

TRAFFORD COUNCIL

Report to: Executive
Date: 28 January 2019
Report for: Decision
Report of: Executive Member for Adult Social Care and Executive Member for Finance

Report Title

Adult Social Care (ASC) Charging and Debt Recovery Policies and Regulatory Reform Order (Disability Facilities Grants) – Proposed Changes following Consultation

Summary

On 17 September 2018, the Executive approved a public consultation exercise on changes relating to the Council's Adult Social Care Charging Policy, Debt Recovery Policy and Regulatory Reform Order (Disabled Facilities Grant).

This report details the outcome of the public consultation exercise, provides details regarding the potential opportunity to revise and combine the above existing policies and contains proposals to implement changes to the policies.

Recommendation(s)

That the Executive with effect from 1 April 2019:

- 1) approves the amalgamation of the Adult Social Care Charging Policy, the Debt Recovery policy and the Disabled Facilities Grant Policy to create a single policy;
- 2) approves the proposal to incorporate clear guidance regarding Disability Related Expenditure;
- 3) approves the amendments to the existing Disabled Facilities Grant Regulatory Reform Order, as detailed in the report; and
- 4) approves the introduction of legal charges to clients in respect of the administration of funding arrangements and associated legal documents as detailed in the report.

Contact person for access to background papers and further information:

Name: Louise Shaw & Deborah Gent
Extension: 3120 & 4776

Background Papers: None

Relationship to Corporate Priorities	Improving health and wellbeing of residents. Value for money and low Council Tax.
Financial	<p>The introduction of new charges will raise a small income which will be reinvested back in to the service to provide advice and support through the financial element of adult social care for residents and their families.</p> <p>From 2008/09 the scope of DFG funding widened to support any local authority to use DFG grant funding for wider purposes, including the increased top-up level limits, the moving assistance grants and administration costs associated with legal charges and recovery of debt. The DFG changes proposed in this report will be fully funded by the Disabled Facilities Grant.</p>
Legal Implications:	The proposed changes are fully compliant with the legislation and guidance.
Equality/Diversity Implications	An EIA has been developed and ran alongside the consultation process. There are no particular groups adversely affected by the changes based on the equalities data available.
Sustainability Implications	N/A
Resource Implications e.g. Staffing / ICT / Assets	None – will be within existing resources.
Risk Management Implications	None
Health & Wellbeing Implications	Clearer information, support and guidance and the reduction of accruing debt will have a positive effect on health and wellbeing as will an improved Disability Facilities Grant application process.
Health and Safety Implications	N/A

1.0 Introduction and Background

- 1.1 Unlike the NHS, adult social care is not automatically free for recipients and therefore each local authority is responsible for its own policy based on legislation and guidance. Self-funding clients – those who are not eligible for Council funding – can receive support and advice in relation to finding a placement, however they will generally be responsible for the relationship and financial obligations directly with the provider. Where the funding criteria is met, the Council pays the provider for the care package that has been put in place, financially assesses the client and then invoices them for their contribution.
- 1.2 The Council aims to support people to remain at home and to be as independent as possible for as long as possible. It is important to support people to maximise their income and ensure we prevent debt from developing. Adults with care support needs contribute to their care in line with the Care Act 2014.
- 1.3 Trafford's Adult Social Care (ASC) charging policy was amended in 2015 to reflect the changes within the Care Act 2014. A separate Debt Recovery policy was also devised around this time to ensure a consistent and transparent approach to debt recovery.
- 1.4 Trafford Council funds adaptations to domestic properties where residents have disabilities, and require an adaptation to their home to enable them to remain living as independently as possible in their communities, through Disabled Facilities Grants via a central government grant. In 2003, central government allowed each local authority to develop a Regulatory Reform Order (RRO) allowing local authorities to develop discretionary powers which Trafford duly did and updated in 2011 to increase individual grant limits.
- 1.5 The Council has undertaken an exercise which involved evaluating lessons learnt from complaints and identifying areas where process improvements could be made. This has led to the proposal for changes to the ASC, DR and RRO Policies as well as to create a combined policy.
- 1.6 A report went to the Executive on 17 September 2018 detailing the relevant parts of the policies that the Council would like to amend as well as an overview as to the way in which the current policies work, please refer to Appendix A as an aide memoire if required. Approval was received to consult with the public for 12 weeks which ended on 21 December 2018.
- 1.7 Through learning from customer feedback and identifying areas where process improvements could be made it has been identified that there is an opportunity to revise and combine the existing policies. This report details the outcome of the public consultation exercise, provides details regarding the potential opportunity to revise and combine the above existing policies and contains proposals to implement changes to the policies.

2.0 Public Consultation

2.1 It was important for the Council to ensure all current adult social care service users and/or their official representative, were not only aware of the consultation but also had the opportunity to have a face-to-face discussion with Council officers who would be available to answer any questions in relation to the proposal. The public consultation process, therefore, used a variety of engagement methods to ensure that clients and partner agencies were able to participate. These included:

- a letter was sent to all clients (approximately 3,000) to ensure they were aware of the consultation exercise being undertaken and how they could participate;
- An online questionnaire which could be found via the Council's consultation webpages (33 responses);
- This was mirrored with a paper document which was provided on request as well as being available at all events;
- There were 2 consultation workshops, 1 was held at Trafford Town Hall and 1 was held at Sale Waterside (20 attendees). All service users, or their official representative, were sent a personal invite to attend one of these events. They were also given a contact number and an email address to request a call back at a time suitable to them by one of the officers attending the events to answer any queries and concerns.
- In addition to a personal email linking to the consultation survey on the Council's website, there was also a dedicated adult social care providers and interested parties consultation event (17 attendees). Invites were sent to all providers and advisory services such as the Citizen's Advice Bureau, Age Concern, Carers Centre as well as the Council's Welfare Right's Service; this list is not exhaustive. This led to a follow up meeting at the Carers Centre where Officers attended and presented the proposals.
- A Members event was also held which in addition to the consultation proposals, was also a training event on an overview of how adult social care charges are calculated (6 attendees).

2.2 The consultation respondents were asked to complete a questionnaire to indicate their level of agreement with the proposal whilst still being able to suggest alternatives. The following paragraphs include general consultation responses against each proposal; a full version with percentage breakdown against each question or comments can be found at Appendix B.

3.0 Proposed Policy Changes and Consultation Feedback

3.1 Combine the Adult Social Care (ASC) Charging and Debt Recovery (DR) Policy and include the Regulatory Reform Order (RRO) policy.

3.1.1 The Council's DR policy is working largely as intended but as it is in a separate policy to the ASC Charging Policy. Clients, families and advisory services have to work through different documentation which is repetitive in parts and can cause confusion. The proposal is therefore to merge both policies and have one joint policy.

3.1.2 In addition, following revision of the RRO policy, it is proposed that this is also included in the single overarching policy including debt recovery methods relating to the process around land charges and recovery cycles.

3.1.3 The public consultation responses support this change and therefore the Council proposes that the above policies be combined.

3.2 Clear guidance for Disability Related Expenditure (DRE)

3.2.1 Although it is clear in Trafford's policy that DRE will be taken in to account, there isn't further detail and guidance for residents or advisory services around what, how, backdating etc. This is often challenged in particular when recovery gets to the latter stages of enforcement.

3.2.2 The proposal subsequently consulted on, therefore, was to include clear guidance regarding DRE both in terms of examples of allowable expenditure and anticipated maximum values as well as how this will be treated as part of the financial reassessments process. Also to ensure that reviews are completed consistently.

3.2.3 The majority of the survey respondents were in agreement with, including maximum allowances within the policy (48%), and more than half who gave a view on this question felt that the most common items had been identified. However, there was slightly more who disagreed than agreed in terms of the average true cost placed against the common items. Further analysis of the limited comments made from those who disagreed suggests that the respondents may have read the question as the DRE list being the only items considered and not just a list of common items and average true cost.

3.2.4 The feedback from the consultation meetings held and attended was similar to the survey results, with most in favour.

3.2.5 Based on the overall feedback the Council is proposing to include the guidance with common items and average costs, but ensure it is clear in both the policy and procedures for staff advising clients on DRE matters, including at the point care packages are agreed, that each case will still be considered on its own merits. The expert appeal panel that will be put in place will ensure this is carried out in practice.

3.3 Introduce charges (initial and annual) to clients who have excess of the capital limit of £23,250 to undertake the legal work to set up funding arrangements and associated legal agreements

- 3.3.1 Where a client has assets that are not suitable for a Deferred Payment Agreement (DPA) and/or the client lacks capacity to enter in to a formal agreement, the Council can offer other financial assistance solutions, such as an interim loan. In such circumstances the Council must seek to secure repayment of the monies by the client, which could include securing a solicitor's undertaking. Currently the Council do not charge the client for costs incurred by the Council in facilitating such arrangements.
- 3.3.2 The consultation proposed to introduce charges (initial and annual) to clients who wish to enter into such alternative agreements with the Council and who have in excess of the capital limit of £23,250 and therefore have the means to pay, but their assets are not accessible at the time that financial assistance is required.
- 3.3.3 These are often complex cases with family disputes and capacity issues and do cause additional anxiety and stress around the payment of residential care bills while the formal financial arrangements are put in place. The proposed charge will enable the Council to provide more financial assistance options to clients and family members.
- 3.3.4 With no formal agreement or debt recovery method in place the Council has little option but to initiate a formal debt recovery process to recoup any monies owed. The proposed charge reflects the costs incurred when undertaking the legal work required to ensure that monies can be recouped and they align with charges applied to clients who do enter in to a DPA.
- 3.3.5 The consultation survey asked a combined question about introducing initial and annual charges for the legal work associated with these agreements and there was a mixed response. Having looked further in to the disagreement comments these were again limited and reflected overall views about generally charging for care.
- 3.3.6 At the consultation events, the respondents were overall in support of an initial charge but not an annual one thus aligning to the online responses. The Council has taken this in to account and amended its proposal accordingly.
- 3.3.7 Therefore, the Council's proposal is to amend the policy to include the "opt in" alternative financial assistance arrangements but only an initial charge (plus on-going interest). The proposed rates can be found at Appendix C.
- 3.3.8 As in DPA cases, full payment will be due 56 days after the termination date (which in these cases will be when the temporary position ceases, i.e. the

property is sold or the family has access to funds via the courts). Interest will be applied at the same rates as in DPA cases which is currently 1.65% while the agreement is on-going, rising to 8% after 56 days in line with the Office of Budget Responsibility most recently published report.

3.4 Introduce annual charges (already an initial charge) to clients who enter in to a Deferred Payment Arrangement (DPA) and therefore have in excess of the capital limit of £23,250

3.4.1 Where a client has opted to enter in to a DPA they currently agree to pay an initial administration charge to compensate the work and incurred costs, however there are annual costs that are also incurred, for example equity checks and tenancy checks, that the Council is currently bearing the cost of.

3.4.2 The consultation proposed therefore to introduce an annual charge which covers the costs incurred by the Council. The survey respondents were overwhelmingly against this and, as advised in 3.3.5 above, annual charges were also not seen as something the Council should introduce at the events attended. Alternative suggestions around reducing the work carried out as part of the annual assessment were put forward. Considering these factors the Council have concluded that it will no longer be continuing this proposal as a policy change. The initial charge will remain as is.

3.5 Clear guidance relating to Third Party Top Ups (TPTU) and Choice of Accommodation

3.5.1 TPTU agreements should be assessed for both the individual's willingness and ability to pay. The latter is not often assessed before a placement is entered and this has caused extreme distress for clients and their families in terms of decisions to remove clients from settled placements and complaints when financial provisions have been underestimated and/or exhausted. There have also been issues relating to clients and families reporting that they have felt the Choice of Accommodation and financial impact of that choice have not been made explicitly clear.

3.5.2 The proposal consulted on was to include clear guidance relating to TPTU's in terms of willingness and ability to pay which will include requirements in appropriate cases to provide proof of how the TPTU can be financially sustained; again to ensure it is transparent when families are signing up to often high weekly TPTU amounts whilst also safeguarding Council funds and reduced recovery administration which only adds further stress and anxiety.

3.5.3 In both the survey responses and the events feedback, there was an overarching agreement about the requirement to assess financial access and sustainability in terms of TPTU agreements, but it was difficult to identify what that would look like in practice, in particular as there are unknowns in terms of how long the agreement would be in place and how charges can increase

over time, as well as personal finances. It is clear that further work is required in this area to ensure the right balance between intrusion and risk assessment and therefore at this stage there will not be amendments to the policy but further work will take place which will be based on a test and learn approach

3.6 Review and amend the existing Disabled Facilities Grant Regulatory Reform Order (RRO)

3.6.1 The RRO and subsequent application process needs to be developed and updated to create a more responsive adaptations service for Trafford residents which will in turn ensure the Disabled Facilities Grant (DFG) processes will work more efficiently.

3.6.2 The first proposal, is to increase the top level of funding for each DFG application from £30k to £50k to reflect the rising costs of building work and the increasing number of complex builds, the consultation responders was in favour of and therefore the proposal is to amend the RRO accordingly.

3.6.3 In addition, it is also proposed to introduce a Moving Assistance Grant capped at an upper limit of £3k to support rehousing to an adapted property where suitable was also well supported and again is proposed for change.

3.6.5 Finally, it is proposed that a limited land charge is secured on the Client's property, subject to the client's consent, to guarantee repayment if the property is sold or otherwise disposed of within ten years of the grant award. Subject to the client's consent, the Council will seek to secure a limited where the value of the DFG exceeds £5,000, limited to a maximum charge of £10,000. Before determining whether or not it is reasonable to require repayment or part repayment on disposal of the property the Council will consider:

(i) the extent to which the recipient of the grant would suffer financial hardship were they be required to repay all or any of the grant;

(ii) whether the disposal of the premises is to enable the recipient of the grant to take up employment, or to change the location of their employment;

(iii) whether the disposal is made for reasons connected with the physical or mental health or well-being of the recipient of the grant or of a disabled occupant of the premises; and

(iv) whether the disposal is made to enable the recipient of the grant to live with, or near, any person who is disabled or infirm and in need of care, which the recipient of the grant is intending to provide, or who is intending to provide care of which the recipient of the grant is in need by reason of disability or infirmity.

3.6.6 When appropriate the Council may decide to secure a limited charge against an adapted property, this will be determined on a case by case basis reflecting the individual circumstances of each applicant.

3.6.7 It is expected that through the introduction of this land charge security the Council will be able to recycle these funds in the DFG programme when the adapted property is sold (providing this occurs within ten years of the grant award).

4.0 Other Options

The Council could decide not to implement the changes to the policies, however it is clear from the exercise completed that more comprehensive guidance is required and if the charges are not introduced there remains no clear pathway for residents with the funds to pay for their care to make informed choices in a timely manner. There would also remain a disparity between those clients entering in to a DPA compared to those receiving interim funding as well as the continued inflexibly for residents requiring adaptations to their properties.

5.0 Consultation

As detailed in the report.

6.0 Reasons for Recommendation

To enable the Council to develop and implement a more coherent single policy and to enable the facilitation of increased financial relief options to clients and their families.

Key Decision Yes

If Key Decision, has 28-day notice been given? Yes

Finance Officer Clearance NB

Legal Officer Clearance DS

CORPORATE] DIRECTOR'S SIGNATURE



(electronic)

To confirm that the Financial and Legal Implications have been considered and the Executive Member has cleared the report.

Appendix A – Trafford Current Policies - Aide Memoire

- A.1 The current ASC Charging Policy determines how the Council financially assesses clients, both in their own home and in a care home. An individual is allowed to keep a certain amount of their income and capital before being asked to pay a contribution towards their care. The amount they are allowed to keep depends on their personal and household circumstances and for income this is called the Minimum Income Guarantee (MIG) and it is set annually by the Department of Health and Social Care.
- A.2 An individual's capital is also taken in to account as part of the financial assessment. The capital limit, which includes property, is between £14,250 and £23,250. Anyone with more than £23,250 is required to meet the full cost of their care.
- A.3 Where an individual chooses a residential placement that exceeds the Council's rate, they have to meet the full cost of the difference. This is known as a Third Party Top Up (TPTU) and it requires a third party to enter in to a legal contract with the Council to pay for the placement.
- A.4 Often a client has funds over the capital limit that they cannot, or do not, want to be released such as a property, their former family home, annuity plans etc. In the circumstances where this relates to a property the Council is legally obliged to offer a Deferred Payment Agreement (DPA) - subject to qualifying conditions being met - which in essence is a loan against the value of their property which is then repaid with interest when the property is sold or the client passes away. The policy details the eligibility criteria, the administration charges and interest for DPA's. The DPA is a legal contract between the owner (or a person officially acting on their behalf) and the Council.
- A.5 The policy also includes information relating to what expenditure should be taken in to account when determining a client's MIG, such as rent, Council Tax, utility bills etc. The Care Act makes it clear that when the Council is taking into account disability benefits within the financial assessment, the Council **must** consider Disability Related Expenditure for people in receipt of care in their own home.
- A.6 The current DR Policy not only defines the debt recovery cycle, it also describes which services are chargeable, in what circumstances a financial assessment will be carried out and how Direct Payments work and subsequently how they are recovered if required. It also details how clients can fund a TPTU. In terms of the capital element, the policy advises that the Council can offer a Deferred Payment Arrangement (DPA) scheme which, as you can see from above, is repetitive in most elements when compared to the ASC Policy.
- A.7 The Regulatory Reform Order (RRO) currently details the criteria and conditionality relating to the assistance clients can apply for to allow adaptations to be made to their home in order to continue to allow them to live independently. The RRO details the application process, what works will be approved and the maximum award

amounts as well as payment methods and grant conditionality including how repayments can be made.

Appendix B – Consultation Online Survey Results

Questionnaire Questions	Responses NB: Rounded Percentages
<p>1. Do you agree with the proposal to introduce an annual charge [DPA]?</p>	<p><i>Answered: 32 Skipped: 1</i></p> <p>Strongly Agree – 9% Agree – 19% Neither Agree nor Disagree – 13% Disagree – 28% Strongly Disagree – 25% Don't Know – 6%</p>
<p>2. Do you agree with the introduction of the other funding agreement with associated charges [Solicitors Undertakings, Interim Funding Loans]?</p>	<p><i>Answered: 33 Skipped: 0</i></p> <p>Strongly Agree – 12% Agree – 27% Neither Agree nor Disagree – 12% Disagree – 18% Strongly Disagree – 27% Don't Know – 3%</p>
<p>3. Do you agree with our proposal to include DRE maximum allowances for the most common items of expenditure</p>	<p><i>Answered: 33 Skipped: 0</i></p> <p>Strongly Agree – 15% Agree – 33% Neither Agree nor Disagree – 15% Disagree – 18% Strongly Disagree – 12% Don't Know – 6%</p>
<p>4. Do you think our proposal includes the most common items of expenditure?</p>	<p><i>Answered: 31 Skipped: 2</i></p> <p>Strongly Agree – 10% Agree – 19% Neither Agree nor Disagree – 16% Disagree – 16% Strongly Disagree – 6% Don't Know – 32%</p>
<p>5. Do you consider the maximum rates to be an accurate reflection of the average true cost</p>	<p><i>Answered: 31 Skipped: 2</i></p> <p>Strongly Agree – 6% Agree – 13% Neither Agree nor Disagree – 10% Disagree – 19% Strongly Disagree – 6% Don't Know – 45%</p>
<p>6. What do you think about the proposals for the Council to include a financial affordability</p>	<p><i>Answered: 33 Skipped: 0</i></p> <p>Strongly Agree – 21% Agree – 27%</p>

assessment of a Third Party signing a Top Up agreement?	Neither Agree nor Disagree – 9% Disagree – 3% Strongly Disagree – 27% Don't Know – 12%
7. Do you have any other suggestions or ideas for the Council to consider to balance between choice of the resident against the privacy of the third party and the potential for financial hardship?	<i>Answered: 15 Skipped: 18 Comments: 8</i> General feedback received, main comments related to the way in which the care system is funded in general, however specific to this consultation question, feedback was given around care homes prices and the difficulty in agreeing to pay for a top up with uncertainty around length of times and price increases. Allowing the client to pay their own top up was also put forward [however this isn't allowed in accordance with the Care Act legislation]
8. Do you agree with the proposal to offer a Moving Assistance Grant (MAG)?	<i>Answered: 33 Skipped: 0</i> Strongly Agree – 15% Agree – 55% Neither Agree nor Disagree – 15% Disagree – 3% Strongly Disagree – 0% Don't Know – 12%
9. Do you agree with Trafford Council to place Land Charges on Owner Occupier Properties?	<i>Answered: 33 Skipped: 0</i> Strongly Agree – 24% Agree – 21% Neither Agree nor Disagree – 12% Disagree – 18% Strongly Disagree – 15% Don't Know – 9%
10. Do you agree with the proposal for Trafford Council to increase the upper limit to £50k [DFG]?	<i>Answered: 32 Skipped: 1</i> Strongly Agree – 22% Agree – 34% Neither Agree nor Disagree – 9% Disagree – 9% Strongly Disagree – 6% Don't Know – 19%
11. Finally the Council is proposing to merge the charging, debt and disabled facilities grant policies together to remove duplication and have the information all in one document in one place. What do you think about this proposal?	<i>Answered: 33 Skipped: 0</i> Strongly Agree – 30% Agree – 39% Neither Agree nor Disagree – 21% Disagree – 0% Strongly Disagree – 3% Don't Know – 6%
	<i>Answered: 14 Skipped: 19 Comments: 10</i>

12. Do you have any other suggestions or ideas relating to the proposal put forward in this consultation?

General feedback received, main comments related to the way in which the care system is funded/charged for, however specific to this consultation feedback was given around having one point of contact throughout the process and for DRE to be linked more to the care plan and common items to be more imaginative.

Appendix C – Charges for Deferred Payment Agreements and Proposed Rates for Alternative Funding Arrangements

Legal costs for a DPA (including Land Registry Services fees secured by a first legal charge against freehold property in sole ownership of applicant, with no loans secured and no legal complications	£575 [Existing Charge]
Interim Funding Agreement (Council loan) secured by a legally binding agreement	£295 (+VAT*if applicable) [New Charge]
Solicitor’s Undertaking a legal document that is signed by the clients conveyancing solicitor confirming funds owed in outstanding care fees will be paid out of the proceeds of sale before funds transferred	£175 (+VAT*if applicable) [New Charge]
Annual interest rates for DPAs & Interim Funding Arrangements we charge the maximum interest rate as defined in the Care and Support Regulations on a daily basis (compounded). Interest charges are added to the debt, payable at the end of the agreement	1.65%** (As at 1 January 2019)

*Value Added Tax (VAT): the legal and administration costs quoted above are exclusive of VAT. VAT will be charged on those costs where applicable. DPAs which meet the national mandatory DPA requirements to be secured by a first legal charge are not subject to VAT

*Set at 0.15% above the market gilt rate specified in the most recent report published by the Office of Budget Responsibility (OBR) which is published in January and July each year