

People & Health Overview Committee

14 December 2020

Current & Future Changes to the Financial Assessment and Care Contributions Policy

For Recommendation to Cabinet

Portfolio Holder: Cllr L Miller, Adult Social Care and Health

Local Councillor(s): n/a

Executive Director: V Broadhurst, Interim Executive Director of People - Adults

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Report Status: Public

Recommendation:

The updated policy as set out in appendix A is agreed. This incorporates the changes identified with this report under section 2.2.

Agreement is sought for the Executive Director and the Portfolio Holder for Adult Social Care and Health to have delegated authority to sign off future minor amendments and clarification of decision-making processes within the policy.

Reason for Recommendation:

To update the Charging and Financial Assessments Policy to support the continued delivery of the Service ensuring care contributions can be assessed and collected in a timely manner supporting fairness and equitability across the county.

1.0 Background

Unlike the NHS, Adult Social Care is not a free service. The expectation is that individuals who can afford to fund their own care do so and those who are unable to do this can apply to Dorset Council for support. The support from Dorset Council will be based on a care needs assessment which will identify the needs of an individual and whether they are eligible under the Care Act 2014. If the

council is going meet an individual's needs through services e.g. home care, residential care, day care, direct payment, then a financial assessment will be carried out to determine the level of contribution that an individual can afford to make towards their care. In carrying out the Financial Assessment, the Financial Assessment Team will seek to ensure that an individual is maximising the income they can claim in relation to benefits and also take account of any disability related expenditure. For some individuals they will be assessed as not being able to afford to make a contribution towards their care costs for others the assessment process will determine the maximum amount of contribution they need to make.

Dorset Council's Charging and Financial Assessment policy was originally written in 2015 before the implementation of The Care Act 2014. When the Care Act 2014 was implemented, this policy was adopted. Under The Care Act 2014 local authorities are able to charge for care and support. Where charges are made the overarching principle is that people should only be required to pay what they can afford. The charging framework is therefore based on the following principles that local authorities should take into account when making decisions on 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 training or plan for the future costs of meeting their needs to do so
- be sustainable for local authorities in the long-term

Since the implementation of The Care Act 2014, it has become clear that there are areas where the Act is not always clear on how to treat an individual's finances within the financial assessment, e.g. in the specific area of allowances in the financial assessment for Disability Related Expenditure (DRE). Often when faced with a difference of opinion between the council and the individual or their representative, The Care Act 2014 cannot provide a definitive resolution, which leaves Dorset Council with a dispute around the outcome of the financial assessment. Recently there has been a case where in-house legal advice was

also unable to clarify The Care Act so it was felt that the situation would benefit from a review by the Local Government Social Care Ombudsman (LGSCO) to clarify the position when the CA is not clear. The outcome from the LGSCO was that where the Care Act 2014 is not clear, the local authority's policy should be clear on how they will deal with those charging issues within the financial assessment.

In 2019/20 Dorset Council invoiced 4,540 people a total of £23.162m. In that same year 6,432 people were receiving care services, suggesting that approximately 70% of service users make a contribution towards their care costs, ranging between £2 per week and the full cost of the care they receive.

2.0 Current Amendments

2.1 This is a refresh and review of the current policy following a recent decision by the LGSCO. This review has taken account of changes in the benefit system after the Care Act was implemented, the expectation on people who have authority to manage someone's money, the allowances that can be made for household or disability-related expenditure.

The amended policy is attached and requires urgent sign off as it now addresses a number of areas where individuals are currently in the process of taking their appeals to the LGSCO.

2.2 The amendments to the policy are in the following areas and are shown in blue in the amended policy;

Section	Change	Reason
2.3	Treatment of couples	Clarifies the request for additional information on the assets of a spouse which they are not obliged to provide as part of the assessment process. Although financial assessments are based on individual circumstances, where people have joint assets or income, they may be asked to provide information on their own assets in order to ensure that the correct allowances are made in the financial assessment. This will be to the benefit of the spouse and will only be used to increase their own income rather than decrease it.

2.5 – 2.7	'Gross without prejudice' funding	Clarifies how we will support people who do not have capacity and cannot access their assets until someone is formally appointed to act for them. Also provides clarification on the process for recovering monies paid out where people do not have capacity.
2.9	Financial assessment in prisons	Clarifies how we will assist prisoners who are receiving care in a custodial setting to access financial support with care services.
3.2	Tariff Income	Clarifies the contribution that people are expected to make towards care from their capital assets
4.2 – 4.3	Completion of financial assessments	Confirms how resources will be used to enable individuals to make applications for financial assistance for care services and the expectation on people with formal authority to act on a individuals behalf.
4.7	Capacity regarding finances	Clarifies that where people do not have someone acting for them formally we will engage with a nominated relative/friend to provide information for the financial assessment, to enable people to access financial assistance where they are entitled.
6.3	Decisions on deprivation of assets	Confirms the review process for appealing decisions around people giving away assets with the intention of reducing future care costs.
8.3	Third party financial assessments	Clarifies the process for ensuring that relatives who state that they are able to meet the cost of a third party contribution are able to do so for a 2-year period and the process where this

		is not considered to be affordable to ensure that people do not enter into a financial agreement that they cannot afford.
9.2	Minimum Income Guarantee (MIG)	Clarifies that MIGs are set annually by central Government and adopted by LAs.
9.4	Property ownership	Clarifies that the value of properties which are not the individuals own home will be treated as a capital asset in the financial assessment.
9.5 – 9.6	Invoicing periods	Clarifies the frequency and detail of requesting payment for care costs.
25 (iv)	Disregarded properties	Clarifies the process for notifying the LA of changes in circumstance where a property has been disregarded in a financial assessment due to a statutory disregard being met.
27.1 (a)	12 Week Property Disregard	Clarifies start date of 12- week property disregard where individual has been self-funding.
45.2 b (v)	Minimum Income Guarantee (MIG)	Clarifies that MIGs are set annually by central Government and adopted by LAs and how they will be treated as income.
46.6	Entitlement to welfare benefits	Confirms that people are expected to claim all of the benefit income that they are entitled to in order to maximise their income and minimise financial assistance required from the local authority.
47.1	Backdated benefits	Confirms that people are expected to inform the LA of changes in their income, in order to ensure that the financial assessment is correct and confirms that where changes are not

		notified, then the charges may be backdated, possibly resulting in a debt.
47.2	Transfers from Disability Living Allowance (DLA) to Personal Independence Payment (PIP)	Clarifies the differing treatment of DLA and PIP in the financial assessment and the responsibility of the person or their representative to inform the LA of the change in order to avoid backdated charges being applied to the assessment.
48.1 – 48.2	Support for Mortgage Interest Loans	Clarifies that where people are entitled to apply for a Mortgage Interest Loan to assist with payment of a mortgage, they are expected to make all appropriate efforts to do so, in order to maximise their own income.
49.1	Debts	Confirms that no allowance can be made in the financial assessment for outstanding debts and that people should take independent advice to address debt issues in with the requirement to pay for care services.
50.2 d) ii, iii, iv, h) i, ii, i, j, k, l 50.3 50.4	Disability Related Expenditure (DRE)	Clarifies the treatment of DRE in the financial assessment on a range of different expenditure in order to ensure fairness and equitability across all areas of Dorset.
53.3	Minimum Income Guarantee (MIG) and non-dependant deductions	Clarifies allowances made in the financial assessment which reflect the fact that people who live with relatives are expected to contribute towards household expenditure such as rent, council tax, utilities, food.

54	Appeals process	Confirms the process for appealing decisions made within the financial assessment process.
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3.0 Future amendments

The Charging and Financial Assessment Policy will continue to require regular amendments, as and when issues are identified that are not clearly addressed within The Care Act. There needs to be a simple and timely ability to amend the policy as and when required.

Delegated authority for further minor changes to the Charging and Financial Assessment Policy is being sought to enable the Executive Director and the Portfolio Holder for Adult Social Care and Health to authorise minor amendments. The majority of minor changes made to the policy will only clarify how specific situations around expenditure and other allowances are considered in the assessment and will not fundamentally change the way individuals are financially assessed across the county.

Significant changes would require member agreement and potentially a formal consultation process.

4.0 Executive Summary

4.1 Financial Implications

Adoption of the changes to the policy should lead to improved clarity and operational delivery of the policy. Fewer cases being lost when reviewed by the LGSCO and in turn, increased income and reduced reputational damage. The LGSCO have themselves recommended that our policy be amended to reflect some of their more recent rulings.

4.2 Well-being and Health Implications

The purpose of clarifying the policy is to ensure that people are treated fairly and equitably across the county and that the policy is sustainable in recovering income from charges for care – enabling the authority to continue to provide the high level of care services required.

4.3 Climate implications

None identified

4.4 Other Implications

None identified

5.0 Risk Assessment

Having considered the risks associated with this decision, the level of risk has been identified as:

Current Risk: **LOW** – the aim is to clarify policy decisions, allowing the Financial Assessment Team to implement charges fairly across the county

Residual Risk: **LOW** – if the policy amendments are not agreed then the authority faces potential reputational risk where the decision-making process is not clear and could face challenge from the Local Government and Social Care Ombudsman.

6.0 Equalities Impact Assessment

The amended assessment does not affect the previously completed EqIA

7.0 Appendices

Amended Charging and Financial Assessment Policy – specific amended areas shown in [blue](#)

8.0 Background Papers

Footnote:

Issues relating to financial, legal, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.