

CABINET

DATE	09/03/2022
REPORT OF	Councillor Margaret Cracknell Portfolio Holder for Health, Wellbeing and Adult Social Care
RESPONSIBLE OFFICER	Bev Compton Director of Adult Social Care
SUBJECT	Adult social care charging policy
STATUS	Open
FORWARD PLAN REF NO.	CB 03/22/07

CONTRIBUTION TO OUR AIMS

Legality: it is a legal requirement that local authorities set out their approach to charging for adult social care.

Sustainability: local authorities are required to consider the resources available to them to meet the adult social care needs of those for whom they are responsible. By reviewing its approach to charging, the Council ensures regular consideration of whether its approach to charging is appropriate and sustainable.

In seeking to act lawfully and sustainably, the Council supports its aims of stronger economy and stronger communities.

EXECUTIVE SUMMARY

The Council has significant discretion regarding its approach to charging for adult social care. Any charges levied must be managed in accordance with the Care Act 2014 and its accompanying statutory guidance and regulations. Financial assessment is the mechanism for establishing individuals' ability to contribute to the cost of their social care, within parameters set by the Care Act. The interaction between the Care Act's charging rules and benefits legislation, as applied to individual financial circumstances, makes this a complex area of law and practice.

The Council's charging policy ('the Policy') was last revised in early 2021, following public consultation. The Policy may be subject to minor modifications to ensure that it remains reflective of latest circumstances.

RECOMMENDATIONS

It is recommended that Cabinet:

- (1) Reflect on previously considered charging approaches, and in particular the rejection of an option of applying a maximum percentage of disposable income as an upper limit to be taken into account for charging purposes ('the 'percentage-based approach') in order to satisfy itself that its current approach to charging is appropriate
- (2) Delegates authority to the Director of Adult Social Services (DASS) in consultation with the portfolio holder for health, wellbeing and adult social care, to revise the charging policy for the financial year 2022/23 and thereafter enable

the portfolio holder for health, wellbeing and adult social care to make minor modifications periodically as may be required in accordance with the constitutional responsibility afforded to that office.

REASONS FOR DECISION

Cabinet must ensure that its adult social care charging policy is periodically updated to reflect law and practice.

1. BACKGROUND AND ISSUES

1.1 The local population

- 1.1.1 The local approach to adult social care charging must take account of the population affected by it. Key considerations include the following:
- a) North East Lincolnshire (NEL) has increasing numbers of older people (who are more likely to need support from adult social care)
 - b) Around 20% of NEL residents report that day-to-day activities are limited by long-term illness or disability
 - c) Physical frailty and dementia are the main causes of entering long-term social, home or residential, care in NEL
 - d) The highest number of those reporting that their health is bad or very bad are located in NEL's most deprived wards
 - e) NEL has high levels of deprivation and unemployment, and lower levels of earnings
 - f) The greatest number of individuals to whom the adult social care charging Policy applies are located in NEL's most deprived wards.
- 1.1.2 In summary, needs are high in NEL, and people generally have less money to contribute to the costs of their adult social care. The Policy largely affects older people and disabled people of all ages.

1.2 The adult social care charging framework

- 1.2.1 Adult social care charging regulations make provision for financial assessment. The regulations set out what can be taken into account and what must be disregarded in calculating what an individual can afford to contribute to the costs of their care. Local authorities have some discretion regarding what to disregard, and in structuring its approach to charging. The following are relevant mandatory disregards for care outside of a care home:
- a) earned income (from employment or self-employment)
 - b) disability related expenditure (DRE), if the local authority exercises its discretion to take into account income from disability benefits.
- 1.2.2 Disability benefits are intended to compensate for the extra costs arising from disability; where they are used for that purpose, they cannot be treated as available to contribute towards the costs of the individual's care. Where the benefits received exceed the DRE they are designed to cover, local authorities may exercise their discretion to take the excess into account in calculating the individual's contribution. There is most likely to be an excess where the local

authority is meeting the needs (e.g., by providing services) which the benefit is designed to cover.

- 1.2.3 Adult social care charging regulations provide for preservation of a minimum income guarantee (MIG) for those not accommodated in care homes. The function of the MIG is to ensure that after deduction of adult social care charges, an individual's income does not fall below that MIG. The MIG differs depending on individual characteristics, e.g., their age. Historically, the Department of Health and Social Care (DHSC) updated the MIG regularly by reference to a formula which included a buffer of 25% on top of relevant benefits. However, this formula has not tracked inflationary benefit increases for some years (so the 'buffer' has decreased).
- 1.2.4 The Government's December 2021 update to the 'Build Back Better' policy paper states that "To allow people receiving means-tested support to keep more of their own income, the government will unfreeze the [MIG] for those receiving care in their own homes [...], so that from April 2022 [the MIG will] rise in line with inflation". Further detail and the exact amount of DHSC's revised MIG from April 2022 is currently unknown. Once known, DHSC's intentions will need to be cross-referenced with local policy.
- 1.2.5 There has been some judicial interest in adult social care charging policies, by reference to which the Policy has been reviewed.

1.3 The percentage-based approach to adult social care charging

- 1.3.1 Prior to implementation of the Care Act in April 2015, the Council gave some consideration to the percentage-based approach to adult social care charging, subsequently set out in the Act's statutory guidance. It appears prudent to further consider that approach, as part of the Policy's current review.
- 1.3.2 A percentage-based approach equates to a council setting a maximum percentage of disposable income as an upper limit to be taken into account for charging purposes. For example, the Council could decide to take into account no more than 90% of each individual's disposable income when calculating how much they can afford to contribute to the costs of their social care. Adopting such an approach gives rise to the following concerns:
 - a) Adopting a maximum percentage appears unlikely to achieve comparability of outcome in all cases (those with earned income would receive a mandatory disregard)
 - b) Adopting a different percentage tailored to specific cohorts, is likely to be complex and administratively unworkable. The current electronic system (Controc) only allows for one approach applicable to all within the same care setting. Any additional approach would require a supplementary manual system. Maintenance of two systems would be unlikely to represent best value for money in terms of efficiency and effectiveness
 - c) Adopting a maximum percentage would cost the Council substantial sums in lost opportunity for cost recovery (an estimated £380,000 – 400,000 per annum if disposable income were capped at, say, 90% for all. Note: the estimate of lost cost recovery created in 2021 is for illustration only for the

purpose of this report. A more accurate calculation would require more in-depth and individualised calculations)

- d) Some system change would be required to enable adoption of the percentage approach which would create challenging resource issues, at least in the short term
- e) The additional costs to the system of adopting a percentage approach are unlikely to be affordable, particularly in the context of the need to ensure that the Council's approach remains sustainable in the long term.

1.3.3 Enquiries have been made to understand whether any other local authority has adopted the percentage-based approach set out in the Care Act's statutory guidance, from which NEL might learn. Where replies have been received, all local authorities have confirmed that they have not adopted this approach.

2. RISKS AND OPPORTUNITIES

2.1 Risks

2.1.1 Recent proceedings have thrown doubt on the efficacy of the supporting regulatory framework for adult social care financial assessment, because of the potential for differential treatment arising from its mandated disregard of earned income. Where such differential treatment arises, it flows from the necessary consequence of national regulations, and is not caused by the Council's Policy. The recommendation sought that the portfolio holder for health, wellbeing and adult social care be permitted to make modifications, will enable further such to be made if more information becomes available.

2.1.2 The government's December 2021 White Paper "People at the Heart of Care: adult social care reform" proposes some changes in the national approach to charging. It is currently understood that *most* of these proposed changes (for example, the 'cap' on care costs) will not take effect during the lifetime of the Policy i.e. the financial year 2022/23. Whilst full details of the proposals are not yet known, it is anticipated that changes will be fundamental, requiring significant work to implement. Work on implementation is likely to start in the current financial year. The delegation in favour of the portfolio holder for health, wellbeing and adult social care will enable a timeous response to emerging proposals.

2.2 Opportunities

2.2.1 The Council has previously committed to reviewing its approach to charging for short stays in a residential setting (generally referred to as 'respite'). This work has been delayed by the Covid-19 pandemic, but remains an area for further consideration.

2.2.2 National reform of adult social care charging referenced as a risk at 2.1 above, may also present further opportunities to review the Policy.

3. OTHER OPTIONS CONSIDERED

3.1. A substantial range of approaches to adult social care charging have been considered over a number of years. Approaches which the Council previously

utilised include (by way of summarised examples):

- a) Setting a maximum weekly figure to charge individuals, regardless of actual cost to the Council of the individual's care. This was previously part of the Council's policy; for example, from October 2009 the Council set a maximum charge for care at home at £200 per week
- b) Subsidised hourly rates for care costs i.e., seeking to recover from individuals less per hour than the Council pays for the service. Subsidised hourly rates for care at home appear to have ended from April 2011
- e) Setting a maximum percentage of costs to be charged to an individual, regardless of actual cost to the Council of the individual's care. Until April 2015, the Council's policy was to charge service users no more than 90% of the actual costs of their care at home
- d) Offering a MIG substantially in excess of the level set nationally by DHSC. For example, until October 2009 the Council allowed a MIG of 30% on top of income support. Note: NEL's current MIG amount is above the nationally set MIG, but is now less generous than previously (the local MIG is sourced from a single person's DWP rates (set annually by the Department of Work and Pensions), including any premium entitlements plus, an additional 25%).

3.2 Other options that the Council previously considered but did not pursue include (again, by way of summarised examples):

- a) Charging individuals the full costs of both care workers delivering care to them, where two care-workers are required to deliver care simultaneously
- b) Charging for support provided to informal carers
- c) A range of other options for maximising cost recovery, including varying the Council's approaches to treatment of certain benefits as part of financial assessment, have been considered and not pursued.

3.3 The Council has previously committed itself to a policy position of full cost recovery wherever appropriate. As the previous approaches at 3.1 show, the Council has updated and amended its policy over some years to reflect that commitment. The importance of such commitment is highlighted by the unprecedented challenges to the Council's budgets generally, and to the overstretched adult social care budget in particular.

3.4 Despite these challenges, the Council continues to retain a more generous approach in some areas of its policy, such as in respect of a higher MIG than that directed annually by DHSC, and in electing not to pursue options such as those listed at 3.2 (for example charging for carers' support services). In its past and current deliberations, the Council has striven to develop an approach to charging which takes into account personal affordability for adults in need, and affordability for the system as a whole.

4. REPUTATION AND COMMUNICATIONS CONSIDERATIONS

4.1 Charging for adult social care can be a contentious topic. However, the Council needs to be mindful of the need to ensure sustainable service provision whilst ensuring value for money.

4.2 A long-term funding solution for adult social care has been awaited for some years; the debate regarding the inequity between health care – which is free at the point of access – and social care – which is not – has been heightened in the context of the Covid-19 pandemic. It is widely reported that the pandemic has widened inequalities. Local consideration of the impact of Covid-19 can be found at: https://www.nelincsdata.net/wp-content/uploads/JSNA_2021_SoB_Final.pdf In this context, the Council's need to balance the reputational risks associated with its charging approach is particularly sensitive.

5. FINANCIAL CONSIDERATIONS

5.1 In recent years in NEL, the demand for help, and the costs of providing that help, have increased, but available funding has not (excluding targeted, covid-related funding). Funding reductions have been addressed by seeking to manage demand, reshaping how services are delivered, working smarter, and increasing income from those who receive help. There has been limited ability to invest in quality and over recent years, overall levels of satisfaction of people who use adult social services has decreased.

5.2 Over the last three years, the Council has spent an average of £45 million per annum on residential and community chargeable packages of adult social care, and recovers around 20% of that via assessed individual contributions. The Council needs to continue to seek assessed contributions towards the cost of their care from those who can afford it, if the system is to remain sustainable. Securing sustainability is challenging in the context of high demand and high levels of deprivation.

5.3 Decisions regarding adult social care spend are taken in the context of the Council's overall financial position and short to medium-term financial plans. The overarching objective is always to deliver a balanced budget, in light of required savings and investments, and likely available funding options. These include application of Council Tax increases, utilisation of the adult social care precept, social care grants, and Better Care Funds etc.

5.4 Following consultation and the agreed revision of the Policy in 2021, charges in respect of day care, transport and laundry will rise to keep up with cost increases (a principle of annual indexation was agreed from the financial year 2021/22 onwards); the administration fee for arranging care for those who can afford it will also increase to reflect the actual costs to the Council of providing this service. Care costs charged to adults will increase by an inflationary amount, as they do each year. Calculations are made prior to the start of the new financial year, 2022/23. Increases will support the Council in ensuring its approach to adult social care charging is sustainable.

6. CHILDREN AND YOUNG PEOPLE IMPLICATIONS

- 6.1 As this report relates to charging for adult social care, there are no direct implications for children and young people, excepting in respect of the following:
- a) Adults in receipt of care, to which the Policy applies, may be the parents or guardians of children and young people. The financial position of the parent/ guardian will clearly have an impact on the children/ young people they care for
 - b) Children and young people with needs may continue to have needs as an adult. If so, and in so far as they have eligible needs which will be met under the Care Act 2014, their ability to contribute to the costs of meeting them will be assessed on the basis of the Policy.

7. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

- 7.1 There are no direct environmental implications.

8. CONSULTATION WITH SCRUTINY

- 8.1 The matter has not been referred to scrutiny but scrutiny played an integral part of reviewing the charging policy for 2021. Given that only minor modifications are likely to be made to the policy within the financial year 2022/23, it is not intended to engage further with scrutiny.

9. FINANCIAL IMPLICATIONS

- 9.1 Adult Social Care forms a significant proportion of the overall Council's net revenue budget equating to approximately 39% of the total services budget. As such, given the demand and other complexities of this cost driven budget it is a significant consideration particularly the impact changes in demand can have on the financial spend in this service area and the impact on the Council's overall financial stability and sustainability.
- 9.2 Fees and charges form an important element of the budgetary position of the Council and therefore any policy and changes to these need to consider a range of matters such as equity, fairness, legality and the impact on the overall position of the Council's budgetary position

10. LEGAL IMPLICATIONS

- 10.1 The principles under the terms of the Care Act 2014 and supporting regulatory framework and guidance are largely set out in the above report. The Care Act gives local authorities powers to charge for certain types of care and support, at their discretion.
- 10.2 A regular periodic review of charges generally is considered both good practice and necessary. In conducting such a review the Council should have regard to the public sector equality duty (s.149 Equality Act 2010) and ensure that its policies are not discriminatory.

11. HUMAN RESOURCES IMPLICATIONS

- 11.1 There are no direct human resources implications.

12. WARD IMPLICATIONS

- 12.1 All wards comprise some users of adult social care. A majority of adult social care users are within the Borough's more deprived wards

13. BACKGROUND PAPERS

The Policy can be found here: <https://www.nelincs.gov.uk/health-wellbeing-and-social-care/adult-social-care/>. The impact assessment associated with the Policy is available.

Cabinet Report of 10th February 2021.

14. CONTACT OFFICER(S)

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