs associated with the scheme. Local authorities are advised that they must set any charge at a reasonable level and that the charge must reflect the actual costs incurred.

9. The guidance provides details of what the costs incurred may include, such as

   - registering a legal charge with the Land Registry
   - postage, printing and telecommunications
   - employment costs of staff involved
   - valuation and revaluation of property
   - overheads.

10. Local authorities are required to maintain a publicly-available list of administrative charges separated into a fixed set-up fee and other reasonable one-time fees that may be incurred during the course of the agreement.

11. A proposed fee and breakdown is shown at Appendix A. It should be noted that a valuation fee has not been included. It is proposed that ACFS use websites such as Zoopla and Rightmove to secure a valuation. If the home owner disputes the figure for any reason then they will be able to seek a current market valuation free of charge using an estate agent.

12. A number of local authorities, including Rutland, Leicestershire, Hertfordshire, Oldham, Dorset and Lincolnshire, already make a charge to service users who enter into a deferred payment arrangement. Oxfordshire obtained counsel's opinion which confirmed that local authorities were legally entitled to charge a reasonable fee for administering Deferred Payments and there have been no challenges to the charge via the Local Government Ombudsman. Numerous other councils such as Derby City, Hull, Middlesbrough and Liverpool are considering introducing a charge as part of their Care Act implementation programme.

13. It is also possible to charge an annual fee to cover the ongoing costs of operating the scheme. This would cover costs associated with review of charges payable due to increase in benefits and fees payable to the home, changes in the interest rate and producing statements. A flat rate fee of £25 would be estimated to cover these costs.

14. The demand for Deferred Payments is very difficult to predict. The Department of Health has estimated that 20% of current residential self-funders would opt for a Deferred Payment. In Nottinghamshire there are an estimated 3,000 residential self-funders, so it is expected that 550 additional self-funders would request a Deferred Payment in addition to the 50 service users that are already on the scheme.

15. Based on the Department of Health's estimate, in point 14, if interest rates remained at the current level, the Council would be able to recover £110k in interest charges for 2015-16 (which is predicted to increase to £780k by 2020, with the amount being loaned by the Council on the scheme rising to £30 million). If the Council were to borrow this much from the Public Works Loans Board, the interest it would pay would be in the region of £120k in

2015-16 (rising to £870k by 2020), meaning a pressure on the 2015/16 budget of £10k (as opposed to pressure of the full £120k if no interest charges were levied by the Council). In summary the cost of running the scheme will be greater than the amount that can be recouped through interest charges, even if the maximum rate specified by the Department of Health is used.

16. The impact of charging interest and administrative fees could potentially reduce the demand for Deferred Payments, but it is unknown by how much. For illustration, if demand were to reduce from 20% of self-funders to a lower number, the following table shows the revised impact according to the financial modelling:

% self-funders borrowing	20%	17.5%	15%
Increase in DPAs by 2020	385	309	233
Extra cash for NCC to borrow in 2015/16	4M	3M	3M
Cash loaned by NCC in 2015/16	7M	6M	6M
Extra interest payable in 2015/16	**0.12M**	**0.11M**	**0.09M**
Extra interest receivable in 2015/16	**0.11M**	**0.09M**	**0.08M**
Extra cash for NCC to borrow in 2019/20	26M	22M	19M
Cash loaned by NCC in 2019/20	29M	26M	22M
Extra interest payable in 2019/20	**0.9M**	**0.7M**	**0.6M**
Extra interest receivable in 2019/20	**0.8M**	**0.7M**	**0.6M**

17. It is also permitted within the Care Act to charge a lower interest rate than the nationally set rate. The following table shows the projected impact on the Council of applying different interest rates, assuming 20% uptake among self-funders and a nationally set rate of 2.65%:

Interest rate charged	*2.65%*	*2.15%*	*1%*	*0%*
Interest paid by NCC in 2015/16	0.12M	0.12M	0.12M	0.12M
Interest received by NCC in 2015/16	0.11M	0.07M	0.04M	-
Net cost of borrowing in 2015/16	**0.01M**	**0.05M**	**0.08M**	**0.12M**

Charging to arrange support

18. The Care Act enables self-funders with eligible needs to ask a local authority to arrange their care. The local authority can either opt to enter into a contract with the care provider, thereby allowing the service user to access authority provider rates, or broker the contract on behalf of the person. The Care Act permits local authorities to charge a ‘brokerage fee’ for putting in place the necessary arrangements. This could either be a flat rate fee based

on an average cost to arrange a service, or a variable fee based on the actual work involved, but should not include any profit.

19. The Department of Health is deferring the decision to allow this charge for residential care home placements until April 2016. This is to allow for more detailed analysis to be undertaken on the likely impact to care home providers market. Regulations permitting Local Authorities to make a charge for arranging care for self-funders who live in the community are still expected to come into force from April 2015.

20. Current estimates suggest that the Council will need to assess approximately 1,500 community self-funders in 2015/16 and 3,500 in 2016/17. It is difficult to predict how many of these would approach the Council to arrange their support. The table below illustrates some different outcomes dependent on different rates of uptake, assuming a flat fee of £100 were introduced to arrange non-residential care and support in 2015/16:

% self-funders requesting brokerage	10%	12.5%	15%	17.5%	20%
Packages arranged	150	187	225	262	300
£ revenue	£ 15K	£ 19K	£ 23K	£ 26K	£ 30K

21. It is therefore recommended that a flat rate fee of £100 be introduced to arrange care and support for self-funders who will receive services in a non-residential setting and to consult with the public, stakeholders and partners on this issue.

Charging for support to carers

22. Where a carer has eligible support needs of their own, the Care Act confers onto the local authority a duty, or in some cases a power, to arrange support to meet their needs. Under the Act, this may now take the form of services in the carers' own right as well as the existing carer personal budget.

23. When it meets a carer's support needs, the local authority has the power to charge the carer. However, the Act makes very clear that local authorities are not required to do so, and that this decision should be carefully considered (especially in light of the impact on carers' willingness and ability to continue caring).

24. It is difficult to predict the number of carers that will approach the council for an assessment and what proportion would then be determined to have eligible needs requiring support. Further, it is very difficult to predict what impact charging will have on carers' willingness and ability to continue caring. Therefore, ascertaining both the potential income and the potential extra costs associated with this charging option over such a wide matrix of unknown parameters is not feasible.

25. A number of local authorities have decided to delay making a decision on whether or not to charge until further analysis on demand for services and attempts made to predict the likely behaviour of carers has been undertaken. It is recommended that the Council not introduce a charge for carer services on 1 April 2015, but that the Council analyse the changes in demand during 2015/16 and revisit the decision on charging in time for 1 April 2016.

Other Options Considered

26. Other options that have been considered are:
    - not to charge interest on Deferred Payment Agreements.
    - to charge an interest rate on Deferred Payment Agreements that is lower than the national rate.
    - not to charge an administration fee for setting up a Deferred Payment Agreement.
    - to charge a regular, ongoing (e.g. annual) administration fee for Deferred Payment Agreements.
    - not to charge self-funders for arranging care and support.
    - to introduce a range of rates for arranging care and support, depending on the complexity of the arrangement process.
    - to consult on the introduction of a flat rate charge with the offer of a full financial assessment if requested.

Reason/s for Recommendation

27. Statutory guidance states that the Deferred Payment Scheme is intended to be run on a cost-neutral basis to local authorities. Charging interest and administration charges at the statutory levels will minimise the budgetary cost to the Council, in line with this aim. However, the size of the anticipated annual charge is sufficiently small that it is not believed to be cost effective to raise and so is not recommended.

28. Charging a flat rate fee for arranging care and support will help to minimise the budgetary cost to the Council, while being simpler and more cost-effective to administer than collecting data for each service user who asks for this service. As well as minimising the end cost to the service user, this will also allow them more certainty over what they will need to pay.

29. Postponing a decision on whether or not to introduce a charge for a period of 12 months will allow the Council to collect data and carry out a detailed analysis of carer data to inform the decision making process.

Statutory and Policy Implications

37. 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.

Implications for Service Users

38. If charges are introduced, service users who enter into a Deferred Payment Agreement under the new scheme from April 2015 will be liable for charges that are not payable by service users on the current scheme.

RECOMMENDATION/S

1) It is recommended that Committee:

   - authorises consultation on the introduction of an administration fee and interest charges for the new Universal Deferred Payment Scheme
   - authorises consultation on the introduction of a flat rate fee for arranging community based support for self-funders
   - delays the decision on charging for carers' services for a period of 12 months.

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Constitutional Comments (KK 18/12/14)

39. The proposals in this report are within the remit of the Adult Social Care and Health Committee.

Financial Comments (KAS 20/12/14)

40. The financial implications are contained within 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.

- ASCH Committee Report – Universal Deferred Payment Scheme.

Electoral Division(s) and Member(s) Affected

- 'All'.

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