

CABINET

8 MARCH 2016

ADULT SOCIAL CARE FAIR AND AFFORDABLE COST OF CARE POLICY

Portfolio Holder: Councillor David Brake, Adult Services

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Summary

This report provides Cabinet with an overview of the proposed Fair and Affordable Cost of Care Policy for Adult Social Care. The proposed policy will introduce a maximum expenditure limit for non-residential care and support, making sure that clients receive the best value care and support package, whilst ensuring that the funding available to the Council is sufficient to meet the needs of the entire local population.

1. Budget and Policy Framework

- 1.1 This report supports the Council Plan priority “Supporting Medway’s people to realise their potential”. It promotes the following way of working “Giving value for money”.
- 1.2 The information in this report provides Cabinet with an overview of the proposal to introduce a Fair and Affordable Cost of Care policy in Adult Social Care; it is accompanied by a copy of the proposed policy (Appendix 1). This was agreed as part the savings proposals, under the heading “Maximum Expenditure Policy” in the revenue budget 2016/2017 agreed at Council on 25 February 2016

2. Background

- 2.1 Medway Council is committed to supporting people to live full and independent lives within their local communities. Where people are eligible for Adult Social Care support, the aim is to support them in a way that reflects their preferences and the outcomes they wish to achieve through high quality services.
- 2.2 The Council must, however, take into reasonable consideration its finances and the budgetary position and must comply with its related public duties. This includes the importance of ensuring that the funding available to the Council is sufficient to meet the needs of the entire local population.

- 2.3 It is proposed to Cabinet that a Fair and Affordable Cost of Care Policy is introduced in Adult Social Care where the maximum amount of money Medway Council will pay for individuals to have their care and support needs met in the community is equal to the cost of care and support of needs for individuals being met in a residential care setting.
- 2.4 The proposed policy will ensure that individuals will receive the best value care and support package.
- 2.5 The proposed policy will ensure that care and support plans that are not best value can be delivered differently to seek best value.
- 2.6 The proposed policy cannot be a blanket policy as individual needs and circumstances must be considered.
- 2.7 The proposed policy seeks to achieve:-
- Fairness in how Medway Council funds care packages.
 - Improved safety and reduced risk to individuals and promotion of wellbeing. For example, if a person requires through the night care in their own home, this may not only be the most costly option but also the most risky if care is delayed or not available. In a residential setting or other accommodation with support, the risk of the required support not being available is significantly reduced ,if not removed.
- 2.8 It is proposed that maximum expenditure limits are introduced for all clients. However, there will be a different limit for specific groups of clients.
- Older People Service
- 2.9 The table below shows the prices Medway Council pay to meet an individuals assessed eligible needs in residential care.

Care Description	Proposed Weekly Cost (subject to Cabinet approval)
Standard Residential Care	£395.00
Residential Dementia Care	£485.00
Standard Nursing Care	£472.00
Nursing Dementia Care	£573.00

- 2.10 It is proposed that the Standard Residential Care weekly cost of £395.00 is implemented as the maximum expenditure limit for the Older People service.
- 2.11 Any community based care package exceeding that limit would be treated as an exception and alternative methods of care and support will be offered to provide the necessary care at best value.
- 2.12 Analysing community based care packages for new clients since 1 April 2015 has established that in the Older People's service 36 new clients have received community based care packages in excess of £395.00 per week. Of these, only 18 care packages remain open as of 9 February 2016.

- Adults with a disability

2.13 Due to the often complex and challenging needs of adults with a learning/physical disability; there is no standard price for residential care. The table below provides a breakdown of the price range paid for residential care providers to meet individual needs:

	<u>Low</u>	<u>High</u>
<p><u>Band A</u> Complex needs, high level of dependency requiring support to accomplish daily activities and access community.</p>	£570	£975
<p><u>Band B</u> Complex health & physical needs and/or learning disability which may include:</p> <ul style="list-style-type: none"> ○ Health needs fluctuating e.g. diabetes, MS, COPD, peg feeding ○ Challenging behaviour Learning disability/acquired brain injury/spinal injuries ○ Wheelchair dependent ○ At risk without support ○ Communication difficulties ○ High level of physical dependency ○ Fluctuating capacity 	£900	£1,600
<p><u>Band C</u> Highly complex health & physical disability and/or learning disability which may include:</p> <ul style="list-style-type: none"> ○ Challenging behaviour - learning disability/Behaviour issues e.g. Huntington's, ABI, YOD ○ Unstable/unpredictable elements to condition/behaviour ○ High level of risk to self/ others without 24 hour support ○ Capacity issues ○ Communication difficulties ○ High level of physical dependency 	£1,100	£2500

2.14 It is proposed that the Band A low limit is implemented at £570 per week as the maximum expenditure limit in the disability service.

2.15 Any community based care package exceeding that limit will be treated as an exception and alternative methods of care and support will be offered to provide the necessary care at best value.

2.16 Analysing community based care packages for new clients since 1 April 2015; has established that in the Disability Service, 6 new clients have received community care packages in excess of £570.00 per week, of these only 3 remain open as of 9 February 2016.

- Mental Health service

- 2.17 The proposed maximum expenditure limit for Mental Health Service is the fixed price for clients with dementia of £485.00 per week.
- 2.18 Any community based care package exceeding that limit will be treated as an exception and alternative methods of care and support will be offered to provide the necessary care at best value.
- 2.19 Analysing community based care packages for new clients since 1 April 2015 has established that in Mental Health, 31 clients have received community care packages in excess of £485.00 per week, although only 22 of these remain open.

3. Options

- 3.1 Local Authorities are asked to consider the need to consult local people, if the proposed change will impact people living in the community.
- 3.2 There are three options available with regard to the proposed change:
- Option1 – Do nothing and continue with current practice.
 - Option 2 – Implement the proposed change without consultation.
 - Option 3 – Ensure a robust consultation process is carried out to establish Medway's residents' view of implementing the proposed policy.

4. Advice and analysis

- 4.1 A Diversity Impact Assessment has been partially completed and if Cabinet agree to the recommendations in section 9 of this report, will be completed in full (and included in the report back to Cabinet following consultation) after the proposed consultation has taken place.
- 4.2 The information below provides analysis for Cabinet to make a decision whether we should consult:
- Option 1 – By continuing with current practice, we are not taking into account the current available financial resources in all decision making, to ensure that resources are fairly distributed across all people who are eligible for adult social care support.
 - Option 2 – The LGA guidance advises that we should consult if proposed changes have an impact on clients. Without this consultation Medway residents will not be given the option to tell us their opinions about the proposed policy, which is vital, because the policy will impact not only on current, but future clients and their families/carers.
 - Option 3 – By following LGA guidance and carrying out a robust consultation, we will ensure that Medway residents are able to give their opinion about the proposed policy. This will enable feedback to be provided to Cabinet, which will allow Members to make an informed

decision about whether the proposed Adult Social Care Fair and Affordable Cost of Care Policy should be implemented in Medway or not.

5. Risk management

5.1 The following risks have been identified.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Medway residents may view the proposed policy as a budget saving alone and that the authority is putting clients at risk.	By proposing the Fair and Affordable Cost of Care Policy on community based care, residents may think that this is purely a budget saving scheme and that we will not provide the care required, thereby placing clients at risk.	<p>The consultation and policy must make it clear that the authority is obliged to meet clients' eligible needs and that the introduction of the proposed policy will not stop the Council meeting those needs, but that we may need to meet them differently to seek best value.</p> <p>We must ensure that it is understood that the proposed policy will not result in eligible needs going unmet, but that an equitable and fair process is undertaken in the same way for everyone regardless of age, disability or gender etc. to ensure eligible needs are met in the most appropriate and cost effective way.</p>	C2
Clients challenge the proposed policy.	The Local Authority is challenged on the proposed Fair and Affordable Cost of Care Policy as clients are concerned that care will be removed.	<p>The completion of a consultation will not avoid the risk of challenge.</p> <p>However, the ability to advise that a meaningful consultation has been carried out and changes to policy approved will enable the Local Authority to respond appropriately.</p>	C2
Clients may be concerned that their community based care will cease and that they will be forced into residential care.	The proposed policy states that the weekly maximum expenditure in the community will be no greater than the weekly cost of care in a residential	<p>The proposed consultation will need to make it clear that this is not the case.</p> <p>If, after consultation, it is agreed that the policy will be introduced, then the policy should be discussed with the client by the Social</p>	C2

	<p>setting; there is a risk that people may interpret this incorrectly i.e. that because the cost of their community based care is too high they will be forced to move into residential care.</p>	<p>Worker as part of the assessment/review process.</p> <p>Individuals should have choice and control over their care and support plan and by discussing the financial and support options available as part of the assessment/review, people should feel more able to shape or directly control the quality and outcomes of their care.</p>	
<p>Providers of community based care may perceive the proposed policy as favouring residential and other accommodation with support over home/day care.</p>	<p>The proposed policy states that the weekly maximum expenditure in the community will be no greater than the weekly cost of care in a residential setting.</p> <p>There is a risk that providers of community based care may interpret this as the authority favouring residential and other accommodation support.</p>	<p>The proposed consultation must ensure that we engage fully with providers so that they recognise that whilst the cost of residential care is used as a benchmark for the maximum expenditure, the approved care package is based on the most appropriate and cost effective solution.</p>	C2

6 Consultation

6.1 It is recommended to Cabinet that a public consultation is carried out for a period of 12 weeks. As the proposed policy will affect a wide range of Medway residents, the consultation must be broad, covering as much of the local population as possible. It is recommended that engagement with stakeholder groups etc. should be accompanied by as much media exposure as the authority can manage so that anyone who wants to take part in the consultation will be aware of how they can do so.

6.2 The following clients and partner organisations will be included in the consultation: -

- Adult Social Care clients
- Carers/Representatives
- Medway Residents
- Care Providers

- Local voluntary organisations supported and represented by Medway Voluntary Action.
- Carers First
- The Learning Disability and Physical Disability Partnership Boards
- Health and Wellbeing Board
- Safeguarding Adults Board
- Kent Association for the Blind
- Kent and Medway NHS & Social Care Partnership Trust
- Medway CCG
- Medway NHS Foundation Trust
- Medway Community Healthcare
- The Mental Health Operational Group
- Medway Healthwatch
- Better Care Fund steering group members

7 Financial implications

- 7.1 The revenue budget 2016/2017 agreed at Council on 25 February 2016 included an assumption that implementation of this policy could reduce annual Council expenditure by around £220,000, this figure may be subject to some change dependent on numbers of service users that this policy applies to and also by the timing of any implementation of this policy.

8 Legal implications

- 8.1 Section 10.27 of the Care and Statutory Support Guidance issued under the Care states:

“In determining how to meet needs, the local authority may also take into reasonable consideration its own finances and budgetary position, and must comply with its related public law duties. This includes the importance of ensuring that the funding available to the local authority is sufficient to meet the needs of the entire local population. The local authority may reasonably consider how to balance that requirement with the duty to meet the eligible needs of an individual in determining how an individual’s needs should be met (but not whether those needs are met). However, the local authority should not set arbitrary upper limits on the costs it is willing to pay to meet needs through certain routes – doing so would not deliver an approach that is person-centred or compatible with public law principles. The authority may take decisions on a case-by-case basis which weigh up the total costs of different potential options for meeting needs, and include the cost as a relevant factor in deciding between suitable alternative options for meeting needs. This does not mean choosing the cheapest option; but the one which delivers the outcomes desired for the best value.”

- 8.2 The guidance refers to the LAs not setting arbitrary upper limits on the costs it is willing to pay to meet the needs of the service user. This essentially means that the LA should not set random, illogical, uninformed limits. The guidance does state that it recognises the needs for LAs to ensure that funding available is sufficient to meet the needs of the entire local population
- 8.3 We would still be working inline with the guidance if we set an upper limit however it cannot be based on illogical or uninformed basis and we also have

to ensure that there is an understanding that each case would still be considered on a case-by-case basis given that the whole process should remain person-centred.”

8.4 The following case law is pertinent to this policy.

8.4.1 R v Gloucestershire County Council, Ex Parte Barry [1997] established that Local Authorities can consider the availability of resources when deciding whether it is necessary to meet a person’s presenting needs.

8.4.2 R (McDonald) v Royal Borough of Kensington & Chelsea [2011] established that where a needs assessment broadly identifies a need as to how best to meet that need.

8.4.3 R (KM) v Cambridgeshire CC [2012] UKSC 23; [2012] P.T.S.R. 1189 established that a Local Authority must provide reasons to show that the sum allocated in a personal budget is reasonably sufficient to meet the person’s eligible needs but that as long as it can do this, it has discretion to allocate such sum as it thinks fit in each individual case.

8.4.4 R (Savva) v Royal Borough of Kensington & Chelsea [2010] EWCA Civ 1209, October 28, 2010 established that a person was entitled to be given adequate reasoning to explain how the sum in their personal budget had been reached.

9. Recommendations

9.1 It is recommended that Cabinet agree to a 12 week public consultation being carried out which will propose the introduction of the Fair and Affordable Cost of Care Policy for Adult Social Care and that the outcome of the consultation is reported back to Cabinet.

10. Suggested reasons for decision(s)

10.1 The public consultation is recommended to provide feedback to Cabinet and enable Members to make an informed decision as to whether the policy should be implemented in Medway.

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Appendices

Appendix 1 – Proposed Fair and Affordable Cost of Care Policy

Background papers

Budget report to Council – Appendix 2a – 25 February 2016

<http://democracy.medway.gov.uk/mglIssueHistoryHome.aspx?Ild=15761>

Care and Support Statutory Guidance issued under the Care Act 2014

<http://democracy.medway.gov.uk/mglIssueHistoryHome.aspx?Ild=16414&PlanId=245>

FAIR AND AFFORDABLE COST OF CARE POLICY FOR NON-RESIDENTIAL CARE PACKAGES

Version 1 – Jackie Brown
Version 2 – Jackie
Brown/Michael Hood
Version 2.2 – Jackie Brown

Introduction

Medway Council is committed to supporting people to live full and independent lives within their local communities. Where people are eligible for Adult Social Care support, the aim is to support them in a way that reflects their preferences and the outcomes they wish to achieve through high quality services.

Audience

The policy for determining Fair and Affordable Cost of Care for Non-Residential Care Packages applies to adults in Medway who meet the Care Act eligibility criteria to receive social care services funded by Medway Council.

All Medway Council Social Care staff, Medway Community Healthcare Staff and partner agencies that are responsible for Assessments and Care and Support Planning under the Care Act 2014 are required to comply with this policy.

Document Purpose

Medway Council must take into reasonable consideration its finances and budgetary position, and must comply with its related public duties. This includes the importance of ensuring that the funding available to the council is sufficient to meet the needs of the entire local population.

This document describes the principles for decision making which lead to the allocation of resources to an individual and a framework for identifying the maximum expenditure of a care package to support an individual in their home.

Policy Statement

Medway Council is committed to supporting people to live full and independent lives within their local communities by promoting independence, social inclusion and positive risk taking. Where people meet the eligibility for adult social care and support, the aim is to support them in a way that reflects their preferences and the outcomes they wish to achieve.

However this needs to be balanced against Medway Council's responsibilities to make best use of available resources.

Medway Council has developed this policy to apply to all adult social care users so that decision making in individual cases is fair, equitable and transparent and so that resources are fairly distributed across all people who are eligible for care and support.

Underpinning Principles

Medway Council has a duty under the Care Act 2014 to carry out an assessment where an individual appears to have a requirement for community based care services.

The purpose of an assessment is to identify the person's needs and how these impact on their wellbeing, and the outcomes that the person wishes to achieve in their day-to-day life. The assessment will support the determination of whether needs are eligible for care and support from the local authority, and understanding how the provision of care and support may assist the adult in achieving their desired outcomes.

Medway Council's policies and practices in assessment and reviewing give emphasis to people's rights, choices and inclusion. Individuals are encouraged throughout the assessment process to be an active partner in the assessment of their needs and, through an understanding of their situation, identify the outcomes they wish to achieve.

Advocacy and interpreters will be arranged as necessary to enable people to contribute to the assessment process. Information from other agencies is also considered and, with the agreement of the individual, carers are involved in the assessment process.

The national eligibility criteria set a minimum threshold for adult care and support needs which local authorities must meet. All local authorities must comply with this national threshold. The eligibility threshold for adults with care and support needs is set out in the Care and Support (Eligibility Criteria) Regulations 2014 (the 'Eligibility Regulations'). The threshold is based on identifying how a person's needs affect their ability to achieve relevant outcomes, and how this impacts on their wellbeing.

In addition to considering the needs of the individual and their preferred care and support plan, Medway Council has a responsibility to ensure the effective and efficient use of resources which takes account of the needs of all individuals in Medway who are eligible for social care and support.

Medway Council has adopted the Resource Allocation System (RAS) as the mechanism to identify the level of resources required to meet assessed need and to do so in an equitable way. This level of resource is the individual's Personal Budget.

The Council has to operate within a defined financial limit which is subject to Government spending decisions, which may vary from time to time. It is important that account is taken of the current available financial resources in all decision making to ensure that resources are fairly distributed across all people who are eligible for adult social care support.

In order to balance potentially conflicting responsibilities, through the introduction of the Fair and Affordable Cost of Care policy, the Council has decided to implement a maximum expenditure limit which will represent the expected maximum weekly cost on a package of care that would meet assessed eligible need in the following service areas;

- Community based services in someone's home.
- Respite via Direct Payment

In circumstances where a care and support plan to meet need and manage risk in the person's home exceeds the usual maximum expenditure, alternative care arrangements would be considered. This might include offering different ways of meeting need from the client's first choice.

Services provided to a carer supporting the individual where the service is for the carer and not the cared for are not included in the costings of the support plan and are therefore not taken into account if the usual maximum expenditure is met.

General Principles/Guidance

Medway Council's policy is to apply, subject to exceptional circumstances, a maximum amount of money that Medway Council will pay for clients to have their eligible care and support needs met in the community. This maximum amount is equal to the cost of having their eligible care and support needs met in a residential setting or other accommodation with support.

This could mean that insufficient Council funds are available for the package of support preferred by the individual and an alternative will be proposed by the Council. The individual may wish to achieve their preferred method of support by supplementing the Council's allocated resources through their own private resources, e.g. benefits received and personal assets but the Council must be satisfied that the final care and support plan meets need and manages risk appropriately.

Direct Payments will be offered to all Clients as the default option. Direct payments are a central part of personalisation and give Clients choice and control over their care. The advantage of this is in giving people choice, flexibility and control.

Where the need for respite has been identified and will be provided as a direct payment the maximum cost to Medway Council will be no more than the net cost of a prepaid/block purchase respite provider or equivalent service provision.

Should the individual choose to supplement the cost of their support through their own private resources, the council must be assured that this does not affect their ability to comply with the assessed client contribution determined through the Financial Assessment process.

In applying this policy the Council will give due consideration to Article 8 of the European Convention on Human Rights which gives a right to respect for private and family life, home and correspondence. In considering this right, the Council will apply an approach, which balances the needs of the individual with the needs of all those for whom it has a duty to arrange services. The Council will ensure that maximum independence and privacy is achieved for each individual within the financial limits of the resources available.

The Mental Capacity Act 2005 has particular relevance where the use of Independent Mental Capacity Advocates (IMCAs) might be appropriate to ensure that, as far as possible, people who lack capacity to make specific decisions about their accommodation, care and support are supported to be involved in the decision-making process.

The provisions of the Equality Act have to be considered where cultural requirements dictate a particular, and specialist, style of service which may be more expensive than other options.

Ultimately, however, the Council has to consider how the needs identified in the Assessment could be met in a way which represents the most cost-effective use of resources.

Procedure

This policy will be applied when the assessment/review process is complete and when full costings of the care and support plan preferred by the client and of the alternative care and support plan proposed by the Council are available. The potential for the promotion of independence through reablement/enablement and the use of assistive technology will have been taken in to consideration throughout the assessment process.

The assessment will be person centred and focussed on an individual's strengths and capacity to meet their own needs with the support of their informal support network such as family and friends. However, Practitioners are expected to explain the policy during the assessment process.

Where a proposed care and support plan exceeds the maximum expenditure limit the first step would be to re-examine the detail of the plan to see if any of the needs can be met in less expensive ways e.g. with the help of informal support, additional assistive technology.

Where the maximum expenditure limit is exceeded an individual has the right to make up the difference between the Council's allocated funding and the amount needed to fund their preferred support plan. However, this cannot affect payment of the assessed client contribution determined through the Financial Assessment process.

Medway Council must be satisfied that the revised care and support plan is able to meet agreed needs and appropriately manage risks and such cases will be agreed at the Exceptions Panel.

This policy will be applied through the decision making process of the Exceptions Panel and the outcome communicated in writing to the individual. Where the community based care and support plan is not agreed, the Practitioner will discuss with the individual and or/their representative other appropriate and alternative options to meet eligible care needs, this may include alternative accommodation including available care home placements.

Exceptions to this policy will be agreed through the Exceptions Panel. These decisions will be made on an individual basis. Factors that would be taken into account in the exercise of discretion include the potential for further reablement and the eventual reduction of support needed, cultural issues requiring a specialist agency or exceptional family circumstances such as the separation of family members. This is particularly important when considering young people transitioning to adult services that may still have the opportunity to learn daily living/social skills or education opportunities and may then have the opportunity for paid employment and be less dependent on social care funding in the future.

Right of Appeal Stage 1 – Request a review

The individual has the right to submit further information and to request the Exceptions Panel to review its decision.

Stage 2- Appeal

Should the individual or their representative remain dissatisfied with the outcome of the Exceptions Panel they can invoke the Appeal process. The Appeal Panel consists of a Head of Service in Adult Social Care, the Self Directed Support Team Manager and a third senior manager who has had no involvement in the Exceptions panel decisions.

Reviews and re-assessments

This policy applies to new users of social care services; to clients where a change of need is identified, and to existing clients at the point of review.

Glossary

Exceptions Panel – an internal process for scrutinising budget allocations which are above the maximum expenditure limit. This is done to ensure equity applies across all service groups.

Client contributions - a client contribution is the amount the individual pays towards the cost of their care. This is calculated after a financial assessment which takes in to account their personal finances.

Direct Payments (DP) – payments of a personal budget paid directly so that the Client can purchase and manage their own care and meet the outcomes which have been agreed in their assessment. Direct Payment enables people to have more choice, control and flexibility over the services they receive.

Legal duty – this is the Council's statutory responsibility

Net weekly cost – the cost to the Council for a service after client contributions have been paid.

Assessment – the process to identify an individual's social care and support needs and their eligibility for public funded care and support

Maximum Expenditure Limit – the maximum amount of money the Council will make available for the purchase of non-residential care services for an individual.