

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:

1935

Author:

Linda Sellars

Department:

Children and Families

Contact:

Linda Sellars

(Job Title: Adult Social Care Specialist, Email: linda.sellars@nottinghamcity.gov.uk, Phone: 01158764150)

Subject:

Care Act 2014 and Charging for Residential Care

Total Value:

Nil (Type: Nil)

Decision Being Taken:

Approval that Nottingham City Council continues to charge for residential care, save in exceptional circumstances, on the coming into force of s.14 of the Care Act 2014 and the Care and Support (Charging and Assessment of Resources) Regulations (which is anticipated to be 1 April 2015) and does so from that date in accordance with the provisions of that legislation.

Reasons for the Decision(s)

The duty of a local authority to provide residential accommodation to individuals assessed as having an eligible need is set out in s.21 National Assistance Act 1948.

The current legislative framework for charging individuals for care within such a residential setting is set out under s.22 National Assistance Act 1948. The charging provision under s.22 is framed as a duty which requires the local authority to charge in accordance with a means tested approach. The only exceptions to the obligation to charge are during the first eight weeks of a stay, or if it is part of a package of intermediate care.

The way in which that means tested charging system operates is specified currently in the National Assistance (Assessment of Resources) Regulations 1992. Guidance known as CRAG (Charging for Residential Accommodation Guide) is published annually by the Department of Health and is s.7 Guidance.

It is anticipated that from 1st April 2015 the duty to charge for residential care under s.22 NAA 1948 is to be overtaken by s.14 Care Act 2014. The Government's policy that charging for all forms of care and support should be discretionary has seen the enactment of s.14 which means that the council no longer has a duty to charge for residential care but a power to charge.

The change from a duty to a power to charge for residential care requires the local authority to exercise discretion in deciding how it wishes to charge. The income generated from charging for residential care is significant and allows the local authority to continue to meet need in an environment where there are significant budgetary pressures.

The Act has given the Secretary of State regulation making powers and as such the Care and Support (Charging and Assessment of Resources) Regulations 2014 provides the mechanism under which an individual is financially assessed including the provision of capital and income thresholds. CRAG has been replaced by Care and Support Statutory Guidance and chapter 8 of that guidance refers. The charging regime for residential care at this time substantively reflects current practice. More significant reforms including the introduction of cap on care costs are not due to come onto the statute books until April 2016 at the earliest.

The change from a duty to a power to charge for residential care requires the local authority to exercise discretion in deciding whether it wishes to charge. The income generated from charging for residential care is significant and allows the local authority to continue to meet need in an environment where there are significant budgetary pressures.

Other Options Considered:

1. Whilst the details of the transitional arrangements are not fully clear it is expected that s.21 National Assistance Act is to be repealed. If that take places as expected the council will have no basis under s.21 NAA 1948 on which to charge as the duty to charge will have been repealed. The council will be at risk of challenge if it purports to continue to charge for this service under s.14 Care Act 2014 for not having put its mind to the exercise of the statutory discretion. (Not Favoured)

2. Consider the exercise of the new power under s.14 Care Act 2014 and decide not to charge. The council's budget is predicated on continued charging at the current ratesThe income generated from charging for residential care is significant and allows the local authority to continue to meet need in an environment where there are significant budgetary pressures. (Not Favoured)

3. Exercise the power under s.14 Care Act 2014 to charge. If this option is preferred then the rate of the charges will be governed by the Care and Support (Charging and Assessment of Resources) Regulations 2014. (Favoured)

Background Papers:

None

Published Works:

None

Affected Wards:

Citywide

Colleague / Councillor Interests:

None

Consultations:

Those not consulted are not directly affected by the decision.

Crime and Disorder Implications:

Not applicable

Equality:

EIA not required. Reasons: This recommendation does not change current practice therefore it would not be proportionate to carry out an EIA for this specific proposal.

Decision Type:

Portfolio Holder

Subject to Call In:

Yes

Call In Expiry date:

20/04/2015

Advice Sought:

Legal, Finance

Legal Advice:

As outlined in the body of this report, s.14 of the Care Act 2014, once in force, will create a discretion to charge adults for meeting assessed eligible needs for care and support (including residential care), whereas currently the National Assistance Act 1948 creates a duty to provide and charge for (with certain exceptions) residential accommodation to individuals assessed as having an eligible need. This report deals with the Council's proposed approach to the new legislation. Advice provided by Sarah Molyneux (Legal Services Manager) on 18/03/2015.

Finance Advice:

As stated in the reasons for the decision, the 2014 Care Act has made charging for residential care discretionary. The purpose of this decision is to ensure that this discretion is positively addressed and the current charging regime continues. There is no value attached to the decision as it does not specifically affect the level of funds received.

Advice provided by Ian Greatorex (Finance Business Partner) on 17/03/2015.

Signatures

Alex Norris (PH Adults, Commissioning and Health)

SIGNED and Dated: 13/04/2015

Alison Michalska (Corporate Director for Children and Adults)

SIGNED and Dated: 27/03/2015