

AGENDA ITEM

REPORT TO CABINET

11 March 2010

**REPORT OF CORPORATE
MANAGEMENT TEAM**

CABINET DECISION

Adult Services & Health – Lead Cabinet Member – Councillor Mrs McCoy

PERSONAL CARE AT HOME BILL 2010

1. Summary

The Personal Care at Home Bill aims to help around 280,000 people nationally with the highest care needs by guaranteeing free personal care at home. This is being promoted as the first step towards setting up a new National Care Service.

The principle of helping more people with care needs to stay in their own homes for as long as possible is an extension of Government policy the Council has been working towards for a number of years.

However, there are a number of key concerns about the Government's proposals in the Bill, including:

- The robustness of the Bill Impact Assessment;
- The feasibility of achieving the proposed local government efficiencies;
- The creation of perverse incentives that disadvantage already strongly performing councils, and;
- Implementation pressures and workforce issues.

2. Recommendation

1. The main elements of the new Bill are noted;
2. Further work needs to be undertaken to estimate the potential financial impact (loss of income) by assessing the number of individuals who are assessed as receiving personal care (as per the definition/qualifying criteria) and who have been assessed as critical in terms of the Fair Access to Care Services (FACS) eligibility criteria;
3. Assess how many self-funders, or those who have resisted services because of charging but would possibly qualify;
4. Consider how we will adapt our Resource Allocation System for Personal Budgets; and
5. Appendix A is used as the basis for a Stockton Council response to this consultation exercise

3. Reasons for the Recommendations/Decision(s)

To note the issues and concerns assessed locally and reflected nationally, through informal correspondence with other Councils and formally through the Association of Directors of adult Social Services (ADASS).

4. Members' Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.

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However, there are a number of key concerns about the Government's proposals in the Bill, including:

- The robustness of the Bill Impact Assessment;
- The feasibility of achieving the proposed local government efficiencies;
- The creation of perverse incentives that disadvantage already strongly performing councils, and;
- Implementation pressures and workforce issues.

RECOMMENDATIONS

1. The main elements of the new Bill are noted;
2. Further work needs to be undertaken to estimate the potential financial impact (loss of income) by assessing the number of individuals who are assessed as receiving personal care (as per the definition/qualifying criteria) and who have been assessed as critical in terms of the Fair Access to Care Services (FACS) eligibility criteria;
3. Assess how many self-funders, or those who have resisted services because of charging but would possibly qualify;
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DETAIL

1. The Government introduced their proposals for free personal care at home in the Queen's Speech on 18 November 2009. This follows the announcement in the Green Paper *Shaping the future of Care Together*, that care for people with the highest level of need living in their own home would be free from 1st October 2010, (subject to the passage of parliamentary and legislative processes).
2. The move followed growing concern that many older people were being forced to spend all their savings and sell property in order to fund care.

Main points of the bill:

- Guarantees free personal care for people with the highest needs (suggested critical FACS banding) who also need substantial help with 4 or more activities of daily living. This includes current clients assessed as critical in receipt of personal care support and those who self fund their care.
- Local authorities have the option to require a period of free re-ablement in advance of assessing for a community care service. Refusal to participate in this process (if the council decides it is a criterion) could result in a potentially eligible person not qualifying for free personal care.
- A focus on intensive assistance or "re-ablement" reflects the need to help people to regain their independence and prevent ill health. Helping people to stay in their own homes could involve installing new equipment in people's homes and use of telecare.
- No charge will be raised for intensive support and re-ablement services (consistent with Stockton's current policy).
- To be eligible, the client must be in receipt of "personal care" in their own home; specifically requiring significant help with 4 or more activities of daily living.
- To ensure personal care needs are assessed consistently, the DoH intends to develop a standardised assessment tool for all councils to use (summer 2010).
- Councils will have to ensure local flexibility where assessed care costs exceed any amount identified through the Resource Allocation System (RAS).

The Government believes the main benefits of the proposals are as follows:

- Guarantee free personal care for the 280,000 people, including those with serious dementia or Parkinson's disease, with the highest needs.
- Protect the savings of the 166,000 people who currently get free care from future charges.
- Help around 130,000 people who need home care for the first time to regain their independence.
- Where home adaptations or technology can increase a person's independence and reduce care needs, these would be offered.
- It would allow £130 million to be invested in re-ablement and prevention to help people to maintain their dignity and rebuild their confidence so that they can live at home for longer.
- This would put prevention at the heart of the system, improving quality, empowering people, and saving the NHS and social care money.

Issues identified through local and national consultation:

3. There is the potential for the Bill to have significant implications for the Council. Already organisations have begun to assess the impact of these proposals. ADASS have formally presented their concerns over the Bill highlighting a number of common reservations:

The financial burden to councils to meet the "efficiency gap":

4. In terms of finance in 2010/11, funding for Free Personal Care will be issued as part of the Area Based Grant from October 2010 onwards. The grant relates to the extra costs to councils of implementing free personal care at home for those with the highest need. This extra cost has two elements, firstly lost council income from user contributions to personal care at home for those with the highest needs. Secondly, the majority of the additional cost will be for people who are not current users of publicly funded care and who are likely to be currently purchasing care privately.
5. In the first half year, £210m will be made available from central resources and the estimated remainder of the funding required, £125m, is to be found from local government efficiency savings. £670m is expected to be required in the first full year of operation, made up of £420m central funding and £250m which is to be found from local government efficiency savings. The Government is clear that there is a finite amount of money available for this policy and so the offer will be targeted at those with highest needs.
6. In local terms, this means, depending upon which of the 3 funding models the government choose, we will get a full year grant allocation of either £652k, £701k or 746k. Across all Councils, there are winners and losers over the 3 models, so no one solution is currently guaranteed.
7. For Stockton this is estimated to be approx £248k of client contribution income will be lost per annum based on information used in the FACS EIT review for personal care and direct payment clients in the critical banding between October 2008 and March 2009. However, there are difficulties in modelling the impact based not only on estimates of loss of income, but estimates of numbers of self-funders, and number of “switchers” from informal care and residential care. Although the efficiency saving is not additional to that already expected by the Government, as it has not been fully factored into the current MTFP it does in reality represent an unfunded pressure.
8. Interestingly, an assessment of Free Personal Care introduced in Scotland in 2002 by the Joseph Rowntree Foundation, found that between 2002 and 2005, the overall number of local authority home care clients rose by 10 per cent. Within this group, 62 per cent more received personal care. If this pattern were replicated in Stockton, the financial burden would be significantly worse.

The increased administrative burden to councils:

9. The impact assessment identifies the proposed additional £29m cost of administering the bill has been factored into the costing for the grant and efficiency savings. However, as the Government believes that there should be a set period, from 1st October 2010 to 31st December 2010, during which applications for free personal care should be considered retrospectively from the date of they were received plus a concerted effort by all local authorities to promote free personal care to all in the 3 months leading up to its implementation, the view of many councils is that this is insufficient.
10. At the very least, we will also have to undertake: the additional assessments of self-funders; re-assessments for some clients currently assessed at substantial; appeals activity where a banding is challenged; additional activity through intermediate care; and potential training required to deliver the new assessment tool. It is also worth noting that as the majority of people that meet the criteria for free personal care will also receive other services, they will still have to be assessed for charging, and so there will be no reduction in administrative costs.

Public confusion for free personal care:

11. The draft guidance proposes that free personal care should be available to those in the highest need (FACS critical). The assessment of any client as “critical” is known to be variable based on their very unique circumstances of individual clients. People will also need to meet the criteria of requiring assistance with four Activities of Daily Living and new systems would have to be set up to assess this.
12. The Joseph Rowntree study in Scotland of free personal care, found that after 3 years of operation, there remained issues around the lack of understanding of free personal care by the general public, with many people surprised that they may still be required to pay for some aspects of care.

Timetable for implementation:

13. This is a challenging timescale, which is not aided by the Government’s intention to provide a national assessment tool in the summer of 2010. If the delivery of this tool is not timely then councils will struggle to deliver a working system for the expected start date of 1 October 2010.

FINANCIAL IMPLICATIONS

14. There will be a significant financial burden on the back of this bill.
15. There will be grant allocation for 2010/11 (6 months) and 2011/12 (full year) based on one of three funding formulae. Currently, the assessment using the English Longitudinal Survey of Aging (ELSA) would deliver the greatest allocation to Stockton. Based on DoH figures this grant is net of efficiencies it’s expecting LAs to make. Assuming there is a linear relationship between grant and efficiency then based on the £746k grant the DoH are expecting SBC would have to find £443k of efficiencies i.e., that the gross cost would be £1.189m in 2010/11 for six months.
16. The actual extra costs to the Council are made up of two elements:
 - Lost council income for users charges. For Stockton this is estimated to be approx £248k pa based on information used in the FACS EIT review for personal care and direct payment clients in the critical banding between October 2008 and March 2009.
 - The majority of the additional costs are expected to be for people who are not currently users of our services and who are purchasing care privately. From a financial perspective this is the unknown factor at present.
17. The policy covers all adults but it primarily relates to older people.
18. Three potential options for allocating the amount needed to meet individuals’ personal care needs are outlined:
 - Setting an indicative amount based on the average costs of personal care of those with the highest needs;
 - Setting an indicative range that would enable councils to calculate a precise figure based on the personal care assessment and local costs (reflecting the varying costs of care around the country); or
 - Leaving councils to assess the costs of each individual’s personal care needs on an individual basis.
19. The consensus amongst other councils is option 3 is the most practicable, and fits more with the principles of personal budgets. It also reflects the government’s view that councils must be flexible to meet any costs that exceed indicative ranges where they are applied

LEGAL IMPLICATIONS

20. Scotland's experience has shown there has been persistent confusion over which tasks should be regarded as personal care tasks and therefore provided without charge. This issue was the focus of potential court action at the time of the report (2007). Local authorities reported that there is still significant uncertainty as to how charges should be levied for some tasks, and several reported that they would welcome a judicial decision to guide their actions.

RISK ASSESSMENT

21. Within CESC Risk Register.

COMMUNITY STRATEGY IMPLICATIONS

22. Healthier Communities and Adults: This bill will have a significant effect on the focus to support a growing number of residents who have additional support needs to live at home, through a range of support including further development of early intervention and preventative measures.

EQUALITIES IMPACT ASSESSMENT

23. DoH EIA identified no detrimental links across any of the 6 diversity strands.

CONSULTATION INCLUDING WARD/COUNCILLORS

24. A presentation of the main elements of the Bill was made on 4 February 2010 to Councillors, and feedback has been built into the consultation response by the Council.

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Background Papers

The consultation document is available in full:

http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_109139

Ward(s) and Ward Councillors:

The DoH documents are in the public domain and available to all Councillors for information.

Property

The report does not have implications in relation to the Council's property.

