

NOTICE OF INDIVIDUAL EXECUTIVE MEMBER DECISION

ITEM NO.	IMD 2015 12
TITLE	Response to the national consultation on April 2016 Care Act reforms
DECISION TO BE MADE BY	Councillor Julian McGhee-Sumner, Executive Member for Health and Wellbeing
DATE AND TIME OF DECISION	Friday 27 March 2015 at 4.30pm
VENUE	Committee Room 2
REPORT TO BE PUBLISHED ON	Thursday 19 March 2015

**INDIVIDUAL EXECUTIVE MEMBER DECISION
REFERENCE IMD 2015 12**

TITLE	Response to the national consultation on April 2016 Care Act reforms
FOR CONSIDERATION BY	Executive Member for Health and Wellbeing
ON	Friday 27 March 2015
TIME	4.30pm
WARD	None Specific
DIRECTOR	Stuart Rowbotham, Director of Health and Wellbeing

OUTCOME / BENEFITS TO THE COMMUNITY

The Care Act is introducing a number of social care reforms which will have a significant impact on the lives of people with long term conditions, disabilities, elderly people as well as carers. Most of the reforms such as new eligibility criteria for social care and new rights to care and support will be implemented from April 2015 and the cap on care costs and extended means testing will be introduced in April 2016.

RECOMMENDATION

It is recommended that the report setting out Wokingham Borough Council's response to the draft Care Act April 2016 guidance and regulations be approved.

SUMMARY OF REPORT

The report provides comments on the draft guidance and regulations on the April 2016 Care Act reforms relating to the cap on care costs, care accounts, extended means testing and the new appeals system. The report will be submitted as the Wokingham Borough Council's formal response to the national consultation.

Background

We welcome the general principles of a fairer system of adult social care based on limiting the cost of payments adults with disabilities or long term conditions will make in their lifetime. However, we are concerned that the proposed system does not eliminate inequality inherent in the current system relating to contributions towards cost of care. Furthermore, some of the proposed reforms may lead to a destabilisation of the provider market if self-funders are entitled to services at the same cost as customers supported by the council. There is also a real risk of creating a system where decisions made by a local authority with regards to care and support are open to legal challenge.

In addition, we have serious concerns about the April 2016 reforms being fully funded due to the significant funding gap of several million pounds for this council for the April 2015 implementation.

Cap on care costs

1. Do you agree that the draft regulations and guidance will provide a robust framework that will protect the 1 in 8 of us that will face catastrophic care costs? Please state yes or no along with any rationale.

We agree that the cap on care costs will benefit people who pay for non-residential care and support. However, people in residential care are likely to have spent in excess of the cap by virtue of paying for their daily living costs and possibly, a top up.

The draft guidance does not make it sufficiently clear that reaching the cap of £72,000 is not a straightforward case of registering costs of care and this may lead to false expectations from customers, especially those who fund their own care. We think that the public perception of the care cap based on understanding of the different care costs is crucial to the successful implementation of the April 2016 reforms.

First of all, there is the issue of what local authority would consider as reasonable costs of care. Inevitably, they would be based on the rates the local authority is able to obtain as the major commissioner of care and support services. People purchasing their own care may not be able to get the same rates and should be made aware of the implication of this on their care account.

Reaching the cap in residential care involves further complications. Due to the variations in cost of what the local authority would pay and what the self-funder would pay (excluding "top-ups"), after the cost of living is excluded (£12,000 per year), a self-funder will spend in excess of £72,000 for their care before they reach the cap.

Furthermore, even though capital thresholds are increased and therefore more people will be entitled to free or subsidised care, anyone in residential care with assets between £17,000 and £118,000 will face tariff income of £1 for every £250 which will limit contributions from the local authority.

There is a need for clear public information regarding what costs are taken into account for the cap and how they are calculated to avoid unnecessary disappointment and complaints.

Measuring what counts towards the cap

2. Do you agree that independent personal budgets should generally be set according to an average of personal budgets allocated to people with similar levels of need? Please state yes or no along with any rationale.

The calculation of an average, however formulated, will lead to challenge and potentially to a significant administrative burden on the council to prove the fairness and approach used to calculate the average.

Without undertaking an assessment and thereby calculating the Independent Personal Budget (IPB) according to the council's formula (usually the Resource Allocation System) it's difficult to see how any form of average can be applied.

This becomes even more challenging should the assessment indicate residential care and the cost the council would pay to meet the assessed needs. It is difficult to see how the council can avoid tending towards a 'usual rate' (para 4.19) when calculating the IPB as the cost of a placement can depend on availability at the time, especially in a small borough with high private demand. For example, a council may have to arrange enhanced support at home for a short period whilst a suitable and affordable bed becomes available. In the case of a self-funder, enhanced support at home is less likely to be an issue and, should there be a shortage of suitable beds at the time, the council may be obliged to set the IPB much higher because the self-funder is already in situ. In these circumstances the scenario outlined in 4.17 becomes more likely.

3. Is the guidance sufficiently clear as to the principles for calculating independent personal budgets? Please state yes or no along with any rationale.

We agree that the guidance is clear with regards to calculating the independent personal budgets, but the application of principles of calculating IPBs will present a challenge.

The average of a personal budget (PB) for someone of working age is approx. £14k per annum which means they will reach the £72k cap in just over 5 years. Thereafter the council will pick up costs irrespective of whether they had/continue to have the means to contribute. Depending on personal finances they could have contributed very little of their own wealth towards the cap and should they subsequently need a residential placement and their home is part of their assets for financial assessment purposes then, the (almost) full cost would fall on the council.

The average of a PB for someone of pensionable age is approx. £8.5k per annum which means they will reach the cap in 8.5 years. The same scenario for working age adults (above) will then apply to an older person where it is more likely that the home would be an assessable asset.

Should someone enter residential care without previous intervention and their home is part of the financial assessment, then they are likely to spend more than the £72k in total before reaching the cap.

The contradiction between non-residential and residential care may result in more

people coming forward for an assessment whilst living at home in order to mitigate their exposure to the cost of residential care in the future. There is a risk of people with complex needs who can be better supported in a residential setting staying in their own home so they can reach the cap before moving into residential care.

There is also a risk of self-funders whose needs are currently met by informal carers not declaring this support or purchasing replacement care to reach the cap faster. We also think that the guidance should make it clear that the cost of arranging and managing services on behalf of self-funders would not count towards the cap on care costs and would not be included in the care accounts.

There appears to be an inconsistency between the operation of the care account and the upper limit. Clause 12.22 requires the council to be proactive once the individual is within 18 months of the £72k cap; this requires the council to set out the steps for transition including what action, if any, they need to take. However there is no requirement for the same when an individual is approaching the £118k upper limit although the outcome is similar in that the local authority will then start to contribute towards the cost of the placement. The guidance should be clear and consistent in this respect.

Cap on care costs for working age adults

6. Do you agree that the preferred option best meets the principles and priorities identified? Please state yes or no along with any rationale.

We consider 25 to be an appropriate age for the zero cap. The cap should apply for life regardless of subsequent changes in financial circumstances with the exception of a substantial compensation packages due to life-changing accidents.

7. What are your views on how people of working age can be supported further to enable them to save and plan?

A savings scheme that could be disregarded for financial assessment purposes is to be encouraged. If the objective is to encourage and support working age adults to save, then it must be by reference to a recognised regular savings scheme by a registered financial institution. Any regulations would though need to set out whether and in what circumstances, single lump sums are allowable.

We think that the central government has an important role to play in working with registered financial institutions to develop savings and insurance schemes.

Daily living costs

8. Is there evidence to support further consideration of the level and/or approach to daily living costs? Please state yes or no along with any rationale and provide any evidence you may have to support the rationale.

Although the national, notional daily living cost of £230 per week would eliminate disputes over what living costs are taken into account and how they should be calculated, there should be regional rates. The proposed system is heavily weighted in

favour of people who live in higher cost areas as they will reach the cap much faster than those who live in areas where the cost of living is lower.

In Wokingham Borough where the cost of living is high, this will mean that self-funders will be approaching the cap faster and this will put an additional strain on our limited resources.

Moreover, on one hand each local authority is expected to calculate average cost of care in the area to ensure that local market variations are taken into account and on the other hand, a universal flat rate for living costs is imposed.

First party top-up payments

9. Do you agree that the extension of the existing requirements for third party top-ups to cover first party top-ups will provide both the local authority and the person with the necessary clarity and protection? Please state yes or no along with any rationale.

We agree that the extension of the “third party top-up arrangements” to “first party top-up” arrangements will create a fairer and more straightforward system.

However, we think that it would be helpful to clarify what the top ups cannot be used for. In addition, the guidance states that people who are willing and able to pay “top-ups” will be able to do so. We feel that this definition is very vague and open to misinterpretation. We also suggest calling “first party top ups” and “third party top ups” “top ups” to avoid confusion.

Extension to means-tested support

10. Do you agree that the guidance is clear on how the extensions to the means test will work and that the draft regulations achieve their intended purpose? Please state yes or no along with any rationale.

We think that the guidance gives very clear examples of how the extended means test will work. However, public information will have to be more explicit and it would be helpful if this was developed nationally.

Destabilisation of the support services market

Regardless of whether the self-funders can ask the local authority to arrange residential care services at the local authority’s “usual” rate or not, once the self-funders reach the cap on care costs, they will automatically be entitled to services at the local authority’s usual rates. This means that care home providers will find the self-funders’ market rapidly shrinking. This has two implications. Firstly, the higher fees paid by the self-funders are sometimes used to subsidise customers who are funded by the local authority. This, in turn, is likely to lead to the increase of local authority’s costs. Secondly, the diminishing profit from self-funders will potentially lead to the shrinking of the care providers market.

Lifting of restrictions on top-up fees will not help as they will be used to top-up local authority’s rates rather than self-funders’ rates.

Due to the high number of self-funders in Wokingham Borough, we are expecting a significant impact on us in relation to self-funders being entitled to receive services at the council's rates.

Appeals system

11. Do you think there is a need to introduce a new appeals system to allow people to challenge care and support decisions? Please state yes or no along with any rationale.

The proposed appeals system is supposed to run in parallel to the local authority's complaints system. Firstly, the guidance does not make it clear how the decision which system to follow should be made. Secondly, it is not clear why another system is being implemented alongside the existing complaints procedure. It would be more prudent to modify the existing system rather than create another layer of administration at an additional cost.

We suggest refining the existing complaints process to make sure that it is fit for purpose for all types of expressions of dissatisfaction, not just a specific list (as referred to in questions 13 and 14).

We also think that it would be helpful if the guidance included information on managing unreasonable and persistent complainant behaviour.

Although the guidance states that the administration costs of the appeals system will be covered by central government, it is not clear which costs are included – is it the cost of Independent Reviewers or all costs including administration and cost of releasing the local authority's managers to review complaints as part of phase 1? There is a real risk that local authorities will be expected to cover some of these "hidden costs". We would like to ask for impact analysis of the proposed changes, including increased administration and management.

12. Do you think that the appeals reforms are a priority for reforming care and support redress?

We do not think that a new appeals system will help with implementation of the care and support reforms. The focus should be on making it easy for the customer to raise an issue or concern with the local authority, rather than redesigning a process that is already (in most part) fit for purpose. If the complaints process is robust and focuses on early resolution at its core, then there is no need to create another system.

15. Do you have suggestions as to the expertise, knowledge and person specification for the role of an independent reviewer?

Although we don't support the idea of the appeals system in addition to the existing complaints system, we think that there is a role within the existing complaints system for an independent reviewer (prior to the Ombudsman), but this would have to be cost neutral to the local authority.

We agree with the points made in the consultation document regarding Independent Reviewers. We also suggest referring to the guidance on independent investigators within the statutory children's social care complaints process.

16. Do you think the local authority or another body should be appointing the independent reviewer?

As we already offer this service as part of our children's social care complaints process, we should also offer the same for adult social care complaints.

17. Do you think a 3 year gap in the IR employment from the local authority concerned is sufficient to provide independence, or should this period be longer, or should they never have been previously employed by the local authority?

3 years is adequate. This also falls in line with the guidance around independent investigators within children's social care.

19. How do you think we can promote consistency in decision making for care and support appeals?

We think that there is a lot of scope for sharing information about types of complaints / issues raised and sharing good practice between local authorities on a regional and national level, for example via a secure information portal.

20. Do you think the timescales proposed to process appeals are right?

The proposed timescales are in line with our own complaints processes.

Impact of the proposed reforms

The proposed changes will have a significant impact on the local authorities in terms of human resources and finances. First of all, from October 2015, all self-funders will be able to ask the local authority for an assessment and if they have eligible needs, from April 2016, their care accounts will be activated. Due to the cap on care costs, it is likely that most, if not all, self-funders will ask for an assessment of needs.

Secondly, there is the cost of setting up and running care accounts, administration of Independent Personal Budgets, not to mention the cost of the proposed appeals system (unless this is wholly funded by the government). Due to the zero cap for adults under 25 and the extended means test, more people will be eligible for free or subsidised care and support services. In addition, the guidance states that if someone starts receiving local authority support and loses certain benefits, they are not supposed to be worse off which means that the local authority will also be responsible for meeting these costs.

We are not confident that the proposed care reforms will be adequately funded. In our view, changes in the eligibility criteria framework have a significant impact on Wokingham Borough Council, but this was not properly addressed by the government

and funding to cover this new burden falls short of our predicted need.

We need to have an absolute clarity with regards to the funding of the proposed changes. The demographic pressures (aging population), austerity measures (annual reduction in funding of public services) and pressures on the health system pose a real threat to the delivery of care and support services and unless the proposed reforms are fully funded in a transparent and evidence based way, the quality and safety of the local care and support services is at risk.

We are also concerned about the shortfall in the qualified workforce and we think that further work is needed to define essential skills and standards that have to be met by social care staff as well as development of the social care employment market.

In addition, there is a very tight timescale for the implementation of major changes which will have a significant impact on the local population. The final guidance and regulations on phase 2 are not expected to be published till October which is when we are also supposed to start assessing self-funders for the care accounts.

Conclusion

Although, undeniably, the proposed reforms will benefit a number of people with social care needs through capping spending on care and support services, we think that the success of these reforms depends on fair and adequate funding. We welcome clear and consistent information from the government regarding impact of proposed changes and how they will be paid for.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)			
Next Financial Year (Year 2)			
Following Financial Year (Year 3)			

Other financial information relevant to the Recommendation/Decision
N/A

Cross-Council Implications
N/A

SUMMARY OF CONSULTATION RESPONSES	
Director - Resources	N/A
Monitoring Officer	N/A

Leader of the Council	N/A
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Reasons for considering the report in Part 2
N/A

List of Background Papers
Care Act: http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted Care Act Guidance (April 2015 reforms): https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation Care Act Draft Guidance (April 2016 reforms): https://www.gov.uk/government/consultations/care-act-2014-cap-on-care-costs-and-appeals

Contact Marlena O'Donnell	Service Strategic Commissioning Division
Telephone No 0118 974 6773	Email Marlena.O'Donnell@wokingham.gov.uk
Date 17.03.15	Version No. 1