

BARNESLEY METROPOLITAN BOROUGH COUNCIL

This matter is not a Key Decision within the Council's definition and has not been included in the relevant Forward Plan

REPORT OF THE EXECUTIVE DIRECTOR OF ADULTS & COMMUNITIES

NET TO GROSS PAYMENTS

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek approval from cabinet members to implement a new payment arrangement for residential care homes from the 27th of July 2020. Subject to cabinet agreement care home fees will be paid gross weekly rather than net of client contributions with residents charged their contribution by the Council from this date.

2. RECOMMENDATIONS

- 2.1 That cabinet agree to the proposed change to current payment arrangements from the 27th of July 2020.
- 2.2 That cabinet agree the proposed changes to be made in July will not include third party top ups.
- 2.3 That cabinet support further consultation with care home providers regarding the future inclusion of third-party top ups in payment arrangements.

3. INTRODUCTION

- 3.1 Under the current framework agreement for the provision of residential care providers are paid a net fee. This means that the fee paid to the care home by BMBC does not include the clients contribution towards their care.

The agreement states that the client contribution will be paid directly to the home by the service user (or representative) however it also states that BMBC remain liable for the full fee should the client default on their payment arrangement.

This agreement creates a layer of complexity for both care homes and service users particularly where changes to client contributions occur. It also places an additional burden on providers to administer and collect client contributions, and manage any overpayments made or debts accrued by residents.

In the last 12 months Commissioners have received a number of requests from care home providers to consider the payment of gross fees in line with Care Act recommendations.

- 3.2 A further consideration within this area is the inclusion/exclusion of third-party top ups in the gross fee payment.

Top-up fees are fees paid by a third party (usually a family member) to make up the difference between the charges made by a care home and the payment that a local authority is willing to make under a framework agreement. Top ups are payable where a service user chooses a home whose weekly fee is higher than that the council is prepared to pay.

4. PROPOSAL AND JUSTIFICATION

- 4.1 The proposal is to implement a new care home payment arrangement whereby care homes are paid their fee gross by the Council as opposed to net of the resident's contribution. Care home residents will be charged their client contribution by the council as opposed to their care home.
- 4.2 Under the council's Fairer Contributions Policy, individuals are financially assessed to determine how much financial support they are entitled to towards the cost of their care and what contribution they have to make themselves.
- 4.3 Where an individual is required to make a contribution towards the cost of their care the council currently pays care home providers their fee net of the required contribution and requires the provider to invoice the client and collect the contribution to make up the payment to the full fee rate.
- 4.4 The councils current care home payment arrangements are longstanding and consistent with the historic practice of many other Local Authorities. However it is clear that a change in practice, at a time when other Local Authorities nationally are making the same change, will mean consistency with current national guidance whilst allowing the Council to better support vulnerable people and provide improved financial assurance to the care homes with which it contracts.
- 4.5 The proposed changes are reflective of the council's obligations under the statutory Care and Support guidance issued under the Care Act which states that fees should be paid to the provider gross, as well as a number of recent outcomes of Local Government Ombudsman investigations where councils have been found to be acting outside of their obligations where they are paying fees net.
- 4.6 Whilst the statutory guidance states that councils should pay gross, it is not specific around the inclusion of third party top ups in this arrangement. See section 9 'Legal Implications' below.
- 4.7 The Care Act guidance states that the council is responsible for paying the full amount, including where a 'top-up' fee is being paid. However, where all parties are agreed it may choose to allow the person to pay the provider directly for the 'top-up' where this is permitted.
- 4.8 To date care home providers have not requested that third party top ups are included in the gross fee arrangements however this could be requested at a later date and as such should be considered as part of this report.

5. CONSIDERATION OF ALTERNATIVE APPROACHES

- 5.1 The council could maintain its current arrangements paying fees net of client contributions. This would not be in line with Care Act requirements and would leave the council subject to further challenge by care home providers.
- 5.2 The council could move to a payment arrangement inclusive of third party top ups. Further work is required to fully understand the implications of this including consultation with care home providers. This would result in a delay in the implementation of gross payments and a likely complaint to the ombudsman.

6. IMPLICATIONS FOR LOCAL PEOPLE/SERVICE USERS

- 6.1 Service users will be required to change their current payment arrangements for the payment of client contributions to ensure that from the 27th of July these are paid to the council and not the care home.
- 6.2 Switching to an arrangement whereby the Council pays providers their full fee rate (and charges the resident directly for any contribution they are liable for) will ensure that charges to vulnerable people are within Local Authority control, enabling earlier identification of clients who are struggling to pay their care contributions or any signs of financial abuse.
- 6.3 There will be less administration on care homes following the implementation of net to gross as they will no longer be required to raise bills and monitor income from client contributions. The change will also reduce the financial risk on care homes through non-payment of client contributions.

7. FINANCIAL IMPLICATIONS

- 7.1 Consultations have taken place with representatives of the Service Director – Finance (S151 Officer).
- 7.2 The proposed change to payment arrangements relates to older people, learning disabilities and mental health service users supported in residential / nursing care homes. It is proposed that from 23 July 2020, care home providers will be paid on a gross basis (based on the agreed weekly fee), whilst the Council would assume the responsibility for billing and collecting the contributions from service users towards their care cost (as determined under the Fairer Charging Policy). The gross payment proposal is based on the following:
 - Covers only council funded service users / residents in care homes, i.e. it doesn't include self-funders (private residents in care homes who are responsible for their own care and costs).
 - Does not include third party top-ups paid by residents or their families directly to care homes in addition to the Council's agreed rate.

7.3 The table below shows the gross cost of residential / nursing care and the expected level of contributions from service users for 2020/21 (based on Controcc data).

Residential care	2019/20 £M	2020/21 £M
Care costs (gross)	32.910	31.070
Client Contributions:		
- Older People	-7.320	-6.374
- Working age adults	-0.572	-0.566
	-7.892	6.940

7.4 Whilst the proposed change in payment arrangements would have no impact on the cost of residential care for the Council, there are a number of significant financial risks, if not managed effectively, could impact on the level of contributions collected / received during the year. The following paragraphs detailed the financial issues / risks to be considered and managed.

Key Financial Issues / risks

Implementation issues/risks

7.5 The following detailed the key implementation timeline. The following detailed work undertaken to date and some of the key operational issues / risks to manage:

Action	Target Completion Date
Development of computer script by ContrOCC system supplier (OCC)	18/05/2020
Data cleansing of invoice details	07/07/2020
User acceptance testing of computer script	26/06/2020
Prepare letters to affected service users regarding the change to Gross payments	07/07/2020
Prepare letters to care home providers regarding the change to Gross payments	07/07/2020
Issue letters to service users and care home providers	09/07/2020
Computer script run on ContrOCC Live system	26/07/2020
Setup invoices on SAP	15/08/2020
Setup direct debits	15/08/2020

1. Work has commenced on setting up the required invoice data and ensuring the accuracy of the information on record. Testing is scheduled to go ahead next week and the week after.
2. There are 737 service users who we will have to start billing effective from 23 July 2020 - at a cost of £123k per week (£7M per annum). The main concerns around the impact on service users during the current pandemic / restricted access to banks, etc.
3. Risk of services users not engaging effectively and the possibility of adverse publicity as a result of implementing this change at this time.
4. It is proposed to charge service users on an arrears basis, which should allow time for customer accounts and direct debits to be set up in time.

Income collection / debt levels

- 7.6 The increase in billing / invoices as a result of changing to gross payments carries a major risk to the Council's outstanding debt position, as adult social care currently has the highest level of debt outstanding within the Council. Current level of ASC debt outstanding (2013/14 to date) is estimated at £1.554m which includes around £0.827m relating to residential / nursing care provision.
- 7.7 It should be noted that under the current arrangement the Council is still ultimately liable for all debts that can't be collected by care home providers. To mitigate the significant risk of increased debt levels, a full review was undertaken and as a result the following changes have been put in place to monitor the position closely and allow for more pro-active approach to income/debt collection.
1. A full review of the existing customer contact information and collection of data for additional customers is currently being undertaken to ensure correct billing and contact details are held;
 2. The initial debt process will be managed within the existing resources ensuring that there is a better understanding of the full process and more consistency throughout. This will also allow early identification of issues impacting on payment earlier in the process;
 3. A County Court pilot that will to be undertaken to allow where necessary legal action to take place. This will only be undertaken where all actions as outlined in the Care Act 2014 have been completed but where payment is outstanding. This action allows for additional powers of collection, in a more sensitive manner if required including for example a charge of property;
 4. Partnership working with external legal advisors with extensive knowledge and experience in collecting adult social care debt to provide advice, guidance and support on specific cases;
 5. Closer collaboration between the Finance and Adult Social Care business unit to minimise risk of non-payment by engaging with the service user and understanding any concerns early in the process through better communication and use of adult social care systems.

Debt Policy

- 7.8 Work has commenced to review the Council's existing Debt Policy, particularly where it pertains to adult social care service users. This is with the view of strengthening the policy where relevant and to reflect the changes in processes and arrangements (as detailed in para 7.7 above).

8. EMPLOYEE IMPLICATIONS

- 8.1 There are no direct employee implications arising from this proposal. A number of staff from across adult social care and financial services are involved with the implementation of this work.

9. LEGAL IMPLICATIONS

- 9.1 The statutory Care and Support guidance issued under the Care Act assumes that local authorities will contract with the care provider for the full amount of the cost of a person's care (i.e. including the client contribution) and discourages the practice of top up fees being paid separately to the provider.
- 9.2 In particular, paragraph 8.33 of the guidance states: ' Where a local authority is meeting needs by arranging a care home, it is responsible for contracting with the provider. It is also responsible for paying the full amount, including where a 'top-up' fee is being paid. However, where all parties are agreed it may choose to allow the person to pay the provider directly for the 'top-up' where this is permitted. In doing so it should remember that multiple contracts risk confusion and that the local authority may be unable to assure itself that it is meeting its responsibilities under the additional cost provisions in the Care Act.' Further, paragraph 25 of Annex A of the guidance states: "Local authorities should therefore maintain an overview of all 'top-up' agreements and should deter arrangements for 'top-up' payments to be paid directly to a provider".
- 9.3 The potential legal risks in not making changes to the current payment arrangements is that the service user or their family could complain to the Local Government Ombudsman, with such complaint highly likely to be successful given the position that the Ombudsman has adopted in these cases to date. The council could also be at risk of a challenge to its decision making by way of judicial review. Such action could be brought by a care home or service user. Applications for judicial review can only be brought following completion of the pre-action protocol in which the council would be issued with a letter before claim, allowing a short period of time for the council to reconsider its decision making. Defending judicial review applications can be costly and if the defence is unsuccessful, will usually result in a costs order to also pay the claimant's legal costs. Adverse Ombudsman decisions and judicial review outcomes may also lead to bad publicity for the council.

10. CUSTOMER AND DIGITAL IMPLICATIONS

- 10.1 No implications have arisen for service users and carers under the current payment arrangements.

11. COMMUNICATIONS IMPLICATIONS

- 11.1 A number of care homes have contacted the council to request a move from net to gross payments in the last 12 months including a request by Barnsley's Independent Care Home Association on behalf of the wider care home market.
- 11.2 All service users affected by this change will be contacted in writing to inform them of the proposed changes. They will be given clear instructions around the changes to payment arrangements and offered support to establish new arrangements where required.
- 11.3 Communication with service users will be done as part of a wider communication plan in collaboration with care home providers to avoid confusion and support a smooth transition.

12. CONSULTATIONS

12.1 All providers have been offered the opportunity to meet with commissioners to discuss the proposed changes. A number of care home providers attended meetings in March to discuss including a meeting with the Independent Care Home Association acting on behalf of the wider market.

13. PROMOTING EQUALITY, DIVERSITY AND SOCIAL INCLUSION

13.1 An Equality Impact Assessment (EIA) has been undertaken for this decision and, assuming a successful implementation of the new charging model, there are no anticipated adverse implications for people with protected characteristics. Indeed the purpose of this change is to ensure that vulnerable people and their 3rd parties (normally family members), in respect of third party top ups, are in future charged directly by the Local Authority in order that it has oversight of the charging process and can better support the avoidance of debt.

14. TACKLING THE IMPACT OF POVERTY

14.1 Transferring the payment of client contributions to the council will give the council a better oversight of the service users financial situation. Debts will be identified early and flagged with social workers who can then review the individual’s circumstances and identify any risks associated with their financial affairs.

15. RISK MANAGEMENT ISSUES

15.1 See financial risk under section 7 Financial Implications.

16. HEALTH, SAFETY AND EMERGENCY RESILIENCE ISSUES

16.1 There are no implications for the health and safety of the public and workforce or the resilience of the Borough to a civil contingency, emerging through the report.

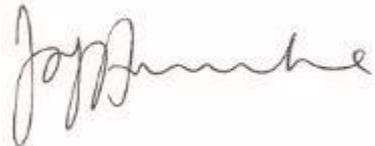
17. BACKGROUND PAPERS

N/A

If you would like to inspect background papers for this report, please email governance@barnsley.gov.uk so that appropriate arrangements can be made

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Financial Implications/Consultation



Joshua Amahwe (26/06/2020)

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(To be signed by senior Financial Services officer where there are no direct financial implications)