

# BRIDGEND COUNTY BOROUGH COUNCIL

## REPORT TO CABINET

15 MARCH 2016

### JOINT REPORT OF THE CORPORATE DIRECTOR OF SOCIAL SERVICES AND WELLBEING AND CORPORATE DIRECTOR – RESOURCES

#### FINANCIAL ASSESSMENT AND CHARGING FRAMEWORK UNDER THE SOCIAL SERVICES AND WELL-BEING (WALES) ACT 2014

#### 1. Purpose of Report.

- 1.1 To update Cabinet on the changes to the financial assessment framework introduced by the new Social Services and Well-being (Wales) Act 2014 for residential and non-residential services and seek approval to undertake a formal consultation exercise to inform a new Charging Policy.

#### 2. Connection to Corporate Improvement Objectives/Other Corporate Priorities

- 2.1 This report links to the following improvement priorities in the Corporate Plan:

- Working together to help vulnerable people to stay independent;
- Working together to make best use of our resources.

#### 3. Background.

- 3.1 The Corporate Director of Social Services and Wellbeing's Cabinet report of 15<sup>th</sup> March 2016 on The Social Services and Wellbeing (Wales) Act 2014 details the main background to the new Act.
- 3.2 The charging and financial assessment provisions are contained in Part 5 of the Act this allows local authorities to impose charges for providing or arranging a service where appropriate. The Act provides for regulations to create a framework for charges, including matters to be taken in account in determining a person's ability to pay; and a system for review of a local authority's determination in this respect.
- 3.3 The regulations in relation to Part 5 of the Act (Charging and Financial Assessment) were laid in November 2015 and these can be found at <http://www.ccwales.org.uk/regulations-and-codes/>.

#### 4. Current situation / proposal.

- 4.1 The Act provides for a single legal framework for charging for care and support, or in the case of a carer, charging for support. It provides a local authority with the discretion to charge in either case. It also provides authorities with the discretion to require payment of a contribution, or a reimbursement, towards the cost of securing care and support (or support to a carer) where a person receives direct payments to enable them to obtain this. Local authorities can exercise this discretion to charge, or to require a contribution or reimbursement where they feel it is appropriate to do so and where they have established that the person required to pay any charge,

contribution or reimbursement has sufficient financial means to do so. The framework entirely replaces the existing framework that is currently in use.

4.2 The Act brings together the duties and functions in relation to improving the well-being of people who need care and support, and carers who need support, into a single piece of legislation and a code of practice made under the Act (<http://www.ccwales.org.uk/codes-of-practice-and-statutory-guidance/>). The aim of the new framework is to provide a more streamlined and consistent system than is currently in place.

4.3 The main changes being introduced by the Act in relation to Charging and Financial Assessments are as follows:

- There will be a single financial assessment and charging framework for both non-residential and residential care, and for contributions or reimbursements for direct payments; this brings together the assessment rules for both residential and non-residential assessments;
- The Act specifies the information that must be provided to a person before they are financially assessed, with that person having 15 working days to provide any information or documentation that is required to complete the assessment;
- The local authority must allow up to 6 weeks free reablement to enable a person to maintain or regain their ability to live independently at home. This replaces the current 6 week's free homecare policy after a hospital stay and is not restricted to it being provided on a set number of occasions in any given period; it is provided on each occasion where a person requires reablement to maintain or regain their independence;
- The extension to residential care of the requirement to provide a person with a statement of their charge (as is currently required in charging for non-residential care);
- The extension to residential care of the requirement to operate the review process currently as required in charging for non-residential care;
- The ability of a local authority to charge a set level of interest on the amount deferred in a deferred payment agreement; the interest is calculated from the start of the deferred payment;
- Short-term residents in a care home, i.e. those whose stay is not expected to exceed 8 continuous weeks, are to be charged as if they were still receiving non-residential care at home. This means that short-term residents will pay a maximum of £60.00 per week (or a maximum of £60.00 for part week stays) for their respite stay. From the 9<sup>th</sup> week, their contribution can be assessed under the residential rules. Those whose stay is expected to exceed 8 weeks from the outset will be charged under the residential charging rules;
- The disregard applied to a War Disablement Pension in a financial assessment will increase from £10 to £25 per week from 6 April;

- The minimum income amount in residential care (known currently as the personal expenses allowance) is being increased by £1.00 to £26.50 per week from 6 April;
- A statement of a person's charge for residential care or non-residential care must be provided to them before the local authority can collect the charge. However, a person's liability for these commences on the day they first receive residential care, non-residential care or direct payments;
- When calculating a person's non-residential charge, the local authority must leave a weekly amount equivalent to any flat rate charges being paid in a person's minimum income amount. This is to ensure that the person is left sufficient funds to be able to pay for the flat rate charge;

4.4 There are major elements of the Authority's existing framework that remain unchanged under the new framework, these are as follows:

- The main categories of people, and the main categories of care and support, for which a charge cannot be levied are unchanged (e.g. those with Creutzfeldt-Jakob disease (CJD) and aftercare services provided under s117 of the Mental Health Act);
- The operation of the capital limit and its level (i.e. £24,000) remain unchanged;
- The operation of the minimum income amount (currently known as the buffer) and the disability related expenditure allowance in non-residential charging remain as now (notwithstanding flat rate charges);
- The present savings credit disregard in a residential financial assessment, and its level, remains unchanged and will be extended to non-residential financial assessments;
- The arrangements on a person's choice of accommodation, and the ability of an authority to charge an additional cost (referred to a top up at present) for more expensive accommodation chosen, are unchanged.

#### Deferred Payment Agreements

4.5 Deferred payment agreements are available to residents where they:

- Have had their care home place arranged by the Council;
- Own their home and the capital value of the property is taken into account in their financial assessment;
- Have savings below the £24,000 capital limit; and
- Are required to contribute towards the cost of their accommodation.

They are legal arrangements which currently allow the resident to defer part of their care payments until either the resident sells their main home, or until 56 days after the resident's death.

4.6 On 9<sup>th</sup> December 2014, Cabinet received a report outlining the current Deferred Payment Scheme and approved:

- A rate of interest at 4% above the Bank of England's base rate, capped at the County Court Judgment Rate (currently 8%), which is applied from day 57 after the resident's death;
- The introduction of legal and administration charges plus recouping Land Registry fees for the work undertaken in relation to deferred payment agreements.

4.7 The main changes in relation to deferred payments that are being introduced by the 2014 Act are as follows:

- Local authorities **must** offer a deferred payment agreement to people entering or in residential care who meet the eligibility criteria as defined in the regulations;
- Compound interest **may** be charged from the date that the person enters into a deferred payment agreement. The maximum interest that can be charged is 0.15% above the 'relevant rate', which is currently 2%, and accrues up to the point that the deferred payment debt is repaid.
- If for some reason the local authority cannot recover the amount it is owed in a deferred payment agreement, and seeks to pursue this through the courts, the local authority **may** charge the County Court rate of interest in that instance.
- Under the new Act, local authorities can still recover the administration costs associated with the agreements, including Land Registry fees, legal and ongoing operating costs.

4.8 If a resident wishes to apply for a deferred payment the resident or their representative will be required to sign a formal legal agreement. This will give more transparency and clarity and offer proper protection for both the Council and the resident. When the agreement is signed, the Council will place a legal charge under the new 2014 Act.

4.9 To ensure that new residents and their families are fully informed, a factsheet has been developed to explain how the Deferred Payments Scheme will work. This includes the suggestion that they seek independent legal and financial advice. The factsheet will be included in the information pack they receive before they move to residential care.

4.10 As a result of the Act, it is proposed that paragraph 5.9 of the Scheme of Delegations at Scheme B2 as a function allocated to the Corporate Director – Social Services and Wellbeing be amended accordingly with effect from 6<sup>th</sup> April 2016:

5.9	"To authorise and agree terms for, deferred payment agreements and legal charges under the Social Services and Well-being (Wales) Act 2014 and authorise the registering of the legal charges at the Land Registry on behalf of the Council".
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- 4.11 In line with the requirements of the Act, the Regulations and the Code of Practice, Authorities are required to decide which care and support, if any, they will make a charge, for the nature and level of any charges to be made and how these charges will be applied to particular care and support recipients. Within the framework, Authorities must also determine how their processes for undertaking the various stages of their charging procedure would operate and ensure that these are compliant with the Act.
- 4.12 The Code of Practice (Charging and Financial Assessment) states that where authorities design new policies, or significantly amend existing policies, they **must** consult those affected locally and take their views into account **before** deciding upon what policy, or what amendments to their policy, they should operate.
- 4.13 As local authorities were required to charge for residential accommodation under the National Assistance Act 1948, there was no requirement for councils to have a policy in relation to residential charging. Therefore in order to inform and create a new Charging Policy, it is necessary to undertake a formal consultation exercise. The non-residential charging policy that was agreed by Cabinet on 30 April 2013 will also be reviewed.
- 4.14 It is intended that the main areas for consultation will be the Act providing the Council with discretion to charge for:
- Residential care;
  - Short-term residential care after 8 weeks;
  - Interest on deferred payments and levying administration charges;
  - Preventative services and assistance;
  - Direct Payments

The non-residential charging policy that was agreed by Cabinet on 30 April 2013 will also be reviewed as part of the consultation exercise.

#### Transitional arrangements

- 4.15 The new financial assessment rules apply to those that have new care plans made under the Act. Existing cases will be transferred onto the new assessment arrangements during April 2016.

### **5. Effect upon Policy Framework & Procedure Rules.**

- 5.1 The Scheme of Delegation of Functions will require amending as set out at paragraph 4.10.

### **6. Equality Impact Assessment**

- 6.1 The Welsh Government has undertaken an Equality Impact Assessment on Financial Assessment and Charging under Parts 4 and 5 of the Social Services and Well-being (Wales) Act 2014; the declaration concludes that the policy does not have a significant impact upon equality issues.

6.2 The Council will undertake its own Equality Impact Assessment for the draft residential charging policy following the consultation exercise.

## **7. Financial Implications.**

7.1 The exact level of the potential loss of income is difficult to predict at present, the Authority is seeking clarification from Welsh Government on the mechanism that will be used to take this forward.

Areas of potential loss of income:-

- Short-term residents in a care home, i.e. those whose stay is not expected to exceed 8 continuous weeks, are to be charged as if they were still receiving non-residential care at home. This means that short-term residents will pay a maximum of £60.00 per week (or a maximum of £60.00 for part week stays) for their respite stay. From the 9<sup>th</sup> week, their contribution can be assessed under the residential rules. Those whose stay is expected to exceed 8 weeks from the outset will be charged under the residential charging rules;
- The disregard applied to a War Disablement Pension in a financial assessment will increase from £10 to £25 per week from 6 April;
- When calculating a person's non-residential charge, the local authority must leave a weekly amount equivalent to any flat rate charges being paid in a person's minimum income amount. This is to ensure that the person is left sufficient funds to be able to pay for the flat rate charge;

7.2 Any loss of income will be met from within existing Social Services and Wellbeing resources, which may put further pressure on the service.

## **8. Recommendation.**

It is recommended that Cabinet:

- Note the new financial assessment and charging framework under the Social Services and Well-being (Wales) Act 2014;
- Approve that a formal consultation exercise be undertaken in order to inform a Charging Policy as set out at paragraphs 4.11- 4.14;
- Note that a further report will be brought to Cabinet following the outcome of the consultation exercise;
- Approve amendment to the Scheme of Delegations in relation to Deferred Payment Agreements as set out in paragraph 4.10 of the report with effect from 6<sup>th</sup> April 2016.

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### **Background documents**

Welsh Government White Paper – Sustainable Social Services for Wales: A Framework for Action:

<http://www.wales.nhs.uk/sitesplus/documents/829/WAG%20-%20Sustainable%20Social%20Services%20for%20Wales%202011.pdf>

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

Part 5 – Charging and Financial Assessment:

<http://www.ccwales.org.uk/regulations-and-codes/>

Part 4 and 5 Code of Practice (Charging and Financial Assessment)

<http://www.ccwales.org.uk/codes-of-practice-and-statutory-guidance/>

Welsh Government's equality impact assessment on the Financial Assessment and Charging under Parts 4 and 5 of the Social Services and Well-being (Wales) Act 2014:

<http://gov.wales/docs/phhs/publications/151124eia5en.pdf>