

### **Care Act 2014: Charging for Services – The new arrangements**

Under the Care Act the charges for care and support are based on a single approach, but with an element of flexibility as to how they are applied to non-residential services.

All charges are subject to a means test meaning that only those with sufficient income and/or assets will be asked to contribute to all or part of their care costs. Those without assets will pay nothing, as is the situation now. The Care Act changes the way the means test is undertaken to reduce regional variations, this is being set out in statutory regulations. The flexibility is in what services are charged for and how much to charge in relation to the full cost of the service.

Councils are required to provide a list of services that are charged for and the current rate upon which calculations are based. This will give people information on which they can decide whether or not they wish to approach the local authority for support in planning their care.

#### **Existing service users**

Existing service users are unlikely to see much of a change from the new regulations, particularly those in residential care homes. Some people will find themselves eligible as a result of the proposed changes in the capital thresholds.

The future charging arrangements are an extension of the existing rules set out in the Charging for Residential Accommodation Guide (CRAG). The Council identifies the cost of care for the person and applies a means test to this figure to identify the individual charge.

For residential services there will be changes to thresholds, but for most people currently receiving services there is no anticipated change. A few people may now find themselves eligible for support, but the numbers are likely to be small. There is no flexibility as to how the rules are applied to this group of people.

For non-residential services the rules will change and become much closer to those used for residential care, with the exception that the person's main home is not included in the capital calculation. For the first time under the new regulations (*"Final Affirmative Regulations Under Part 1 of the Care Act"*) published 23<sup>rd</sup> October 2014 non-residential services will be treated as "charged for", rather than made a "contribution towards". The main difference for both Councils and service users in respect of this apparently subtle change is that debts associated with service charges can be recovered in the courts. Detailed regulations around debt recovery have been included in the guidance.

It is possible that the charge for people using non-residential services will increase under the new arrangements, but for this group of people the authority has the discretion to waive charges in whole or in part. This would allow for a transition period for those whose costs might increase. On average, a non-residential package of care is provided over a period of about a year and, therefore, any transitional arrangement would, reasonably be relatively short.

### **The new rules**

In all situations the regulations provide for the means tested charge that an individual can be asked to make, unless they are assessed as being wholly responsible for meeting their own costs in full. However the person funding their own care (usually referred to as “self-funders”) can ask the local authority to set up and manage services on their behalf, for which the authority **may** choose to charge a management fee.

As in the past the authority has no power to financially assess anyone other than the person receiving services according to a care and support plan or a carer with a support plan. However in B&NES we have used the flexibility that a couple may opt to be assessed together and we would use the lowest resulting charge. This is no longer an option under the new Regulations.

The local authority may not charge administrative fees against services it provides on a statutory basis. This includes all situations where the individual receives a subsidy to their care and support, safeguarding investigations and the non-targeted provision of information and advice.

The local authority must not charge for certain types of care and support which must be arranged free. These are:

- Intermediate care including reablement (for up to six weeks).
- Community equipment (aids and minor adaptations). Aids must be provided free of charge whether provided to meet or prevent/delay needs. A minor adaptation is one costing £1,000 or less.
- Care and support provided to people with Creutzfeldt-Jacob Disease.
- After-care services/support provided under section 117 of the Mental Health Act 1983.
- Any service or part of service which the NHS is under a duty to provide. This includes Continuing Health Care and the NHS contribution to Registered Nursing Care.
- More broadly, any services which a local authority is under a duty to provide through other legislation may not be charged for under the Care Act 2014.
- Assessment of needs and care planning may also not be charged for, since these processes do not constitute “meeting needs”.

There does not appear to be any restriction on other services with local items and costs being left to the discretion of the Council.

There are also some exempt groups such as people receiving a Veterans Grant.

### **Principles for charging**

The regulations set out key principles for charging:

- Ensure that people are not charged more than it is reasonably practicable for them to pay;
- Be comprehensive, to reduce variation in the way people are assessed and charged;
- Be clear and transparent, so people know what they will be charged;
- Promote wellbeing, social inclusion, and support the vision of personalisation, independence, choice and control;
- Support carers to look after their own health and wellbeing and to care effectively and safely;
- Be person-focused, reflecting the variety of care and caring journeys and the variety of options available to meet their needs;
- Apply the charging rules equally so those with similar needs or services are treated the same and minimise anomalies between different care settings;
- Encourage and enable those who wish to stay in or take up employment, education; or
- Be sustainable for local authorities in the long-term.

### **Care Management Charges**

Although the draft regulations suggested the possibility of charging for all care management services, the final regulations only allowed for charges to be made to cover the cost of contracting and managing an on-going care package for non-residential services. The nature of this is that the costs would be difficult to account for in isolation from the much larger volume of work undertaken for Council funded individuals. The decision not to allow a charge for assessments will result in the Council needing to make provision for an additional cost of undertaking assessments of approximately £489,000 per annum. However, this shortfall in funding could be mitigated by:

- i) Reducing demand for assessments through enabling “self-assessment” using a specifically designed form or on-line self-assessment tool and/or
- ii) by allowing self-funders to identify and pay for their own independent needs assessment using Social Work assessor and accepting that assessment for the purposes of establishing individual Care Accounts and Deferred Payment Agreements

It is important, however, to note, that there is, at present, no specific market in B&NES to provide Social Work assessment outside of that commissioned from Sirona Care & Health or provided by mental health practitioners managed by Avon & Wiltshire Mental Health Partnership NHS Trust (AWP). This market would, therefore, need to be developed locally in the longer term. Also, the Council would need to put in place appropriate quality assurance standards, checks and balances, if it were to accept the results of independent needs assessment.

No analysis has been undertaken of the cost of a self-assessment (using the pdf on our website) or an on-line self-assessment in the future. This approach might give people an additional incentive to take control of their own care and support rather than seeking the assistance of the Local Authority.

### **Deferred payment**

The regulations make provision for two charges for statutory deferred payments for residential care. From April 2015 the Council can charge interest annually against the loan value and, also, a management charge that reflects the costs incurred in setting up and then managing the agreement.

The maximum interest rate is set as the Market Gilts Rate published by the Office of Budget Responsibility and is revised every six months. For 2015-16 the projection in March 2014 was 3.3% per annum. This is significantly lower than the market rates available to borrowers on the high street. It is also lower than the borrowing rates available to the Council. It is proposed that this Council charges the maximum rate available as adjusted every six months.

Initially, the Government had indicated that there would be grant funding allocated to Local Authorities to meet some of the associated costs, however, the Government has now confirmed that no grant will be made on the basis that Local Authorities can decide to make a management charge. The cost to the Council for setting up a Deferred Payment is £560 (to include Legal Charge and Land Registry fees) with an annual review cost of £290. In addition there is the cost of the initial assessment, which can be partially mitigated as above.

### **Charging carers**

The Act provides for charging carers but places a number of tests for authorities seeking to charge. Charges should not have a negative impact on the carer's ability to continue providing care.

Individuals need to be considered in their own right within the financial assessment, so it would not be appropriate to undertake a single assessment per household. However there is the opportunity to undertake a 'light-touch' assessment.

Within the guidance to date there appear to be three options in terms of charging carers:

- i. Opt not to charge any carer for the support they receive because of the contribution that they make towards meeting the care and support needs of the cared for person;
- ii. Undertake a light-touch assessment for carers who are supporting someone with an existing care and support package and only seek to levy an additional charge if there are significant additional resources. Other carers (where there is no existing charge) would be assessed in full; or
- iii. Undertake full assessments on all parties and maximise the income to the Local Authority derived from the associated charges.

In reaching a decision, it is important to take account of the risk that there will be a significant number of people seeking carer support who are not currently in touch with the Council. The 2011 Census showed there were 17,585 people in B&NES consider themselves to be carers providing unpaid care and support. There are 1,462 carers currently receiving services from the Council. The entire cohort of 17,585 will be entitled to request an assessment with a proportion of these assessments resulting in a package of support. Modelling of the implications of the Care Act estimates that an additional 350 people a year in B&NES would be entitled to a package of support but it is difficult to predict before the Care Act comes into force the actual number of carers who will request an assessment or, indeed, then be entitled to a package of support.

In this context, the Council might reasonably decide on a policy that enables a charge to be made to carers for the support they are receiving but set this charge at “£0” in the first instance, subject to review after the first 12 months of implementation in order that any decision about a charge can be informed by the extent of the additional financial burden associated with this new duty. This would go some way towards mitigating the financial risk to the Council of the new duties to carers.