

## RE: SOCIAL CARE REFORM – CARING FOR OUR FUTURE – RESPONSE TO CALL FOR EVIDENCE

The London Borough of Barnet Adults and Communities welcomes the opportunity to comment on the Governments proposals for the care funding reform contained within Department of Health: *Caring for our future* consultation document. This response covers the main areas of change as proposed within the consultation document<sup>1</sup>

### 1. Advice and information

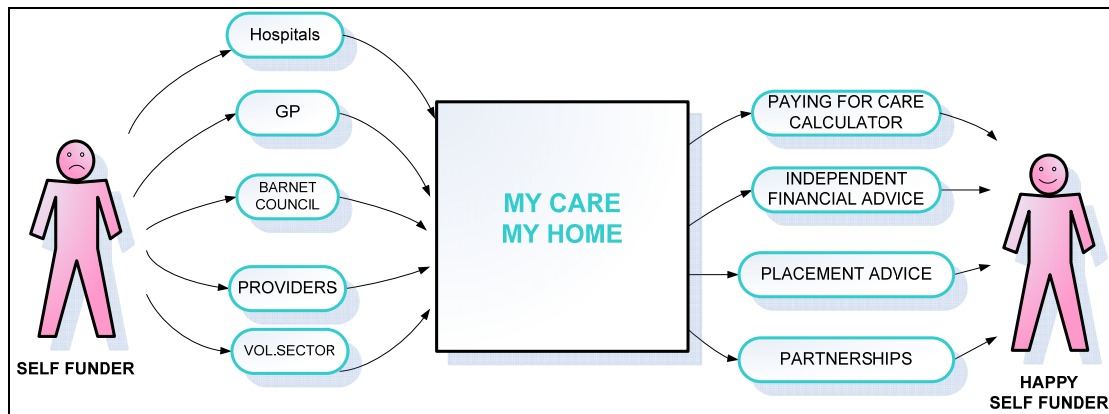
*Call for evidence – Staying independent for longer – planning and preventatives - Raising awareness - information and advice - Question 1 Advice on financial planning and decisions - Question 2, Encouraging people to plan to pay for their care and support - Question 3*

- 1.1 It is recognised that the need for advice and information about care funding is critical in the care journey process. The London Borough of Barnet (LBB) is currently working with representatives from the voluntary and financial services sector to pro-actively target advice about care options and independent financial advice to people receiving care and their carers. The authority has been working with *My Care My Home* to deliver advice and information about care funding options. Since the launch of the project, 134 people have been referred for advice and information about care funding. The experience gained from the project has shown the value of advice and information about care funding, it has also highlighted a number of issues:
- The need for financial advice and information at critical points in a person's life; particularly during periods of hospitalisation; discharge from hospital; ill health and disability; caring responsibilities.
  - Clear referral pathways at the first point of contact. Referral pathways to ensure a seamless referral process when people approach local authority and voluntary sector for advice about care funding options.
  - Greater engagement from health care professionals to raise awareness of financial advice and care funding options.
  - Developing closer working arrangements with care providers to provide information and advice to those people who do not directly approach the local authority for care assessments, particularly self-funders.

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<sup>1</sup> Feedback is provided on consultation questions – where consultation questions are not listed in this document then the response from LBB Adults & Communities is neutral.

Fig 1: LBB - My Care My Home referral pathway for people paying for their own care:



1.2 Within the proposed new statutory framework to provide information and advice, the local authority has a critical role as a lead commissioner of these services. As lead commissioner, local authorities are positioned to enable and facilitate access to information about care funding options and independent financial advice. When commissioning advice services, the local authority can ensure that financial advice and care planning is incorporated within advice service outcomes. For example, commissioning advice service outcomes to ensure local advice agencies either provide or refer people for advice about care funding options, financial and benefits advice etc.

## 2. National Charging Policy

*Call for evidence - Fairer and more consistent charging - the charging framework - Question 1, Fairer cap for working age adults - varying the levels of cap - Question 2, Accessing support towards your care cost – the financial assessment- Question 7, Fairer and more consistent charging – the charging framework - Question 8*

2.1 *Caring for our future* proposes an overarching charging regime for both community care and residential care based services. A national charging policy will reduce the different charging anomalies between local authorities, particularly for non-residential care.

The proposed principles, which guide a national charging policy, are welcomed, particularly:

- A comprehensive charging policy, which will reduce variations between local authorities. This will remove charging variations between different client groups and care settings
- Greater transparency on the treatment of income and allowances.
- Encouragement for people to return or seek to work by continuing with current earnings disregard on paid employment.
- Commitment to enable financial planning for care by ensuring, which eligible care contributions and costs count towards the cap.

- The flexibility to recognise the different care funding options available to people when paying for care.
  - Continuing to ensure that contributions are based on ability to pay
- 2.2 It is not clear from the consultation document as to whether a national charging policy would encompass all community-based services such as meals, emergency alarms, respite care and enablement. It is our view that local authorities should retain some discretion on the services, which will be financially assessed. For example, many local authorities, including the London Borough of Barnet, do not assess contributions for meals service but charge a fixed price. Consideration should be given within a national charging framework to making enablement a non-chargeable service or at least retaining local discretion not to charge for some care services. This would also be consistent with the Governments localism agenda.
- 2.3 The introduction of national charging legislation presents the opportunity to modernise the current charging regimes and remove current anomalies on the treatment of income and capital. For example, the treatment of trust funds for personal injury compensation payments and investment bonds with life assurance elements, which are currently disregarded as capital. There is an anomaly that within current charging policies, where there is a statutory disregard of personal injury compensation payments.
- 2.4 It is recognised that the current system of Fairer Charging/ contributions policies for non-residential care service is complex and bureaucratic to administer. Under the current charging system, different types of income are subject to full or partial disregards. There is a complex system of personal allowances and disability related expenses, which can be used to offset charges. A national charging policy would need to be transparent and simplified.
- 2.5 A re-designed national charging policy would also need to take into account the interaction between the benefits and charges. The current system of non-residential charging policies provides for the treatment of attendance allowance and personal independence payments as income. Through a complex system of means testing the value of these disability benefits (intended to pay for care needs), are clawed back by local authorities. A more simpler and transparent national charging system would align the payment of disability benefits and assessment of charges. The current system of paying disability benefits 'in one hand' and taken back by a complex means testing of charging for care in 'the other' is costly and complex to administer. A new national charging policy presents the opportunity to simplify the financial assessment process.
- 2.6 *Caring for our future* recognises that the financial assessments process needs to be proportionate, and balancing the need of local authorities to obtain information about income and capital without being overly intrusive. A national charging framework should enable greater exchange of information between local authorities, with appropriate data protection protocols. It would allow for the automatic 'passporting' between local authorities of financial assessments alongside the portability of care accounts.

- 2.7 There is need to embed within a new charging framework, greater integration of data sharing between Department for Work and Pensions and local authorities. For example, shared data protocols on the verification of income/capital. This would reduce administrative costs, provide for a streamlined financial assessment process and reduce inter-departmental customer 'hand offs' and improve the experience for the resident. Under the present system of charging and benefits, customers are presented with multiple agencies, different national and local authority departments all asking for the same information.
- 2.8 A national charging policy also presents opportunity to develop a national charging assessment framework and joint working between local authorities and the private sector, particularly around IT systems development and assessments.
- 2.9 Maintaining the current earnings disregard for people in work will continue to incentivise people to retain paid employment and those people with disabilities who are able to return to work.
- 2.10 There is an inconsistency in the consultation document on the treatment of capital where a person owns a property. Where a person's property is taken into account (residential care) then the proposed capital limit is £118,000. If a person living in residential care does not have a property then the proposed capital limit is £27,000 (currently £23,250). Greater clarity is needed as to the rationale for the differentiation between the capital limits for people living in residential care, those who own a property and the £27,000 capital limit for those that do not.
- 2.11 The proposed cap on care costs is not directly linked to the actual amount a person pays as their contribution towards their care. The design of a national charging needs to reward those people who had made provisions for their retirement by paying into a private or occupational pension. The current proposals could reward those people who have not made provision for retirement:

Example:

Mrs A receiving care at cost of £200 per week and paying £20 per week would be eligible for free care at the same time as Mrs B with care costs of £200 per week and paying £120 per week. The design of a new charging policy would need to take into account the different financial circumstances of those receiving care whilst at the same time incentivise people to make provision for savings and retirement.

*Requesting the local authority to arrange your care – the arrangement fee-  
Question 9*

- 2.12 The consultation document recognises that there will be an increase in the volume of people who, for the first time, will approach local authority social care services for a care assessment and assistance to arrange care. Charging an administrative fee for arranging care will offset the costs of; setting up care packages; reviewing and monitoring. Administrative costs would need to take account the additional costs of; brokerage and transactional costs. It is our view that the administrative fee passed on to the

person needing care would need to be based on ability to pay and/or dependent on a person's capital (aligned to capital limit of £27,000).

### **3. Cap on the costs of care**

*Call for evidence - Accessing the cap on care costs – managing demand for assessments - Question 4, Calculating what counts towards the cap Consultation- Question 9, Measuring what counts towards the cap – the personal budget- Question 26, Calculating what counts towards the cap - Question 27 Recording progress towards the cap – the care account - Question 30*

- 3.1 The consultation document proposes a cap on care costs incurred after 2016. To make care reform more sustainable, any care costs that pre-date 2016 will not count towards the cap. The level of the cap will be determined when the person first has eligible care needs. Public expectations on the impact of the cap will need to be managed over this transitional period to ensure that there is awareness of what care costs count towards the cap and who would qualify. National and local information campaigns will be necessary to raise public awareness on the reforms.
- 3.2 There is particular concern about the numbers of self-funders within the care market and how this needs to be reflected in grant allocations to the local authority. London Councils project that 27% of self-funders in London are likely to hit the cost cap, compared with a national average of 15%. Further, the average length of time in London to reach the cap is estimated to be 3.6 years compared with the average in England of 4.2 years.<sup>2</sup>
- 3.3 Funding allocations will need to reflect cost pressures within each local authority area. In Barnet, there is a specific issue concerning the volume of people living in residential care and supported living compared with other London boroughs, particularly inner London boroughs. For example, in Barnet there are an estimated 2,300 care home placements for older people, within the borough, with Barnet Council funding around 650 (28%) of these placements. It is submitted that changes to the funding formulae and grant allocation should reflect the unique position of Barnet in the residential care and supported living provider market in London.
- 3.4 The picture in Barnet is similar with regards to the level of privately purchased home care. A report from Lang and Buisson (2009) estimate that 26% of home care hours are purchased privately. For Barnet this would equate to 1,050 residents in Barnet purchasing their own care each year. This presents significant funding and systems problems for Barnet Council, if this cohort of people approaches the local authority for care assessments during the implementation phase of care funding reform – from October 2015 onwards.
- 3.5 Local variations on care unit costs are also dependent on commissioning and contract arrangements with local care providers. There will be regional and local variations between people with the same or similar care needs as they progress towards the care costs cap.

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<sup>2</sup> Source Care and Support Funding Reform – Cost Implications for London; London Councils July 2013

- 3.6 The universal cap on care cost does not differentiate the current market position between each local authority area. There is a risk that a national cap could incentivise people to move to neighbouring local authority areas where the unit costs for care are higher. Current estimates that there is a 2% movement between local authority areas. The costs cap whilst promoting choice may also promote greater fluidity in the market and greater cross movement of people between local authority boundaries.

*Aligning contributions in different care settings - daily living costs - Question 4*

- 3.7 Under the proposals people living in residential care would be responsible for paying contributions towards for daily living costs at £12,000 per year (£230 per week). These daily living costs would not count towards the overall care costs cap. People would remain responsible for these personal living costs even though they have reached the cap.

Although the consultation document does not provide details on the financial assessment process. It is accepted that to maintain continuity and it would simplify the process if the contribution towards personal living costs was calculated in the same way as the contribution towards care costs.

*Call for evidence - Who is responsible for your cap or deferred payment – ordinary residence - Question 31, 32.*

- 3.8 The consultation document seeks feedback on the ordinary residence rules and how this would change under a new care-funding framework. As an outer London Borough, with relatively high level of numbers of people living in supported living compared with inner London Boroughs it will be important that Barnet is not put at a financial disadvantage. Given the relatively high percentage of people in Barnet living in residential care and not directly funded by Barnet Council, it will be critical that the application of any new ordinary residence rules does not put the authority at a financial disadvantage and risk when assessing ordinary residence. It will be also be critical during the initial phase of the implementation of the costs cap that ordinary residence rules and procedures are robust to resolve inter-authority disputes, particularly for those people paying privately for residential care, pre- 2016 implementation.

#### **4. Care accounts**

*Call for evidence - Recording progress towards the cap - the care account Consultation Question 10, Recording progress towards the cap – the care account Question 30*

- 4.1 The setting up of care accounts for personal budgets and independent personal budgets will require the development of new business and IT systems leading to significant cost pressures. There are circa 67,500 adults living in Barnet with health and/or care needs. It is not clear as to how the impact of offering care assessments; support planning and care management will affect the Council. It is likely that there will be significant pressures on adult social care during the initial periods before and after the implementation of the care costs cap. The additional cost pressures need to be funded and supported by the additional burdens regime.

- 4.2 Monitoring and reviewing care accounts for those receiving Independent Personal Budgets will require the development of processes to track those care costs that count towards the cap. Where the local authority arranges or provides support, there will be a contract with the provider. The unit cost that counts towards the cap will need to be quantifiable for local authority funded and for those who privately fund care. This will be complex and costly to administer and reliant upon obtaining all of the relevant information from private providers to assess care costs which count towards the cap.
- 4.3 Where the person with eligible care needs is privately arranging their own care and support there will need to be a mechanism to monitor the actual care delivered in order to provide care accounts. This will create significant administrative costs for local authorities, the monitoring the unit costs of care and reviewing care needs. The local authority would have to develop monitoring arrangements with care providers for people who privately arrange care or different process with individuals in relation to the evidence they will need to present for expenditure to count towards their care account.

## 5. Universal Deferred Payments

*Call for evidence - Who will qualify for a deferred payment? - Question 5, What fees can someone defer - Question 6, How long can the deferred payment last? - Question 7, Wider flexibility to offer deferred payments Consultation Question 8. Universal deferred payment agreements – 12-week property disregard,- Question 15 Who will qualify for a deferred payment? - Question 16, Support for homeowners- Question 19, What information do people need when they take out a deferred payment? - Question 20, Ensuring deferred payments are financially sustainable - Question 21, Local Authority processes for setting up deferred payments*

- 5.1 A universal deferred payments scheme with set criteria will provide greater clarity on entitlement to deferred payments and eliminate the current inconsistencies between local authorities on the eligibility criteria. The London Borough of Barnet has assessed the likely impact of a new deferred payments on residential care placements and it is estimated that a scheme could cost up to £14m, with a break even position in year 6 following implementation.<sup>3</sup>
- 5.2 We welcome the proposal to enable local authorities to charge an administrative fee and interest to cover costs in arranging a deferred payment. It is recognised administrative and arrangement fees would be cost neutral and not present an opportunity to generate income for the authority. Within a deferred payments scheme there would be a need for clear guidelines on the process for obtaining property valuations and treatment of properties, particularly those in joint ownership. Currently, many local authorities rely on valuations from local estate agents. A robust independent valuation process would reduce disputes on property valuations.
- 5.3 The 12-week property disregard period provides for a window of opportunity to advise people on care funding options. These care funding options could include; renting out property; equity release and advice about other financial products. The experience of Barnet has shown that information and advice to

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<sup>3</sup> Source: Social Care & Support Bill – implications for London Borough of Barnet, Cabinet Report April 2013

support people to make informed choices during the 12-week property disregard is critical. The London Borough of Barnet's work with *My Care My Home* has demonstrated the need to provide a holistic service to people receiving care and their carers; independent financial advice on care funding; managing and renting properties; monitoring care quality; ensuring chosen care options meet need.

- 5.4 Under the proposed scheme (April 2015), those people with capital in excess of £23,250 would not be eligible for a deferred payment. It is not clear from the consultation document whether this capital limit will be increased to £118,000 in line with proposed upper capital limit for residential care in 2016. Any increase in the capital limit would need to be factored into the funding formulae and grant allocation for Deferred Payments.
- 5.5 Deferred payments could be creatively used to enable the person receiving care to exercise more choice on the care provided and enable for top up fees to be made from the equity available in the property. Deferred payments and top ups could be used promote greater choice in different care settings. The current charging and care assessment system is not flexible to allow for 'top ups' for non-residential care services. Using the equity available in a property to unlock capital to pay for additional non-residential care services above assessed care needs. Care funding reform also presents the opportunity to resolve the anomalies in the current system of third party top ups for residential care.

## **6. Complaints and independent appeals process**

*Call of evidence - Providing redress and resolving complaints - Question 11*  
*Providing redress and resolving complaints - Question 33, 34, 36*

- 6.1 There is acknowledgment within the consultation document that following the introduction of the funding care reforms there is likely to be a greater volume of people being assessed by local authorities, both for their care and finances assessments. The consultation document seeks feedback on the robustness of current complaints procedures to deal with the likely increase in volume of decisions and disputes.
- 6.2 The experience of social care services in Barnet has shown the value of a clear review and appeals process as resolution mechanism for resolving disputes about the financial assessment of contributions towards social care. The LBB experience has demonstrated that a mechanism of internal review and appeals can effectively resolve disputes.
- 6.3 Introducing an element of 'independence' within the process would provide for transparency of outcomes. It is our view that a full tribunal system to resolve disputes would be bureaucratic, cumbersome and costly to administer. A process of local internal reviews and then utilising existing complaints procedures would provide for local accountability on decisions whilst ensuring public confidence in the decision making process on care and financial assessments is maintained. The likely increase in numbers of people challenging local authority funding and care assessment decision would need to be reflected within the additional resources from the burdens regime for local authorities.



## **7. Summary**

We are looking forward to seeing the outcome of the consultation and would welcome continued involvement in developing and shaping these proposals.