

TRAFFORD COUNCIL

Report to: Executive
Date: 17 September 2018
Report for: Decision
Report of: Corporate Director, Adult Services and Corporate Director
Finance and Systems

Report Title

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

Summary

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.

The Council's current Adult Social Care Charging Policy was last reviewed in 2015 to reflect the legislation and guidance provided as a result of the introduction of the Care Act 2014. A separate Debt Recovery (DR) policy was also devised at this time in order to ensure a consistent and transparent approach to debt recovery.

The Council's current Disabled Facilities Grant (DFG) application, means test and recovery processes are detailed in its Regulatory Reform Order (RRO) which was last updated in 2011 to increase the spend limits.

Trafford is keen to ensure it continually improves, both in terms of the customer journey and the back office value for money delivery of its functions. 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.

The Council are proposing to consult with the public on the following changes:

- 1) Combine the Adult Social Care Charging Policy and Debt Recovery policy to remove duplication and include Disabled Facilities Grant (DFG) to create a single policy.**
- 2) Include clear guidance regarding Disability Related Expenditure (DRE)**
- 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 legal agreements.**
- 4) Introduce annual charges (already an initial charge) to clients who enter in to a Deferred Payment Arrangement (DPA) -**

- 5) Include clear guidance relating to Third Party Top Up (TPTU) assessments and Choice of Accommodation.
- 6) Develop and update the existing Disabled Facilities Grant (DFG) Regulatory Reform Order (RRO).

Recommendation(s)

That the Executive agrees to the Council consulting with the public on proposals to amend and combine the above policies.

Contact person for access to background papers and further information:

Name: Louise Shaw
 Extension: 3120

Background Papers: None

Relationship to Corporate Priorities	Improving health and wellbeing of residents. Value for money and low Council Tax.
Financial	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. Although amendments to increase the means tested limit to potentially between £3k-£5k will result in marginally less income it is anticipated that the number of applications in this area may increase. It is expected that the income raised from applying land charges will offset this increased spend.
Legal Implications:	The proposed changes are fully compliant with the legislation and guidance.
Equality/Diversity Implications	An EIA will be developed and ran alongside the consultation process.
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 which is based on legislation and guidance. In the main, 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 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.
- 1.3 Trafford Council funds adaptations to residents of the borough 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.
- 1.3 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 opportunity to propose changes to the ASC, DR and RRO Policies as well as create a combined policy.

2.0 Trafford's Current Policies

- 2.1 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.
- 2.2 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.
- 2.3 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.
- 2.4 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.

- 2.5 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.
- 2.6 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.
- 2.7 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.

3.0 Drivers for Change

3.1 Combine the ASC Charging and DR Policy and include the 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 them and have a joint policy.

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

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 is 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. It will also ensure that reviews are completed consistently.

3.2.3 It is important to note that each case will still be considered on its own merits and a panel will be put in place so that residents can appeal the decision if they do not agree following their review.

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

- 3.3.1 Where a client has assets that are not suitable for a DPA and/or the client lacks capacity to enter in to a formal agreement, the Council can enter in to other agreements such as an interim loan or solicitors undertaking in order to secure the debt on the Council's behalf. Currently the Council do not charge for this service.
- 3.3.2 The proposal is to introduce charges (initial and annual) to clients who have in excess of the capital limit of £23,250 to undertake the legal work to set up funding arrangements and legal agreements to align with the charges to clients who enter in to a DPA. The charges will relate to a very small cohort of residents who have the means to pay, but their assets are not accessible at the time of entering into a care home.
- 3.3.3 These are often complex cases with family disputes and capacity issues and do cause additional anxiety and stress as there is the worry on how residential care bills can be paid while the formal financial arrangements are put in place. With no formal agreement in place the debt recovery process legally has to commence. The changes will therefore allow clients and family members to have a more informed choice regarding the cost of care with the detailed options available to facilitate. This also provides residents and their family members a choice to seek interim funding elsewhere due to the charges i.e. through a loan or an annuity.

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 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. The proposal is therefore to introduce an annual charge that will align to the Interim Funding Charges as described in 3.3.

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 is 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. Similarly further clarity around Choice of Accommodation.

3.6 Develop and update the existing DFG 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 DFG processes will work more efficiently.
- 3.6.2 The proposal will firstly be 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.
- 3.6.3 In addition, a review should take place to increase the current £1k means test for adaptation grants to a figure that is more cost effective when compared to the administration time to process and recover debts. Further work is required in this area to analyse this but it is anticipated between £3k and £5k.
- 3.6.4 Introduce a Moving Assistance Grant capped at an upper limit of £3k to support rehousing to an adapted property where suitable.
- 3.6.5 Finally, introduce applying a land charge as a condition of the grant in the case of owner occupier applications. This allows the recovery of funds in the event of a property subsequently being sold or otherwise disposed of.

4.0 Public Consultation

In the main the proposed changes are a positive addition to the Council's existing policies providing the residents of Trafford with a tool to provide clear and concise guidance as well as advisory services and enhancing the DFG policy and application process. However, the introduction of the charges for those with capital over £23,250 is a new proposal as well as the DRE categories and values and the way in which DRE is reassessed. The increased upper limits and land charges for DFG's is also a new proposal. It is important, therefore that these proposals are consulted on as well as ensuring that as part of the consultation the Council has captured all of the main issues currently experienced as part of the adult social care charging process. It is important that the Council consults with residents, key staff, partners, stakeholders and advisory services which it will do through an online survey but also by holding stakeholder events. The consultation would commence immediately following the agreement to consult (subject to the call in period expiring) and last for 12 weeks. A further report will then be prepared for the Executive to put forward the proposed new policy including charges with an effective start date of 1 April 2019.

5.0 Other Options

The Council could decide not to propose 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.

Key Decision

No

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

N/A

**Finance Officer Clearance NB Nikki Bishop
Legal Officer Clearance PD Patrick Davis**

CORPORATE] DIRECTOR'S SIGNATURE



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