

From: Andrew Ireland, Corporate Director for Social Care, Health and Wellbeing

To: Graham Gibbens, Cabinet Member for Adult Social Care and Public Health

Decision No: 15/00086

Subject: **BACKDATING CHARGES FOR DOMICILIARY AND OTHER NON-RESIDENTIAL ADULT CARE AND SUPPORT**

Classification: Unrestricted

Past Pathway: Adult Social Care and Health Cabinet Committee - 10 July 2015  
SCHWB DMT - 15 July 2015

Future Pathway: Cabinet Member decision

Electoral Division: All

**Summary:** This report recommends that Kent County Council should extend the process of backdating charges to domiciliary and other non-residential care and support.

**Recommendations:** The Cabinet Member for Adult Social Care and Public Health is asked to:

- a) **AGREE** to take this decision, to come into effect as soon as reasonably practicable.
- b) **AGREE** the Corporate Director for Social Care, Health and Wellbeing or other nominated officer undertake the necessary actions to implement this decision.

## 1. Introduction

- 1.1 KCC currently backdates charges for residential care to the date that funding commenced but does not do this for non-residential care (following the LGO decision against the council's previous Provisional Charging policy – under the pre Care Act legislation). The amount of income lost by not backdating charges for non-residential care is approximately £300,000 per year (see table below in section 3).
- 1.2 It has been assumed in the budget planning for adult social care that the above position would continue. However the Department of Health has now provided clarification which has led to the view that backdating for non-residential care and support should be instituted in the same way as for residential care.

## 2. Legal basis for backdating under the Care Act

- 2.1 From April 2015 the legal framework covering charging was replaced by Section 14 of the Care Act 2014, the Care and Support (Charging and Assessment of Resources) Regulations 2014 and the accompanying Statutory Guidance. Neither the Act, Regulations or Guidance states anything explicit about

backdating of charges. In the absence of anything concrete to go on, local authorities have been attempting to get clarity from the Department of Health about whether they can backdate charges.

- 2.2 A Key Decision was taken on 3 February 2015 that KCC exercises its power to charge under Section 14 of the Care Act and that from 1 April 2015 the county council continues to charge for the same adult social care and support services that it currently charges for. The issue of backdating specifically for non-residential services was not dealt with by this decision as the council was awaiting clarification from the Department of Health at that point.
- 2.3 At the request of local authorities, the Department of Health has provided clarity over the backdating issue, most recently in a series of FAQs, the relevant one being reproduced below:

**Q102. From what date can local authorities charge people?**

*A102. Under the Care Act, local authorities have powers to charge for care and support to cover the costs they incur when contracting for care. **The local authority can, therefore levy charges from the date when it starts to incur costs** to meet a person's care and support needs. However, we would usually expect the local authority to work out how much the adult can afford to pay for their care and support before the local authority collects any money from them. An exception to this would be where a person refuses to co-operate with the financial assessment.*

*We would expect a local authority to complete a financial assessment as quickly as possible to avoid people being faced with large and unexpected bills. Where any arrears of charges are due, people should be given a reasonable length of time in which to pay the money and should not be expected to pay it all off in one go.*

- 2.4 It is believed that the above communication permits local authorities to backdate charges for both residential and non-residential care, provided certain safeguards are in place (i.e. the financial assessment is carried out as soon as possible and people are given time to pay backdated charges if necessary).
- 2.5 Following legal advice, it is recommended that any decision to backdate should be taken by the Cabinet Member but that this need not be a Key Decision. As the decision will only apply to new service users (and will not be retrospective) the decision does not meet the criteria for Key Decision status.

**3. Financial implications**

- 3.1 The amount of income lost by not backdating charges for non-residential care is approximately £300,000 per year (see table below).

Client group	Average charge	Average no. of days lost	Average income lost per assessment	Number of clients	Total lost income
LD	£32.55	40	£ 184.56	149	£ 27,499
MH	£53.41	32	£ 242.94	63	£ 15,305
OP	£48.40	25	£ 175.42	1426	£ 250,142
PD	£43.62	24	£ 150.86	78	£ 11,767
<b>TOTAL</b>	<b>£44.50</b>	<b>30</b>	<b>£ 188.44</b>	<b>1,716</b>	<b>£ 304,714</b>

NB: the average charge does not include Nil charges or charges exceeding £100 per week.

3.2 It has been assumed in the budget planning for adult social care that the above position will continue with the above position. However if backdating did begin an approximate extra £150,000 income can be expected for the remainder of the financial year 2015/16 (if introduced from 1 October for example) and approximately £300,000 p.a. thereafter.

#### 4. Practical implications

4.1 Backdating for non-residential services could be implemented immediately and there would be no systems issues. As we already backdate charges for residential care, to extend this to non-residential care and support would be relatively simple, involving the following:

- Following the financial assessment the client is sent a letter outlining their charge, when it will run from and that if the arrears cannot be paid off in one go, they should contact Finance to arrange to pay this off over a longer period.
- The first invoice will then be sent out which will include charges back to the date services began. This will give a further opportunity to arrange to pay the backdated amount over a longer period. If the person is set up on Direct Debit (the majority of clients) there will be a gap of at least ten days before any money is deducted from their account.

4.2 It will be important to communicate the changes to Case Management, Finance and other relevant staff. In addition the relevant public information booklets will need to be amended.

4.3 It is important to note that were this option to be introduced, it would not be retrospective and would only affect new service users from the date of implementation.

#### 5. Cabinet Committee Input

5.1 This issue was discussed at the Adult Social Care and Health Cabinet Committee on 10 July 2015. The Cabinet Member read out the statement reproduced in Appendix 1 and following a brief discussion, there was agreement to proceed with the recommendation to introduce backdating for non-residential care and support.

5.2 The above statement did include an offer to provide further information to members of the committee but to date no request has been made.

#### 6. Recommendation

6.1 The Cabinet Member for Adult Social Care and Public Health is asked to:

- a) **AGREE** to take this decision, to come into effect as soon as reasonably practicable.
- b) **AGREE** the Corporate Director for Social Care, Health and Wellbeing or other nominated officer undertake the necessary actions to implement this decision.

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30 July 2015

**Appendix 1****Statement by Graham Gibbens at the ASCH Cabinet Committee – 10 July 2015**

As you know, the Care Act has made changes to the legal basis for charging for Adult Social Care from 1 April this year. I took a Key Decision in February 2015 to put our charging system firmly under the new legal framework from 1 April 2015.

At the time of my decision one of the areas that was unclear was whether we could backdate charges to the date that care and support was provided. There was nothing explicit about this in the Act, Regulations or Guidance and therefore this issue was not addressed in my decision. In April we continued with the current position which was to:

(a) Not backdate charges for domiciliary care (and other non-residential services)  
(b) Continue to backdate charges for residential care as this was previously allowed.  
Following representations made by several local authorities, the Department of Health has now clarified the position. They have confirmed that we can backdate charges as long as:

(a) We complete the financial assessment as quickly as possible to avoid people being faced with large and unexpected bills and

(b) Where any arrears of charges are due, people should be given a reasonable length of time in which to pay the money and should not be expected to pay it all off in one go.

Following recommendation by officers, I intend to take a decision to this effect. I am advised that given the scope and impact of this, it will not be a key decision however if members do want further information or to make comment, I and officers are happy to facilitate this.

It is important to note that the proposed decision will not apply retrospectively but only to new clients.