



CABINET – 29 MARCH 2022

CHARGING FOR SOCIAL CARE AND SUPPORT POLICY

REPORT OF DIRECTOR OF ADULTS AND COMMUNITIES

PART A

Purpose of the Report

1. The purpose of this report is to seek the Cabinet's approval for the Council's revised Charging for Social Care and Support Policy to be introduced from 11 April 2022.
2. The revised Policy, which is set out in Appendix A to this report, sets out how the Council charges adults who receive care and support services.

Recommendations

3. It is recommended that:
 - a) The revised Charging for Social Care and Support Policy be approved for implementation from 11 April 2022;
 - b) It be noted that future revisions to the Policy that are necessary to reflect any further changes in legislation and good practice will be made by the Director using his delegated powers.

Reasons for Recommendation

4. To approve a revised policy for charging for adult social care and support which will be implemented from 11 April 2022.
5. To enable the Minimum Income Guarantee and Personal Expenses Allowance (MIG/PEA) amounts to be revised each April in line with changes to the Regulations under the powers delegated to the Director.

Timetable for Decisions (including Scrutiny)

6. Subject to the Cabinet's approval, it is intended to implement the revised Charging for Care and Support Policy from 11 April 2022.

7. The Adults and Communities Overview and Scrutiny Committee received a report on 7 March 2022 and its comments are set out in paragraph 39 below.

Policy Framework and Previous Decisions

8. The Care Act 2014 allows local authorities to charge for most care and support services. The Care and Support Statutory Guidance (the CSS Guidance) requires that where a local authority decides to charge for services, it must follow the Care and Support (Charging and Assessment of Resources) Regulations (the Regulations) and have regard to the Guidance. Local authorities have a discretion to adopt a more generous charging policy than the statutory scheme; for example, they may choose to disregard additional sources of income, set maximum charges, or charge a person a percentage of their disposable income. The CSS Guidance requires that local authorities should develop and maintain a policy on how they wish to apply this discretion locally and how it can:
- ensure that people are not charged more than it is reasonably practicable for them to pay,
 - be comprehensive, to reduce variation in the way people are assessed and charged,
 - be clear and transparent, so people know what they will be charged,
 - promote wellbeing, social inclusion, and support the vision of personalisation, independence, choice and control,
 - support carers to look after their own health and wellbeing and to care effectively and safely,
 - be person-focused, reflecting the variety of care and caring journeys and the variety of options available to meet their needs,
 - apply the charging rules equally so those with similar needs or services are treated the same and minimise anomalies between different care settings,
 - encourage and enable those who wish to stay in or take up employment, education or training or plan for the future costs of meeting their needs to do so,
 - be sustainable for local authorities in the long-term.
9. The Cabinet approved the current Charging for Social Care and Support Policy on 11 September 2015. The Policy has only been subject to subsequent change to reflect changes in legislation, to improve the clarity of the wording and to address issues arising from the Council’s initial response to the Covid-19 pandemic.
10. On 24 January 2022, the Adults and Communities Overview and Scrutiny Committee received a report on the “People at the Heart of Care: Adult Social Care Reform White Paper” and its impact on social care provision in Leicestershire and proposals on the Adult Social Care charging reform; the detail of which is set out under the “Build Back Better: Our Plan for Health and Social Care” command and subsequent policy papers.

Resource Implications

11. The proposed charges to the Charging for Social Care and Support Policy can be implemented using the existing capacity within the Adults and Communities Department. It is envisaged that the changes will avoid or reduce the volume of disputes and appeals that would otherwise be received in relation to these matters.
12. The changes will need to be reflected, as far as possible, on the Council's online financial assessment tool.
13. The Government published the proposed MIG/PEA figures for 2022-23 on 28 February 2022. The impact on income received from service users in receipt of chargeable care and support services is expected to be contained within the departmental budget.
14. The Director of Corporate Resources and the Director of Law and Governance have been consulted on the contents of this report.

Circulation under the Local Issues Alert Procedure

15. None.

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PART B

Background

16. The Policy sets out how the Council will undertake a financial assessment in relation to residential and non-residential care and support services including how different types of income and capital are treated and what allowances are permitted in calculating how much someone is required to contribute towards the cost of their care and support services. The Policy assists people to know what they will be charged.
17. In the Care and Support Statutory (CSS) Guidance it states that the Government considers that it is inconsistent with promoting independent living to assume, without further consideration, that all of a person's income above the Minimum Income Guarantee (MIG) is available to be taken in charges. The Guidance suggests that local authorities should therefore consider whether it is appropriate to set a maximum percentage of disposable income (over and above the guaranteed minimum income) which may be taken into account.
18. A recent High Court judgment (SH v Norfolk County Council) established that local authorities should have a clear and transparent process and a recorded position on their charging policy, including the MIG (i.e. the income a person receiving care outside a care home is left with after charges) and Personal Expenses Allowance (PEA) (i.e. the income a person receiving care in a care home is left with after charges). The statutory amounts have not been increased since 2015 though the Government has increased in line with inflation from April 2022. The proposed amounts, based mainly on a person's age and disability, have now been published in a local authority circular from the Department of Health and Social Care dated 28 February 2022 and amending regulations published 8 March 2022. The link to this circular is included under the Background Papers.
19. The High Court Judgment also concluded that Norfolk County Council's proposed changes to its charging policy had an unintended consequence resulting in unjustifiable discrimination against people with more severe disabilities (see Appendix B attached to this report). In particular:
 - The different approach to earned and unearned income.
 - Demonstrating consideration of whether it is appropriate to set a maximum percentage of disposable income which may be taken into account in charges.
20. Following the judgement, all social care authorities have been advised to review their charging policies.
21. In September 2021, the Government published its proposals to transform the funding of social care. The proposals will require a more fundamental review of the Council's charging policy covering the lifetime cap on the amount anyone in England will need to spend on their personal care, alongside a more generous means-test for local authority financial support which will apply from October

2023. This is planned to be undertaken in the next financial year and will include a further consideration of the High Court Judgement, consultation and an equalities and human rights impact assessment pursuant to the Council's public sector equality duty under the Equality Act 2010.

The Revised Charging for Social Care and Support Policy

22. The main proposed changes to the existing policy are to increase the MIG/PEA amounts used in the financial assessment and to provide additional or increased disregards to reflect increase energy costs for residential assessments and the new compensation schemes introduced by Government.

MIG/PEA

23. It is proposed that the Council adopts the statutory amounts for the MIG/PEA which have been set out by Government for its charging policy for 2022-2023. These are the minimum amounts allowed under the legislation. These amounts will be revised each April in line with changes to the Regulations using existing powers delegated to the Director. The changes will be documented in an Executive Decision Record published on the Council's website.
24. Anyone who feels that their assessed contribution towards their care and support charges is unaffordable can request a review and appeal the decision under the current and the proposed Charging for Social Care and Support Policy.

The Norfolk Judgement

25. A synopsis of the High Court judgement in SH v Norfolk County Council is set out in Appendix B to this report.
26. Norfolk County Council decided not to appeal the judgement but has made interim changes to its policy to mitigate the effects of unintended discrimination. These included disregarding the difference in the amount received under the Standard Rate and the Enhanced Rate of the Daily Living Component of Personal Independence Payment (PIP) and not implementing the proposed reduction in the rate of MIG. The Daily Living Component of PIP is a benefit paid to adults with a disability or long-term health problem who need support or assistance in relation to their daily living tasks.
27. Leicestershire County Council has not adopted this approach. Its proposals focus on the MIG and PEA, which are set to increase in line with inflation following revision by HM Government. This will ameliorate the impact of current charging decisions by setting more generous amounts, in addition to net housing and Council Tax costs, than the current rates set under the Regulations which have not kept pace with costs of living and inflationary increases. This provides a benchmark that the Council considers will assist it in complying with the CSS Guidance, in particular (paragraph 8.42), that a local authority must ensure that a person is left with sufficient funds to meet their daily living costs, such as rent, food and utilities.

28. It is worth noting that the Local Government and Social Care Ombudsman has looked at two previous complaints against the Council for including the full amount of the Enhanced Rate Daily Living Component of Personal Independence Payment in 2018 and 2019 and not found the Council to be at fault.
29. In relation to the requirement that where a person receives benefits to meet their disability needs that do not meet the eligibility criteria for local authority care and support, the charging arrangements should ensure that they keep enough money to cover the cost of meeting these disability-related costs. The Council is confident that its current and proposed charging policy in relation to disability-related expenses can address any hardships that may arise.
30. If an individual considers these measures do not eliminate any unjustifiable discrimination of the type complained of in the Norfolk judgement, they have the right of review/appeal, in the current and proposed policy (see paragraph 55 of the policy).

Energy Costs

31. In April 2022, the biggest rise in the energy bills price cap ever set by Ofgem will be implemented. Ofgem announced, on 3 February 2022, that the price cap will increase the average annual domestic energy bill from 1 April by £693.
32. The CSS Guidance requires local authorities to carry out a financial assessment and ensure that people are not charged more than it is reasonably practicable for them to pay. The Government has announced a package of measures to support households with rising energy bills, including:
 - A £200 repayable discount on their energy bill this Autumn for domestic electricity customers. This will be paid back automatically over the next five years.
 - A £150 non-repayable rebate in Council Tax bills for all households in Bands A-D in England.
 - £144 million of discretionary funding for district councils to support households who need support but are not eligible for the Council Tax rebate.
 - Expansion of the Warm Homes Discount to around an additional 800,000 low-income households.
33. People disputing the affordability of their assessed contribution towards the cost of their care and support services due to the increase in energy costs will be directed to seek assistance from the district councils' discretionary fund, noted above and similar funds where appropriate.
34. In relation to the £150 rebate on Council Tax, unless the Council changes its charging policy, people in receipt of a chargeable care and support service will not benefit from the additional support the Government has introduced. Therefore, the financial assessment will retain the pre-reduction liability for

Council Tax in order to avoid a consequent increase in their care and support charges, in line with the arrangements for Council Tax Support. This will ensure the resident receives the full benefit of the reduction in their Council Tax charge for 2022-23.

35. A person incurring greater energy costs due to their disability, compared to average costs, can be considered for disability-related expenditure under the existing and the proposed policy (see paragraph 51 of the policy).
36. For residential placements where the resident remains liable for energy costs at their former home, under paragraph 46(d) of the CSS Guidance the Council has to consider whether the PEA is sufficient to enable the person to meet any resultant costs. Under the existing Charging for Social Care and Support Policy a standard amount based on average costs originally published by British Gas is allowed. The revised proposal includes an increase to these amounts by the increase in energy costs (54%) rather than the Consumer Price Index generally. As a result, the amounts allowed would be £9.07 for an unoccupied property i.e. frost protection (current £5.89) and £32.02 for an occupied property, divided by the number of occupants (current £20.79).

New Government Compensation Schemes

37. Schemes compensating victims of historical institutional child abuse and from the Windrush Compensation Scheme are disregarded from 1 January 2022 in relation to means-tested social security benefits: Council Tax Support, Housing Benefit, Income Support, Income-based Jobseeker's Allowance, Income-related Employment and Support Allowance, State Pension Credit, and Universal Credit. No amendment has yet been made to the Care and Support (Charging and Assessment of Resources) Regulations 2014 relating to financial assessments for care and support services.
38. However, it is proposed to mirror the disregards in means-tested social security benefits in the Council's Charging for Social Care and Support Policy in relation to compensation paid to victims of historical institutional child abuse and from the Windrush Compensation Scheme.

Comments of the Adults and Communities Overview and Scrutiny Committee

39. The Adults and Communities Overview and Scrutiny Committee considered a report at its meeting on 7 March 2022, which provided a briefing on a number of proposed changes to the Council's Charging for Social Care and Support Policy intended to be introduced from 11 April 2022 and invited comment on the revised Policy. The following key points arose from discussion:
 - Members noted that Central Government had confirmed its intention to raise the statutory minimum amount for MIG and PEA for 2022-23 by 3.01%.
 - Members received confirmation that a person's financial assessment would only be impacted by the rules around deprivation of capital if it could be determined that at the time the person gave away their assets, they had
 - a) a reasonable expectation of the need for care or support; and

- b) a reasonable expectation of the need to contribute towards the cost of their care or support.
- The Committee received assurance that even with the complexities of the financial assessment process around residential care placements (due to the number of considerations that had to be made such as whether the placement was to be temporary or permanent) responding to people's care needs was always the priority and that charging could be back dated if necessary.
 - Members noted that the Department was currently considering ways to improve its online financial assessment tool for use and publication more widely.

Conclusion

40. The Council is required to formally adopt the charging policy for adult social care and support. As detailed above, the Government's proposals to transform adult social care will require a more fundamental review of the Council's charging policy. This is planned to be undertaken in the next financial year and will include a further consideration of the High Court Judgement, consultation and an Equalities and Human Rights Impact Assessment pursuant to the Council's public sector equality duty under the Equality Act 2010.

Equality and Human Rights Implications

41. An Equalities and Human Rights Impact Assessment screening has been undertaken and indicates that an Equality and Human Rights Impact Assessment Report is not required.
42. In relation to the decision in SH v Norfolk County Council the proposal is to retain the existing policy approach. As detailed above there is an existing dispute and appeal mechanism in the charging policy in addition to the statutory complaints process that enables people to challenge the Council's decision on their assessed contribution.

Risk Assessment

43. The risks of challenge to the Council's policy are recorded by the Council as a Strategic Risk including loss of income, reputational damage and loss of trust. The Council has, via the National Association of Financial Assessment Officers, obtained legal advice on the implications of the Norfolk judgement.
44. The Charging for Social Care Policy provides a right to request a review and appeal if anyone who feels that their assessed contribution towards their care and support charges is unaffordable.

Background Papers

Progress with implementation of the Care Act 2014 and Request for consultation - Cabinet: 11 September 2015

<https://politics.leics.gov.uk/ieListDocuments.aspx?MIId=4230>

Report to the Adults and Communities Overview and Scrutiny Committee: 24 January 2022 – Adult Social Care Reform and Charging
<https://politics.leics.gov.uk/ieListDocuments.aspx?CId=1040&MId=6838&Ver=4>

Build Back Better: Our Plan for Health and Social Care
<https://www.gov.uk/government/publications/build-back-better-our-plan-for-health-and-social-care>

Care and Support Statutory Guidance - 27 January 2022
<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#charging-and-financial-assessment>

The Care and Support (Charging and Assessment of Resources) Regulations 2014
<https://www.legislation.gov.uk/ukxi/2014/2672/contents/made?text=care%20act#match-1>

Social care - charging for care and support: local authority circular - LAC(DHSC)(2022)1
<https://www.gov.uk/government/publications/social-care-charging-for-local-authorities-2022-to-2023/social-care-charging-for-care-and-support-local-authority-circular-lacdhs20231>

Social care – charging for care and support: local authority circular LAC(DHSC)(2021)1
<https://www.gov.uk/government/publications/social-care-charging-for-local-authorities-2022-to-2023/social-care-charging-for-care-and-support-local-authority-circular-lacdhs20231>

SH v Norfolk County Council [2020] EWHC 3436 (Admin).
<https://www.bailii.org/ew/cases/EWHC/Admin/2020/3436.html>

Department of Health Impact Assessment - The Care Act 2014: Draft regulations and guidance for implementation of Part 1 of the Act in 2015/16
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/317817/ConsultationIA.pdf

Appendices

Appendix A - Charging for Social Care and Support Policy

Appendix B - Synopsis of the High Court judgement in SH v Norfolk County Council

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