SUTTON'S FUTURE

THE CARE ACT 2014

CARE AND SUPPORT

PUBLIC CONSULTATION

CLOSING DATE – 21 FEBRUARY 2016

EXPLANATORY NOTES

www.sutton.gov.uk/suttonsfuture

Sutton

SUTTON'S FUTURE

As a result of unprecedented cuts from the government, Sutton Council needs to save £74m from its annual budget by 2019.

We have already saved £43m through increasing efficiency, sharing services and changing some services, however, we must save a further £31m by 2019.

It is becoming harder every year to find ways of making the savings. We are now having to make some difficult decisions about whether to keep, reduce or change services or stop them.

There will be greater need for you to take more responsibility for looking after our borough. Through Sutton's Future we would like to have a conversation with you about how we can achieve this together.

This autumn, we are consulting on a number of topics including the future of our libraries, children's centres and youth services. In addition, we are consulting on the changes to adult social services brought about by the Care Act 2014.

More information on Sutton's Future and the different consultations is available at **www.sutton.gov.uk/suttonsfuture**

The Care Act 2014 - Have Your Say

Why are we consulting?

The new Care Act made changes and introduced some options to the way in which people can be financially assessed and supported to pay for the adult social care and support they receive.

The new law enables councils to be more generous when setting eligibility criteria for providing adult social care. It also provides discretion over some parts of the charging rules and introduces services for carers and self funders.

All new legislation comes with regulations and statutory guidance which clarifies what councils must do, or can choose to do, to apply the new law. As all the changes in the law could result in additional costs to the council, it must decide whether it should recover some or all of these costs, and if so, how.

In relation to the Care Act, the council will refer to all the regulations and guidance provided by the government regarding charging and financial assessment.

The Care Act in full and associated regulations and statutory guidance can be found at www.sutton.gov.uk/careact2014

What are we consulting on?

Your views are sought on:

- Whether Sutton Council should be more generous than the law requires when determining whether a person meets the eligibility criteria for services.
- Whether Sutton Council should continue to charge people for residential and nursing care, based on a financial assessment whose rules are set by government.
- The circumstances in which a deferred loan can be provided and the rate of interest that should be applied.
- Whether, in principle, Sutton Council should seek to recover administrative costs where the law allows it to charge such costs.
- Whether Sutton Council should introduce pre-payment cards as an additional method for people to receive their personal budget amount.
- Whether Sutton Council should be more generous in the application of its charging policy and increase the amount of savings that people can keep before being assessed as able to meet the whole cost of any service that they receive at home.
- Whether Sutton Council should introduce a maximum amount that people should be asked to pay for services received at home.
- How Personal Independence Payments are treated for the purpose of financial assessment.

Charging for Adult Social Care

The new law has altered the way that we have been charging some people, and has also meant that some of the discretion Sutton Council used to have has been taken away.

For example, Sutton Council is no longer able to ignore war pensions or war disablement pensions when calculating how much a person can afford to pay towards the cost of their support. Also, the council is no longer able to offer people who live with their spouse an assessment as a couple but must now assess people in their own right.

The purpose of the consultation is not for the council to benefit from any new charges introduced but to cover the cost of the new requirements. The council's budget will not be increased to cover these costs. This means if people who can afford to pay for services are not asked to do so, there will be less money available to pay for services for people who cannot afford to buy them themselves.

If the council does not make the changes being proposed, then the costs will have to be met in other ways. As explained in 'Sutton's Future', this could mean changing, reducing or even stopping other services, or increasing the cost of Council Tax.

More detail about the cost implications is included in the explanatory sections relating to each question. Responders may find it helpful to read the explanatory notes before completing the questionnaire.

Who will the changes affect?

The proposed changes are likely to affect the following groups of people:

- People living in residential care or nursing homes
- Those people who are self funders (able to pay for their own care)
- Carers
- People who receive social care services and are still living at home

Explanatory notes

2 Eligibility for Services
The old system to determine eligibility to services

Before the Care Act people were assessed to see whether they were eligible for services under legislation known as Fair Access to Care Services (FACS). FACS had four bands: low, moderate, substantial and critical. Councils could decide which band people had to meet to be entitled to receive services. This helped councils control the number of people that they provided care and support for and helped them manage service provision within a set budget.

Having set the band level councils then had a duty to meet the needs of everyone assessed as meeting that band level. Sutton set their band level as 'moderate high', which is somewhere between 'moderate' and 'substantial'. This meant that a person assessed as meeting this band would be expected to move into the next band (substantial) within six weeks if their needs were not met.

The new system to determine eligibility to services

The Care Act has changed the way in which professionals assess people for care and support.

A new eligibility criteria has been introduced for all councils in England.

The assessment, completed by a social worker, is based on a three step test:-

Step 1

To be provided with services, a person must be unable to meet two from a list of 10 outcomes of daily living. This includes things like managing dietary needs, toileting and bathing or living safely in their own home.

Step 2

Being unable to manage the tasks in Step 1 because the person has a disability, is ill or has an impairment, and,

Step 3

Not being able to manage the tasks in step 1 has a significant impact on the person's wellbeing.

Councils still have the choice whether to meet a lower level of need if they want to and can afford to. This means the council would be more generous than the law requires, and provide services to people who do not meet the new national eligibility criteria.

However, if the council were to do this, due to the cost implications it would not be able to meet its statutory requirements of protecting and supporting those people who are most in need.

The difference between the old system and the new system

The old system enabled all councils in England to choose which FACS banding they wished to use to enable them to manage service provision and their budgets.

This meant that people with the same level of eligible needs were treated differently depending on where in the country they lived.

The new eligibility criteria was set nationally to try to ensure that if people with care needs are eligible for help and support they would receive the same level of care no matter where they chose to live.

If the council chose to be more generous in meeting the needs of people who do not meet the nationally applied test, then they may receive a service whilst living in Sutton but if they moved house and lived in another borough they may not be entitled to receive the same level of support, and continuity of service between areas would not be maintained.

3 Charging for Residential and Nursing Care The old rules

Since 1948, every council has been obliged to charge people who live in care homes (Residential or Nursing Care) whatever they can afford to pay towards the cost of those services. The amount that a person can afford to pay is based on the outcome of a financial assessment and the rules that councils use for the calculations are national ones.

The new rules

From April 2015, councils can choose whether to charge people for living in Care Homes. The charge will still be based on the amount that people are assessed as being able to pay and calculated using national rules.

The difference between the old and new rules

Under the old rules councils had to charge people who lived in residential or nursing care accommodation. Under the new rules councils can choose whether to charge people living in care homes.

The proposal

Sutton Council is proposing to charge as it always has done. If the council does not continue to charge it will lose an estimated £3.4 million of income, and there will be less available to pay for the services that people need.

The council could consider raising the income in other ways, such as increasing Council Tax but this is not seen as a viable option. Again, the council could choose not to collect the income but it would then be unable to afford to provide services to all those people identified as needing support.

4 Deferred Payments What are deferred payments?

A Deferred Payment is an arrangement which allows someone to keep their main asset, usually a property, and receive some help paying their care fees during their lifetime or until the property is sold. The agreement is legally binding and is registered with Land Registry, in the same way that mortgages are registered by banks, but Deferred Payments do not need to be paid until the contract ends.

People can only request a Deferred Payment if they are;

- Eligible for social care services, and
- Moving to permanently live in a residential care home

The council helps with paying the care home fees and recovers the money when the property is sold (either when the person chooses to sell their home or after their death). This means that people should not have to sell their homes in their lifetime to pay for care.

The old rules

Deferred Payments have been used since 2003 and interest was added 56 days after the Deferred Payment had ended. Interest was calculated on a simple basis and the council could choose the interest rate to be applied to the deferred payment amount.

The new rules

The new Deferred Payment scheme implemented in the Care Act is different. Interest now starts to accrue from the date of the agreement and is compounded each time interest is calculated. (Compounded interest means that interest is added to the interest that has already been applied). The maximum interest rate that the council can apply is set twice a year by government. Councils have the choice to be more generous and to use a lower interest rate.

The rate set by government in July 2015 was 2.25 per cent.

5 Extending the use to other accommodation types

The Care Act provides councils with discretion to extend the use of Deferred Payments (please see above) to help people moving into other types of accommodation that are not residential care homes. These include extra care housing, supported living accommodation and shared lives accommodation (where a person lives with a family who provides the person with care and support).

Extending the use of Deferred Payments to include these additional accommodation types will ensure that those people who need these types of accommodation but who own their own homes and have little or no savings are able to borrow the money to pay their rent and receive the extra care and support that they need.

6 Deferred Payment Debt Security

The council must approve a Deferred Payment request where it is able to obtain a First Charge with Land Registry. A First Charge is like a mortgage and means that when the property is sold the council will be first to receive the monies owed to it from the proceeds of sale.

The council can choose to accept a lesser charge but by doing so, the risk of not collecting the full amount of monies owed to the council when the agreement ends increases significantly. The owner of the First Charge may be due to receive most, if not all, the monies available from the sale of the property and the council may find that there is not enough money left to repay their debt.

Were the council to approve deferred payments against lesser charges it would mean that any monies that remained unpaid to the council would result in less money available to support people. It would also mean that any other loans or agreements secured against the property, for example, Equity Release Schemes or Mortgages would be paid before the council.

The council's preferred option is to only provide Deferred Payment Agreements where it can obtain a First charge with Land Registry.

7 Interest Rates

The Care Act provides councils with a nationally set rate of interest that can be applied to Deferred Payment Agreements, but the Care Act also gives councils discretion to choose to apply a lower rate.

The rate provided by the Care Act is lower than people would usually be able to obtain from banks and other institutions and is therefore seen as being good value for the customer.

The interest applied to the Deferred Payment Agreement will help fund the occasional scenario where, for some reason, the Deferred Payment becomes uncollectable.

If the council were to choose to use a lower interest rate for these loans, it could mean that the scheme, which is to help self-funding clients pay their care fees, costs the council money. This would result in less money being available to help those people who are most in need of care and support. It would also mean that the nationally set rate would no longer apply and people receiving care in the same residential home could be charged differently depending on which authority they lived before moving to live in the residential home.

8 Administrative Costs

The Care Act allows councils to recover the costs of arranging, administering and maintaining contracts for people who are self-funding clients. For example, the council can charge to self-funding people the costs of arranging services that are not taken in a care home. The council can also pass on to clients the administrative costs of arranging and monitoring Deferred Payments.

The council is not allowed to make a profit for administering these services but should look to recover its costs. If the council chose not to recover these costs it would need to find extra money from its budgets meaning that it would have less money to spend providing the services that people need them.

9 Direct Payments

The council provides money known as 'Direct Payments' to people who want to arrange and pay for their own care instead of the council providing them with services. People who receive Direct Payments have to show the council how they have spent the money and every few months they have to send copies of their bank statements and the receipts they have to the council to enable the Direct Payment to be monitored. This method takes up a lot of officer time and causes the users of Direct Payment an additional burden in ensuring that they keep adequate records and receipts.

The council is proposing to offer an alternative method of payment to those people who would like it. The council is considering introducing pre-payment cards where people's direct payment will be loaded onto their own personal card and will then be available to spend. Pre-payment cards can be used in the same way as any other bank card, but the money on the pre-payment card will still belong to the council and therefore council officers will be able to see that the money is being spent appropriately and not require additional documentation from card users.

The new arrangements should make the use of Direct Payments much simpler to administer both for the council and its clients.

10 Capital Limits Increase

The Care Act gives councils discretion about whether to increase the value of savings or assets that people can have before deeming them as self-funding people who are able to meet all of their own support costs outside of a care home.

Currently people are able to afford to pay the cost of their care if they have savings and assets totalling more than £23,250. This amount (£23,250) is nationally set but councils can be more generous. Were the council to be more generous, it would benefit those who are more wealthy, but it would not help those people on limited budgets and who are in receipt of benefits.

11 Setting maximum weekly charge

In 2010, the council consulted on whether there should be a maximum weekly charge imposed where people were receiving services whilst still living in the community and not in a care home. The consultation outcome was that people thought that having a maximum amount that people should be expected to pay was unfair. The only people who would be better off under a capped maximum charge system are those who are more affluent and without such a cap in place would need to fully fund their care.

12 Treatment of Personal Independence Payments for Financial Assessments

The Government is changing the way in which it helps disabled people meet the extra costs that are associated with their disability. Disability Living Allowance (DLA) is being removed and is being replaced with Personal Independence Payments.

Under DLA the council has always assumed that the middle tier (which covered day or night only) applied to day time services and the higher tier (both day and night care) applied to 24 hour care. The council therefore disregarded the difference between tiers for the purposes of financial assessment unless the client was eligible for 24 hour care and support in which we used the higher rate without reduction.

The new scheme is different to the old allowance, it still has two components, Care and Mobility, but makes no differentiation between day and night care.

The council is intending to continue to apply the same logic as people are moved onto the new scheme (Personal Independence Payments). This will ensure that no one is adversely affected by charges when they are no longer able to claim Disability Living Allowance but are receiving Personal Independence Payments instead.

Please complete the accompanying questionnaire and return to us by **21 February 2016** to the Freepost address below:

Care Act, third floor
London Borough of Sutton
FREEPOST CN2117
Civic Offices
St Nicholas Way
Sutton, SM1 1BR

There is no need to attach a stamp.

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