



COUNCILLOR CHRIS JONES
CABINET MEMBER FOR ADULT
SOCIAL CARE

CABINET

6 JUNE 2016

CARE ACT KEY CHANGES TO POLICIES &
PROCEDURES - UPDATE FOR CABINET

Councillor Chris Jones, Cabinet Member - Adult Social Care, said:

“The Care Act 2014 was perhaps the biggest single change in legislation governing social care in a generation. It has led to the Council conducting a full review of all social care policies, providing the opportunity to refresh and modernise our approach at the same time.

Making sure the most vulnerable are supported to be independent and thrive with a focus on their wellbeing is a fundamental thread running through our Wirral Plan. Our policy changes will support this focus and I am really pleased at the progress we are making to realise this.”

REPORT SUMMARY

This report has been prepared to inform Cabinet about recommended changes in, Adult Social Care policy documents. A full review of all social care policies has been undertaken in response to the new social and health care legislation, the Care Act 2014. This came into effect on 1 April 2015. The policies will affect all wards in the borough and will be available in the web library of the Council website

<http://democracy.wirral.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13643&path=0>

This report specifically highlights proposed policy changes in relation to key elements of the Care Act where the Council has discretionary powers (for example in relation to the charging for specific services). This is an important focal point for policy change, and an interim policy framework is set out, subject to consultation.

The policies have been developed in line with the Wirral Plan 2020 pledges. As well as providing a personalised framework for supporting the most vulnerable, these policies specifically offer people greater access to information, new rights and links with supporting older people to live well and to ensure that people with disabilities live independently.

RECOMMENDATION/S

- **That Cabinet approve the following Care Act compliant policies**

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| 1. Assessment Eligibility and Review | 10. Medication |
| 2. Carers | 11. Ordinary Residence |
| 3. Choice of Accommodation and Additional Payments (Top-ups) | 12. Overarching Values and Principals |
| 4. Complaints | 13. Personal Budgets and Direct Payments |
| 5. Deferred Payments | 14. Reablement |
| 6. End of Life Care | 15. Referral and First Contact |
| 7. Homelessness | 16. Safeguarding |
| 8. Hospital Discharges | 17. Safeguarding Adults Partnership Board (SAPB) |
| 9. Market Shaping and Market Failure | 18. Support Planning |
| | 19. Transitions |

- **That Cabinet approve the following policies, delegating authority to the Cabinet Member for Adult Social Care to make any amendments which may be required following consultation**

1. Assisted Transport
2. Charging and Financial Assessments
3. Financial Protection Policy (including protection of moveable property)

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

Policies are a key framework to support the delivery of operational services and to inform residents and stakeholders the Council's position in relation to discretionary legislative powers.

2.0 OTHER OPTIONS CONSIDERED

No other options are available. A full review of policies was required due to statutory changes.

3.0 BACKGROUND INFORMATION

3.1 The Care Act 2014 is the biggest change to adult social care law in over 60 years. It consolidates over 30 different pieces of legislation. The majority of Care Act changes came into force in April 2015, with the exception of the major reforms to the way people pay for adult social care which has been deferred until 2020.

3.2 Key areas of change for April 2015 include:

- General responsibilities for Local Authorities including; promoting people's wellbeing, focusing on prevention, and providing information and advice,
- The introduction of a consistent, national eligibility criteria
- New rights to support for carers, on an equivalent basis to the people they care for.
- Deferred payments for everyone facing the risk of having to sell their home.
- The extension of Local Authority adult social care responsibility to include prisons.
- New responsibilities around transition, commissioning the care market, provider failure, supporting people who move between Local Authority areas and safeguarding.

3.3 The majority of the Care Act is not new but reflects the consolidation of current legislation and guidance into one coherent law. Where the Act has not changed existing policy, we have taken the opportunity to reinforce best practice, consistency and collaboration across Wirral. Some parts of the Act introduce extensions or variations to current policy and practice and others demand new statutory duties and powers which Wirral must comply with.

3.4 Appendix 1 illustrates the Primary and Secondary legislation which has been revoked by the Care Act and highlights the respective areas of change. There are 22 high level Policies which have been written or reviewed to ensure Care Act compliance (Appendix 2). Each policy reflects the over-arching commitment to put the person at the centre of all decisions that are made. The focus on personal wellbeing, information, choice and control is at the heart of how care and support is provided by Wirral.

Overarching Values and Principles

3.5 This overarching policy reflects the Department's commitment to a person centred approach when working with individuals in a way which will also promote wellbeing, choice and independence. This policy clearly connects these values to the Wirral plan and the appropriate 20/20 pledges.

Customer Journey

3.6 This suite of policies includes assessment, support planning, review functions and the delivery of Reablement, Hospital and Intermediate Care services. The content of these policies reflect the new national eligibility criteria and Carers entitlement to an assessment in their own right if they meet the criteria within the Care Act.

Safeguarding

3.7 The two policies in this suite reflect the new duty of safeguarding enquiry under Section 42 of the Act and also the Statutory footing of the Adult Safeguarding Partnership Board. The Board policy has been signed off by the Chair of the currently established Safeguarding Adults Partnership Board.

Charging and Financial Assessment Policy

3.8 **Charging Policy - Carers** - For the first time Carers are entitled to a Carer's Assessment. In the light of the Care Act we wish to be compliant with the new legislation which puts carer's wellbeing on the same footing as the person needing care. It is proposed that in line with discretionary powers of the Act the Carer will currently not be financially assessed and will not be charged for services provided to them.

Choice of Accommodation and Additional Payments (Top Ups) Policy

3.9 Aspects of this policy relate to situations where an individual's home of choice may be more expensive than the Department would usually pay to meet their assessed need. The individual themselves or family members may wish to 'top up' the fee in order to facilitate the placement. This can also be an issue in relation to cross border placements when fee structures may vary in different Councils. Wirral Council has been leading on the development of a regional Choice of Accommodation and Additional Payments (top ups) policy which may reflect regional variations. Until this is finalised we propose to implement the attached interim policy. We are requesting that Cabinet delegate authority to the Director of Adult Social Services to approve any final regional amendments outside of the formal Cabinet process.

Key issues;

- Service Users will be allowed to choose their own accommodation and the Council must offer at least one care home that is affordable.
- All Top Ups will be subject to a tri-partite contractual agreement between Provider, Service User (or their representative) and the Council. Top up Payments will be administered by the Council.
- This is a new area of responsibility for the Council and in the instance of default by the third party this may potentially result in the Council becoming responsible for significant amounts of debt.

- If a third party agrees to pay for the top up, an assessment of their financial capacity will be undertaken to ensure they can pay for the length of time a service user may be in care.
- Service users who can no longer pay top up may be subject to being moved to a care home that is within Council rates, subject to an assessment of their ability to move as for some frail elderly individuals moving to alternative care may have significant impact upon their health and wellbeing.
- Third parties will pay fees direct to the Council and if they default on payments the Council will attempt to recoup any costs.
- The Local Authority will need to require care homes to declare what top up arrangements are in existence in order to facilitate a transition plan. It is thought that care homes may be reluctant to identify these agreements, for a variety of reasons. The plan is therefore to amend the existing care home contract to require care homes to disclose details of all top up agreements to the Local Authority.
- The Local Authority will not pay top up fees for those service users already in care where a tri-partite agreement referred to above has not been completed.

Deferred Payments

- 3.10 *Deferred Payments Agreements* (DPAs) are designed to prevent people from being forced to sell their home in their lifetime to meet the costs of their care. The Act places a duty on all local authorities to operate a deferred payment scheme and to offer deferred payments to people meeting the acceptance criteria for the scheme. This policy was agreed as an interim measure in July 2015 by Councillor Jones
- 3.11 Effectively the scheme offers a person a loan from Wirral Council using their home as security. It doesn't work in exactly the same way as a conventional loan but pays an agreed part of a person's weekly care and support bill for as long as is necessary.
- 3.12 By taking out a Deferred Payment Agreement (DPA) a person can 'defer' or delay paying the costs of their care home until a later date. Key issues;
- No client will be asked to sell their home in their lifetime to pay for care.
 - Interest will be charged on deferred payments in line with Government Interest rates (current rate 2.15%) updated every six months in January and July.
 - Administrative and Legal fees will be payable by service users so long as the fee is affordable and only reflects actual cost.
 - The deferral of payments leads to debts being secured against the property with the debt recovered from the estate when the property is sold.
- 3.13 **Interest Rate and Administration Charge**
The Council will have the ability to charge interest on any amount deferred including any administration charge deferred. The Council will charge interest at the maximum amount specified in the regulations. The interest rate will change every six months on 1st January and 1st July to reflect the changes in the national maximum interest rate. Administration charges will be updated annually but will never be more than the actual cost for that administration.

3.14 Wirral Council's proposed new charges are listed below and, with the exception of the interest charge, will be reviewed on 1 April each year.

Type of Charge	Value
National maximum interest rate (subject to revision 1 January and 1 July, each year)	2.15%*
Set up of deferred payment agreement	£250
Change or stop a deferred payment agreement	£100
Stopping and repaying a deferred payment agreement	£200
Repaying an already stopped deferred payment agreement	£100

All charges are in addition to any applicable valuation or Land Registry fees. All charges are subject to an annual review to take effect 1 April each year.

**to be revised from 1 July 2016.*

Charges of neighbours have been considered to ensure we are not outliers.

3.15 **Policies requiring consultation**

Many of the Charging and Financial Assessment policies have been updated and refreshed to reflect new Care Act guidance but will not have substantial impact upon customers, however some policies are proposing changes in discretionary powers which may have an impact upon individuals and as a result some policies need local consultation. These are detailed as follows;

3.16 **Charging Policy - support planning and arranging domiciliary care for self-funders**

Overview: The Care Act allows Councils to charge an administration fee to those people whose assets are above the Government's upper capital limit (currently £23,250). This fee must not be more than the amount the Council has incurred in arranging services.

The Council proposes to charge an administration fee of £60 in 2016/17 for arranging the care and support to cover its costs and there is a consultation taking place in relation to this. There is also consultation taking place with regard to the allowance the Council will make with regard to disability related expenditure. Results of the consultation are detailed at Appendix 3. In brief:

Consultation feedback – Charging. Results and comments received were mixed. Many approved but some were in disagreement with the policy to charge £60 because they didn't think they should pay or because they felt it was unfair that because they had saved they should pay.

Consultation action - A 'one off' fee of £60 will be charged in 2016/17 to those that have savings of over £23,250.

3.17 **Disability Related Expenditure (DRE)**

Overview – Service users were asked to comment on the need for more transparency and fairness in the way that all service users are treated.

Consultation feedback – Many agreed that DRE should be standardised but also suggested it would be difficult to do so.

Consultation action – We will create a standardised list of expenses so officers have a starting point when they make contact with service users, however the assessment of each service user will be based on their unique needs.

Assisted Transport Policy

3.18 Overview. This policy applies to all adults aged 18 years and above who access support provided directly or commissioned by Adult Services Social Care; there is a separate policy for:

- Children & Young People in education aged 5-16
- Children and Young people in education aged 16-19

3.19 Consultation feedback – Consultation identified a need for greater knowledge relating to the policy.

3.20 Consultation action - Additional Forums will be carried out with service users to ensure they have full knowledge of the new policy.

Financial Protection Policy (including protection of moveable property including pets)

3.21 Overview: If a person goes into hospital or residential care and they have no-one who is willing to help them Wirral Council will make arrangements to safeguard their property (including valuables and pets). Sometimes the storage / kennel / cattery costs incurred can escalate if the person is out of their home for a long period of time.

3.22 Consultation -

Wirral Council will recover third party costs incurred when protecting a service users' property - for example furniture storage fees, kennel / cattery costs. The Council will usually protect the service users property for a period of up to 12 weeks, thereafter the Council will seek to make alternative arrangements.

Consultation feedback – Over 61% of all those who responded agreed that third party costs should be recovered with only 20% objecting.

Consultation action – Third party costs will be recovered.

4.0 FINANCIAL IMPLICATIONS

There may be some impact upon Wirral residents in relation to the application of some of these policies. The deferral of payments will lead to the Council holding much higher levels of debt secured against personal properties. Debts are secured against the property but are recoverable when the property is sold. Administration and interest charges will be applied to cover the Councils reasonable costs.

5.0 LEGAL IMPLICATIONS

The policies have been developed with direct support from legal services, to support Departmental compliance with legislation and to reduce risks to the Council.

6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

There are no resource implications directly arising as a result of this report that have not been addressed elsewhere.

7.0 RELEVANT RISKS

The policies will support compliance with new legislation and if agreed will reduce reputational risk to the Council.

8.0 ENGAGEMENT/CONSULTATION

The report outlines the key policies which are being consulted upon.

9.0 EQUALITY IMPLICATIONS

Has the potential impact of your proposal(s) been reviewed with regard to equality?

Yes, each of the policies have had an Equality Impact Assessment.

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APPENDICES

Appendix 1 - Primary and Secondary legislation which has been revoked by the Care Act

Appendix 2 - Full List of Revised Policies

Appendix 3 - Consultation Exercise Results

REFERENCE MATERIAL

N/A

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
N/A	