

REPORT TO: Executive Board

DATE: 14 November 2019

REPORTING OFFICER: Strategic Director, People

PORTFOLIO: Children, Education and Social Care

SUBJECT: Full Cost Clients in Residential Care

WARD(S) Borough-wide

1.0 PURPOSE OF THE REPORT

1.1 To provide Executive Board with information about the Council's current practice in relation to people who are placed in residential care as a full cost client, particularly the level of support that is provided by the Council.

1.2 The report also presents Executive Board with the option of ceasing this support (bringing Halton in line with most other local authority areas) or continuing to provide support but with a number of improvements to practice in order to mitigate the risks for the Council.

2.0 RECOMMENDATION: That

- 1) the report be noted; and
- 2) the Board approves implementation of the suggested practice improvements outlined at paragraph 3.6.

3.0 SUPPORTING INFORMATION

3.1 Background

3.1.1 A task and finish group has been established to look at current practice in relation to self-funders and consider whether any adjustments need to be made in light of the following:

- Legal Challenge – the Council has received a legal challenge from Care England, which has been prompted by HC One, raising concerns regarding the Council's fee rates and the Council's policy regarding self-funders, particularly the level of assistance provided to such persons by the Council. Although the challenge acknowledges that the Council is able to arrange care as per the Care Act, it alleges that the Council is providing financial assistance to self-funders by negotiating more favourable rates on their behalf. The Council is responding to this

challenge from a legal perspective on the basis that the Council is operating in line with the Care Act and there is no legislative provision that prevents the Council from supporting self-funders in this manner.

- Internal Audit – a recent report suggests looking at whether improvements could be made to the processes that are in place in relation to full cost clients (when the Council contracts with a provider on behalf of a self-funder, they are referred to as a full cost client).

3.1.2 The task and finish group requires that Executive Board make a decision regarding the future provision of support to self-funders. In order to assist, this report provides information on the Council's obligations under the Care Act, a summary of current practice in Halton, information on practice in other areas and an overview of the local and national context.

3.1.3 After considering that information, Executive Board are asked to decide whether the Council should continue to provide the current enhanced level of support to self-funders. If it wishes to do so, there are some suggested improvements that should be implemented in order to minimise the risks to the Council.

3.2 Obligations under the Care Act

3.2.1 The Care Act stipulates that a person with assets above the upper capital limit is deemed as able to afford the full cost of their care; they are referred to as a self-funder. Local authorities are under no obligation to meet the care needs of a person if they:

- Have savings above the government's upper capital limit (currently £23,250); or
- Own property valued at more than the upper capital limit (unless it meets the criteria that would allow the property to be disregarded as part of the financial assessment).

3.2.2 Local authorities identify those people who are required to self-fund by either by carrying out a high level financial assessment or, where the person chooses not to disclose their finances.

3.2.3 Local authorities advise self-funders to contact them if their savings drop below the capital threshold, at which point the local authority will take over the funding.

3.2.4 With regards to self-funders, section 8.13 of the Care Act states:

“A person with more in capital than the upper capital limit can ask the local authority to arrange their care and support for them. Where the person's needs are to be met by care in a care home the local authority may choose to meet those needs and arrange the care, but

it is not required to do so.”

- 3.2.5 In addition, paragraphs 41-42 of Annex A of the Care and Support Statutory Guidance state the following in respect of self-funders who ask the local authority to arrange their care:

“The Care Act 2014 enables a person who can afford to pay for their own care and support in full to ask the local authority to arrange their care on their behalf....

In supporting self-funders to arrange care, the local authority may choose to enter into a contract with the preferred provider, or may broker the contract on behalf of the person. Where the local authority is arranging and managing the contract with the provider, it should ensure that there are clear arrangements in place as to how the costs will be met, including any ‘top-up’ element.”

3.3 Practice in Halton

- 3.3.1 Halton’s policy is to commission services for anyone who meets the needs criteria, regardless of their financial circumstances. The contract is between the Council and the care home provider at the Council’s contracted rate. The Council invoices the client (known as a ‘full cost client’) for payment but ultimately the Council is responsible for the payments to the providers.

- 3.3.2 The number of full cost clients in Halton has risen significantly over the years. In 2010, full cost residential clients accounted for 16% of all placements (106 of the total 678 clients). By 2018 the percentage of full cost clients had risen to 33% (230 out of a total of 688 clients). Overall, full cost clients account for 25% of people invoiced by the Council.

- 3.3.3 The Council’s rate is generally lower than the rate that a self-funder would be charged if they arranged and paid for their own care directly with the provider (with no involvement from the Council). Please see appendices 1 and 2 for more information on the Council’s rates and rates for those who are self-funding directly with care home providers. The Council’s residential weekly rate is £438.79 compared to a rate of over £700 for a number of local care homes. For nursing care, some local providers charge private funders around £1,000 per week compared to the Council rate of £479.93 for nursing and £546.67 for nursing EMI placements.

3.4 Practice in other areas

- 3.4.1 With regards to self-funders accessing the Council’s contracted rate, it has only been possible to able identify one other local authority (in Devon) that operates in the same way as Halton.

- 3.4.2 Limited information has been forthcoming from neighbouring

authorities with regards to their policy on self-funders. All of those that have shared information have confirmed that they have no involvement in arranging or paying for the care of self-funders (it is expected that this is the case in the most areas). Please see appendix 3 for more detailed responses from the North West finance leads.

3.5 National and Local Context

3.5.1 Halton, much like other areas across the country, has an ageing population with increasingly complex needs. This means that more people than ever before are likely to require social care support in the form of a care home placement. Sustained reductions in funding from central government to local authorities has a knock-on effect on the care home sector. Taken together, these issues result in financial pressure for the care home sector.

3.5.2 A report by Age UK [‘Behind the headlines: ‘stuck in the middle’ – self –funders in care homes’](#) (September 2016) picks up on the issue of how self-funders are being adversely affected by the cost pressures faced by care homes:

“As State funded care and support fail to keep pace with rising demand, growing numbers of older people who can no longer live at home and who need to move into a care home are having to pay their own way. It is well established that these so-called ‘self-funders’ pay more than a local authority would if it was funding an identical care home placement...The reason, of course, is that in many areas councils use their buying power as block purchasers to drive down the prices they pay. The outcome, however, is that self-funders are effectively subsidising the State.”

3.5.3 The Age UK report provides a series of case studies based on calls to their advice line, which demonstrate that self-funding older people and their loved ones can face unfair contract terms and additional charges. The report states *“as these case studies suggest, older people who pay for their own care are vulnerable to being required to fill the growing funding gap as providers – perhaps small scale operators especially – struggle to keep their businesses going.”*

3.5.4 Whilst it is acknowledged that there are wider pressures on the care home sector as a whole (which is a national issue that requires action from Government), it is not fair for self-funders to bear the brunt and ‘pay over the odds’.

3.5.5 As a result, practice in Halton has always been to contract with providers on behalf of self-funders, therefore offering them additional support and protection in relation to their care home placement.

3.5.6 It is important to consider the local context when thinking about self-funders; in general, those deemed to be self-funders in Halton are

not wealthy people with high-value properties / substantial savings or pension income. Instead, they are people who may have a moderate amount of life savings and/or a comparatively low value home.

3.5.7 Self-funders in Halton are therefore generally not able to afford a placement in a care home providing a high quality, enhanced level of service costing £1,000 per week plus. It therefore seems appropriate to enable such people to access the local care home sector at the same rate as those who are assessed as eligible for having their care funded by the Council.

3.5.8 The Council recognises the pressures faced by care homes and will continue to support the local care home sector to ensure sustainability and quality of care. There are 25 registered care homes in Halton operated by 14 different providers. There is a total of 760 beds. Following the recent purchase of two homes, the total number of Council owned/run homes is now four. Halton performs above the sub-regional average for the percentage of care homes rated good/outstanding by the Care Quality Commission. There are no inadequate homes in Halton.

3.6 Options for changes to current practice

3.6.1 Going forward, the Council has the following options, which Executive Board are asked to comment and advise on:

- i) The Council could simply choose to no longer become involved in arranging or paying for the care of self-funders. Once someone is financially assessed to be a self-funder (or they opt to self-fund because they don't want to undergo a financial assessment), they would need to arrange their own care and pay the provider directly (which may be at a higher rate than the Council's contracted rate). In line with the Care Act, the Council could still offer to broker the service but the contract would be between the self-funder and the care provider (at the provider's usually higher rate not the Council's contracted rate).
- ii) The Council could continue to support self-funders (by arranging and paying for their care and then invoicing them) alongside implementation of the following changes to strengthen practice and minimise the financial risks to the Council:
 - Cease contracting on behalf of those who fail to clarify their financial position. It could be explained that if financial circumstances cannot be clarified, the person will need to arrange their care directly with a provider and pay the provider's rate;
 - Cease contracting on behalf of self-funders opting for a placement outside of the borough;
 - A separate Understanding Adult Social Care Charges

Form (previously the 'Agreement to Pay' form) could be developed for self-funders, which could include the proviso that if the client or their representative does not pay invoices from the Council for a specified time period, the Council will cease making payments to the provider and the client or their representative will then need to pay the provider directly (the contract will then need to be between the client and the provider);

- Take a more pro-active approach to escalating issues to the Department for Work & Pensions (in the case of appointees who appear to not be acting in the best interests of the person whose benefit income they manage) and the Office of the Public Guardian (in the case of attorneys/deputies who appear to be misusing money or making decisions that are not in the best interests of the person they are responsible for);
- It is permissible for the Council to charge interest on the care fees whilst awaiting the outcome of an application to the Court of Protection for deputyship (when their family member lacks capacity). This practice is employed in another local authority area and it seems to encourage families to drive forward the application more promptly.

3.7 The case for continuing to support self-funders

3.7.1 The preferred option identified by the task and finish group is option 2; to continue providing support to self-funders but improve processes as described.

3.7.2 The rationale for this is that it enables the Council to continue supporting vulnerable people in line with its duties under the Care Act and avoids the potential creation of a two tier system whereby two people could be paying entirely different rates within the same care home for the same level of service (i.e. those who are placed by the Council and those who are privately placed).

3.7.3 An options appraisal matrix is included at appendix 4 outlining the main risk and benefits associated with either ceasing or continuing to provide support to self-funders.

4.0 POLICY IMPLICATIONS

4.1 The options presented above represent a change compared to existing practice, which will need to be fully considered and planned before implementation once Executive Board have advised on the preferred course of action.

5.0 FINANCIAL IMPLICATIONS

5.1 Improving practice in relation to full cost clients will ensure that the Council is able to continue protecting the most vulnerable members of the local community by enabling them to access the local care home sector at a suitable rate, whilst also ensuring that the invoices raised by the Council in relation to such placements are paid promptly.

5.2 There are financial implications associated with the staff resource required to support full cost clients. Care Management staff resource is required in terms of needs assessment and review and Income & Assessment staff resource is required in terms of financial assessment and processing payments etc.

6.0 **IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

6.1 **Children & Young People in Halton**

None identified.

6.2 **Employment, Learning & Skills in Halton**

None identified.

6.3 **A Healthy Halton**

The provision of residential care is an essential part of ensuring that those who are unable to continue living in their own home are able to live in a safe environment with their care and support needs being met.

6.4 **A Safer Halton**

None identified.

6.5 **Halton's Urban Renewal**

None identified.

7.0 **RISK ANALYSIS**

7.1 Please see the options appraisal at appendix 4, which outlines the risks and benefits associated with the options described at 3.6.

8.0 **EQUALITY AND DIVERSITY ISSUES**

8.1 An Equality Impact Assessment (EIA) is not required for this report.

9.0 **LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

None.

Appendix 1: Halton Borough Council and Halton CCG (CHC) Residential and Nursing Home Price Rates 2019/20

RESIDENTIAL & NURSING HOME PRICE RATES 2019 / 20

Price Rates effective from Monday 1st April 2019

Rates per week	Residential	Residential Dementia	Nursing	Nursing EMI
HBC	£438.79	£528.37	£479.93 + FNC*	£546.67 + FNC*
CHC			£645.49	£712.23

*** Excludes FNC Standard Rate of £ 165.56 per week (effective from Monday 1st April 2019)**

Appendix 2: Care Home Private Funder Information

Care Home Name	Bed capacity	Voids	Number of Private Funders	Number of Private Funders on waiting list	Private Rates
Bankfield	6	0	0	0	LA Rate
Beechcroft	66	14	2	0	Nursing £924 + FNC Nursing Respite £1018 Nursing Dementia £963 + FNC Nursing Dementia respite £1057 Residential £751 Residential respite £835 Residential Dementia £780
Bredon Respite Service	4	0	0	0	LA rate
Croftwood	47	3	0	0	£570
Edward Street	6				
Ferndale Court	58	16	0	0	Nursing £924 + FNC Nursing respite £1018 Nursing Dementia £963 + FNC Nursing Dementia respite £1057 Residential £751 Residential respite £835 Residential Dementia £780

Care Home Name	Bed capacity	Voids	Number of Private Funders	Number of Private Funders on waiting list	Private Rates
Ferndale Mews	34	3	1	0	Nursing £924 + FNC Respite £1018 Nursing Dementia £963 + FNC Nursing Dementia respite £1057 Residential £751 Residential respite £835 Residential Dementia £780
Glenwood	12	3	0	0	LA Rate
Halton View Care Home	64	34	1	2	Residential £x Residential Dementia £760
Holmdale	6	2	0	0	LA rate
Madeline McKenna	23	0			
Maeres House	8	0	1	0	Unknown
Millbrow	44	1			
Norton Lodge	32	1	1	0	Owner will clarify
Ryan Care Residential	15	1	4	4	Residential £503.79 Residential Dementia £593.37
Simonsfield	63	5	4	0	Residential £740 Residential Dementia £819
Smithy Forge	6	0	0	0	LA rate
St Lukes Nursing Home	56	0			

Care Home Name	Bed capacity	Voids	Number of Private Funders	Number of Private Funders on waiting list	Private Rates
St Patrick's Nursing Home	40	0	0	0	£836 + FNC
Trewan House	44	0	12	0	Low dependency £615 Medium dependency £650 High dependency £685
Warrington Road	12				
Wide Cove	8	0	0	0	LA rate
Widnes Hall	68	0	29	0	£730
Woodcrofts	19	5	0	0	LA rate
Total	741	88	55	6	
		11.88%	8.42%		

Appendix 3: Responses from other local authorities re involvement with self-funders

Question	St Helens	Blackburn with Darwen	Cheshire East	Bury	Liverpool
1. What assistance do you offer to residential self-funders?	Social Workers issue the approved list of care homes if they are involved in the care assessment, however no involvement by the council after that point.	None	None	None	None
2. If self-funders ask you to arrange their care do you insist that they then pay the home direct to avoid issues around recovery? If not, do you have any stipulations at the point of the initial set up around consequences of non-payment?	We don't arrange care for self-funders	Self-funders pay the home directly.	No, I think we inform them that we could stop paying the provider and that they would then need to deal directly with the home.	Don't know, never been asked.	No cases ever considered this way.
3. Do you get self-funders to sign an agreement of any kind?	No	No, but the provider will require an agreement between themselves and the service user.	No	No	Don't have any cases that have needed this.

Question	St Helens	Blackburn with Darwen	Cheshire East	Bury	Liverpool
4. Do you have many self-funders applying for a Deferred Payment loan to cover the initial 12 weeks?	None	None	No, very few ever	None	Only had 1 case since scheme started in 2015.
5. Do you offer any loan arrangement outside of the DPA?	No	No	No	No	No cases ever considered this way.
6. Do you have any particular issues with self-funders?	No, we only become involved when capital drops below the threshold.	None	Only that we have a lot in Cheshire East, which means that we struggle for reasonably priced beds. In many cases the market would prefer to keep beds empty than offer to us at a lower price as they can charge so much more to wait for a private client.	Only those self-funders who are awaiting Deputyship for access to funds.	We have enquiries around the rates of charges (LCC funded or self-funded) but nothing else.

Appendix 4: Options Appraisal

Option	Benefits	Risks
<p>1</p> <p>Council does not support self-funders in any way</p>	<ul style="list-style-type: none"> • No risk of the Council accruing debt as it is not liable for payments to the provider • No risk of legal challenge to the Council • Halton's practice would align with practice in most other local authority areas • Increased income for providers • HBC in-house care homes could increase charges for self-funders • The Council could still act as a 'broker' if required • Individuals can choose their preferred care home, regardless of the Council's rates • Reduced requirement on staff resources (finance and social work teams) 	<ul style="list-style-type: none"> • Vulnerable individuals / their family members would need to arrange their own care home placement at the provider rate • The client pays more for the same care, which could result in their finances falling below the threshold earlier at which point the Council would be responsible for funding their care • There would be potential for creation of a two tier system whereby those living in the same home receiving the same service are charged at different rates (Council rate vs. private rate) • The Council would not be aware of the placement so there would be no review process in place, which increases the risk to the individual • If the family does not pay provider fees the ultimate outcome could be to evict the individual (only aware of one case where this was considered; the Council stepped in to prevent it)
<p>2</p> <p>Council continues to support self-funders and improves practice</p>	<ul style="list-style-type: none"> • Self-funders can access local care homes at the Council's contracted rate and would not have to pay the higher rate charged by providers • Allows the Council to support vulnerable members of the community and ensure full compliance with safeguarding duties • Individuals are supported by a Social Worker, which includes regular reviews to ensure that the care continues to meet their needs • Avoids the creation of a two tier system • Risk of eviction is minimised 	<ul style="list-style-type: none"> • The legal challenge may be pursued by the independent providers • Council is responsible for payments to the provider; potential risk of debt accruing if client does not pay invoices (unless the contract is between the client and the provider but then the client would pay the provider rate and the Council would simply be a broker)