

Not for publication

Review of Garden Assistance Scheme (H000)

Meeting: Cabinet

Date: 14 November 2017

Cabinet portfolio: Cabinet Member for Homes and Customers

Report by: Housing Manager

Not for publication

1.0 Purpose of report

- 1.1 To advise Cabinet of the review of the current Garden Assistance Scheme and the results of the customer satisfaction survey of the Garden Assistance Scheme offered by Housing Services.
- 1.2 To seek approval from Cabinet to adopt the new qualifying criteria and principles of the new Garden Assistance Scheme.

2.0 Recommendations

- 2.1 That Cabinet note the results of the Garden Assistance Scheme Satisfaction Survey.
- 2.2 That Cabinet approve the new qualifying criteria and principles for the Garden Assistance Scheme.

3.0 Report details

Current Service Provided

3.1 Chesterfield Borough Council Housing Service currently operates a Garden Assistance Scheme (GAS) to help disabled and elderly tenants to maintain their garden in order to meet the requirements of their tenancy agreement. The GAS is for people who are disabled or are over 60 and are unable to maintain their garden due to their disability or age/frailty. In both cases they should not have an able-bodied adult living with them. The service currently received is 14 grass cuts and 2 hedge cuts between March and October each year.

3.2 The service is charged weekly as follows:

Service	GAS users	Weekly Cost 48 weeks	Annual Cost 48 weeks
Grass Cutting	27	£3.30	£158.40
Hedge trimming	7	£1.40	£67.20
Both	109	£4.70	£225.60

3.3 Currently 143 tenants receive the GAS with the majority (109) electing to receive both the grass cutting and hedge trimming service. If each tenant remains on the scheme for a full year the maximum income would be £29,337.60.

3.4 The current GAS is contracted to Glendale. The contract was issued in 2016 as a one year contract with a one year extension; therefore the current contract will finish in October 2017. The original contract value was £21,257 for 15 grass cuts and two hedge trims for up to 145 properties (The number of grass cuts was reduced to 14 for 2017). The retendering of the work has begun and it was expected that a new contract will be in place for March 2018.

3.5 Glendale has struggled to deliver the service required under the contract. As the tenants are not receiving the service expected refunds have had to be made. In 2016 a total of 682 grass cuts were missed to a value of £5,333. This money was refunded to the affected tenants. The total number of missed cuts for 2017 is not yet known.

3.6 Following an internal review by Housing earlier this summer it was identified that as the Council currently charges for all tenants using the garden assistance scheme it could be in breach of the Equality Act 2010 (the Act). The Legal Service was subsequently asked to review

the scheme in its current form. The detailed legal advice is provided in Section 6 of this report.

Benchmarking and GAS Review

- 3.7 Whilst the legal advice was being sought, the Housing Service undertook a review of fourteen other Garden Assistance Schemes offered by other Local Authorities. Whilst there was a wide range of schemes including some that charged in a similar manner to Chesterfield Borough, the majority were offering the scheme at nil cost to qualifying disabled tenants (though still offering a charged service to the other non-qualifying tenants). The breakdown of the information collected is shown in **Appendix 1**.
- 3.8 Within the review the advice from Legal Services concluded that that under the Act, it is unlawful to charge disabled tenants for the provision of the service as a reasonable adjustment to the requirement under the tenancy agreement to maintain the garden of their property. To ensure that the service does not breach the Act the review recommended:
- We need to provide the GAS free of charge to disabled people. Whilst the Council does not necessarily have to maintain a disabled persons' garden, to allow the garden to become overgrown because a disabled person cannot carry out essential maintenance could breach the Council's obligations under the Act. This could be because a disabled person needs to be able to use the garden for a disability –related reason or because disabled people could face victimisation, harassment and become ostracised within the community for failing to maintain their garden
 - There are no implications for maintenance of communal areas and gardens: Where the Council maintains a communal area and where any occupier is charged for this service, a disabled person can also be charged.
 - For the 2018 onwards GAS it will be essential to establish whether the person is disabled. Housing Services therefore needs to contact everyone currently on the GAS as a result of disability and ask them to provide information to allow an assessment of whether they have a disability and if so, whether the disability prevents them maintaining the garden.

- The scheme would not have to be free for all tenants only those with a disability. Tenants aged over 60 can apply for the scheme but can be charged if they are not disabled.

3.9 If we are legally challenged over the operation of the current GAS then we may need to reimburse tenants for payments made since 2010.

3.10 In continuing to deliver a GAS, the HRA will incur additional costs. However there are good reasons why the Housing Service still wishes to provide the GAS:

- The property is owned by the Council and it could cost more in the long-run if the garden and any trees are not maintained regularly
- An overgrown garden could attract vermin and pests and spoil the aesthetics of the area and estate
- There may be a disability related reason why an occupier may need to use the garden
- Maintaining the garden will help prevent victimisation and harassment of people who are disabled.

Customer Satisfaction Survey of Garden Assistance Scheme

3.11 As the scheme was going to have to be reviewed in light of the legal advice it was decided to bring forward the GAS satisfaction survey to assist in any decision to reshape the scheme.

3.12 The annual customer satisfaction survey for those receiving the GAS was brought forward from November to August and the survey undertaken by the Councils Policy Service on behalf of the Housing Service. The report is attached as **Appendix 2**.

3.13 Whilst the satisfaction scores with the service received are reasonable reaching over 80% satisfied there are clearly issues with the number of grass cuts and hedge trims that take place with the majority of respondents indicating that they are not receiving the required number of visits.

3.14 The comments received in the survey responses also raised concerns about the service being offered.

Re-launching the GAS with revised qualifying criteria

- 3.15 Following the review the criteria for the GAS has been revised to comply with the Act. The benchmarking with other Local Authorities has also demonstrated that the service provided by Chesterfield does include more grass cuts than other areas. It is therefore proposed to reduce the grass cuts to a minimum of 10 per annum with the potential to increase this to 12 if conditions are favourable. The service will retain the two hedge cuts per annum.
- 3.16 The reduction in the number of cuts will also enable the contractor to meet the terms of the contract more easily.
- 3.17 It is proposed that the criteria to identify who is eligible for the free GAS scheme will be:

'Tenants aged 75 and over and tenants of any age who are unable to cut their grass or hedge due to disability or frailty.'

In addition to be eligible for the free scheme tenants must also have:

- No-one residing in their property who is not disabled
- No practical support from any other active family member who lives locally (within 5 miles)
- A clear rent account showing nil balance or are in credit or are on a payment plan to reduce arrears

Eligible applicants must be claiming one of the following benefits:

- Attendance Allowance
- Disability Living Allowance
- Personal Independence Payment
- Incapacity Benefit/Employment Support Allowance
- Severe Disablement Allowance
- Industrial Injuries Benefit
- War Disablement Pension

Where none of the above benefits are being claimed supporting evidence from a qualified professional such as a GP or social worker will be required. The Neighbourhoods Manager will have discretion to consider these applications to determine eligibility for the free scheme.

Customers who do not qualify for the free service but are in receipt of Housing Benefit or Council Tax support (in accordance with the council's concessions policy) can elect to receive the GAS for a weekly

charge. The revised weekly charge will be set once the new contract has been awarded.

- 3.18 It is not known at this time how many tenants could be eligible for the free service. The main recipients of the service will be tenants of houses as the majority of our managed bungalows and flats have communally maintained gardens. The Council currently has 307 tenants of houses where the tenant or joint tenants are both aged over 75. It is anticipated that many of these tenants will have assistance in the form of non-disabled adults in their home or in the locality who can assist in the maintenance of the garden.
- 3.19 In addition there are 394 tenants of houses who have self-identified as having a disability. The information held is self-declared and does not indicate that they would be eligible for the scheme. In many instances disabled tenants living in houses will also be living with family leaving them ineligible for the free service. One hundred and one of these are aged over 75 and therefore would be included in the 307 figure in 3.18 above.
- 3.20 As a result of the changes there could potentially be an increase in numbers using the scheme. For the new contract those tendering will be asked to tender a price for a core scheme of 150 gardens and offer a price for each additional garden up to a maximum of 300. The numbers in the contract will be subject to an annual review.

4.0 **Financial implications**

- 4.1 If all the current tenants receiving the GAS remain on the scheme for the whole year then the total income received would be £29,337.60. The contract value is £21,257 but dependent on the number of cuts achieved by the contractor. Any 'surplus' is used to cover the costs of maintaining the GAS.
- 4.2 The GAS is currently being retendered in order to have a new contract in place for April 2018, both the current incumbent and the Council's Grounds Maintenance Service will be invited to tender as part of this process.
- 4.3 As the costs of this service will be largely met by levying a service charge to tenants, the Council should not make a profit from those charges in accordance with the Local Government and Housing Act 1989. It is therefore important that the scheme is procured in an

open and transparent manner to ensure that the price charged to tenants represents value for money.

- 4.4 However in order to ascertain the number of tenants on the current scheme who are disabled and eligible for the service at nil cost, consultation is currently taking place with these existing service users. It is anticipated that following contacting the tenants on the scheme the majority will be entitled to the GAS. It is also anticipated that as the currently scheme is not heavily promoted by Housing Services there will be other tenants who are eligible for the free service.
- 4.5 Tenders will therefore be sought for costs associated with delivering the service to 150 users (around current levels), with an additional price for each user on top up to a maximum that they could reasonably be expected to deliver to.
- 4.6 It is expected that along with the need to provide the service at nil cost to many customers the cost of providing the scheme may also rise. The current contractor bid at a value that was significantly lower than their competitors. However the reduction to a minimum of 10 grass cuts (and a maximum of 12 if conditions allow) per annum will mitigate some of the increased costs to the council in providing the service.
- 4.7 The additional costs of providing this service at nil value to any eligible disabled service user will be met from the Housing Revenue Account Working Balance. For example; if 25% of the service users are disabled, the HRA will meet 25% of the costs of the scheme with the remaining 75% being passed on as a service charge to the service users not eligible for the free service.
- 4.8 The costs of the revised service will be included in the 2018/19 Housing Revenue Account Budget 2018/19 to 2022/23 that will be presented to Cabinet in February 2018.

5.0 **Legal and data protection implications**

The Act

- 5.1 The Act imposes various duties of the Council, as an organisation that manages premises, to ensure that it does not discriminate against someone because of a protected characteristic. Protected

characteristics include disability and for the purposes of this report disability is the protected characteristic that will be concentrated on.

- 5.2 A disability is defined as a physical or mental impairment; and the impairment has a substantial and long-term adverse effect on her/his ability to carry out normal day-to-day activities. Specifically, section 13 of the Act prohibits conduct that directly discriminates against any person because of a disability.
- 5.3 Section 15 of the Act prohibits conduct which treats a disabled person unfavourably because of something arising from their disability. This is a very wide ranging duty that does not require any comparator. The treatment just needs to be unfavourable.
- 5.4 Section 19 prohibits indirect discrimination, that is where the application of a provision, criterion or practice is applied equally, but puts the disabled person at a particular disadvantage.
- 5.5 The unfavourable treatment and particular disadvantage in sections 15 and 19 will amount to discrimination unless the Council can show the conduct to be a proportionate means of achieving a legitimate aim.
- 5.6 The Act also imposes a general duty on the Council as a public sector body. The Public Sector Equality Duty (PSED) provides that the Council must, in the exercise of its functions, have due regard to the need to:
 - Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.

The application of the Act to the tenancy agreement

- 5.7 The relevant provision, criteria or practice in this case is that our tenancy agreement requires tenants to ensure that their garden is "tidy and cultivated to a reasonable standard" and that "lawns must be cut and hedges trimmed" (CBC tenancy agreement). The tenancy conditions apply equally to all tenants, not just disabled tenants, so the tenancy conditions are not directly discriminatory.

- 5.8 Whilst the tenancy conditions apply equally, it is more difficult for a disabled person who cannot carry out garden maintenance due to a disability, to comply with the conditions of tenancy than a non-disabled person. It does not matter whether or not there is a non-disabled person in the household who could carry out the work, as any unfavourable treatment or disadvantage will be against the tenant.
- 5.9 The taking of any enforcement action against a disabled person to enforce the terms of the tenancy agreement in these circumstances is potentially discriminatory as such action would be unfavourable and/or place the disabled person at a particular disadvantage. It is unlikely that such action would be considered to be a proportionate means of achieving a legitimate aim.
- 5.10 The reasonable adjustment in these circumstances would be to dis-apply the relevant conditions of tenancy and take no action in relation to the breach. If the Council does not take action to enforce the tenancy conditions, there will be no discrimination. The current law suggests that the Council does not have to maintain the garden to have complied with its duties to make reasonable adjustments. However, if the garden maintenance is undertaken by the Council, the levying of a charge would be discriminatory as it would be unfavourable treatment and/or put the disabled tenant at a particular disadvantage.
- 5.11 Having due regard to the Public Sector Equality Duty could lead to the conclusion that the garden should be maintained so that disabled people are not ostracised within the community for having an untidy garden.

6.0 Risk management

Description of the Risk	Likelihood	Impact	Mitigating Action	Resultant Likelihood	Resultant Impact
Legal challenge to scheme	M	M	Revise scheme in accordance with the Act	L	L

7.0 Equalities Impact Assessment (EIA)

7.1 The Equalities Impact Assessment is attached as **Appendix 3**

8.0 **Recommendations**

8.1 That Cabinet note the results of the Garden Assistance Scheme Satisfaction Survey.

8.2 That Cabinet approve the new qualifying criteria and principles for the Garden Assistance Scheme.

9.0 **Reasons for recommendations**

9.1 The work towards meeting the Council Plan priority to reduce inequality and support the vulnerable members of our community.

Decision information

Key decision number	740
Wards affected	All
Links to Council Plan priorities	To reduce inequality and support the more vulnerable members of our communities

Document information

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Appendices to the report	
Appendix 1	Benchmarking of Garden Assistance Scheme with other Local Authorities
Appendix 2	Results of Garden Assistance Scheme Customer Satisfaction Survey
Appendix 3	Equalities Impacts Assessment