



ADULTS AND COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE
6 NOVEMBER 2023

CHARGING FOR SOCIAL CARE AND SUPPORT POLICY

REPORT OF THE DIRECTOR OF ADULTS AND COMMUNITIES

Purpose of report

- 1 The purpose of this report is to inform the Committee of the proposed changes to be made to the Council's Charging for Social Care and Support Policy, attached as Appendix A to this report. The revised Policy will be presented to the Cabinet for consideration at its meeting on 24 November 2023 and, subject to its approval the Policy will be the subject of a formal public consultation exercise as detailed below.

Policy Framework and Previous Decisions

- 2 The Care Act 2014 allows local authorities to charge for most care and support services. The Care and Support Statutory Guidance (the 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 statutory guidance.
- 3 The Care and Support Statutory Guidance requires that local authorities should develop and maintain a policy on how they wish to apply this charging 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;

- 4 On 29 March 2022, the Cabinet approved the Council's current Charging for Social Care and Support Policy.

Background

- 5 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.
- 6 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.
- 7 The revised Policy is designed to continue to meet the principles for charging set out in the Guidance and be sufficiently comprehensive to withstand any legal challenges to the Council's approach.

Proposed changes

- 8 The revisions provide additional wording to reflect that the Policy is pursuant to the Council exercising its discretion to charge adults towards the cost of most care and support services, under the Care Act 2014.
- 9 The Policy now highlights that the On-line Care Contribution Estimator is available, in the customer portal within the Council's external website to obtain an indicative contribution amount prior to agreeing any care and support services (<https://customerportal.leics.gov.uk/web/portal/pages/finance>).
- 10 Added clarification has been included for those situations where a person receives both short-term residential and non-residential care and support services in the same week. Charges are 1/7th of the full weekly contribution for each night of a residential stay.
- 11 As detailed in Appendix B, there are clarifications to the wording. This is not changing the principles of charging/assessments. The wording clarifications relate to:
- The arrangements under the licence agreement and the financial assessment for permanent Shared Lives placements;
 - The meaning of 'incapacitated' for a qualifying relative for a mandatory property disregard for a residential financial assessment, i.e. a relative who is in receipt of a disability benefit or has an equivalent level of disability;
 - Circumstances where a person may be allowed to retain additional income (above their personal expenses allowance) in a residential financial assessment. For example, for a dependent child, or liability for housing costs relating to their former home;

- Housing costs that could be included as an allowable expense in a non-residential financial assessment where there is legal liability on the person and proof of the costs;
- Absences: planned care and support that are either not taken up or are not delivered. For example, if a person refuses to accept planned care and support services or if the services are not available as planned.

12 In addition to the above, the following provisions in the policy have been reinforced. This is not changing the principles of charging/assessments:

- Following the death of a Person, the Council is not obligated to re-assess the person's financial assessment for the benefit of their estate. The Council has discretion to do so on request.
- That the Council can refuse a request for preferred choice accommodation in a care home where it determines, following assessment, that the top-up amount is unaffordable. Should a top-up arrangement break down, the Council will undertake a care and support assessment which may lead to moving the resident to an alternative placement which does not involve a top-up amount.
- That the MIG applied to a non-residential financial assessment is the one applicable at the start of the assessment week (Monday–Sunday) and that any change affecting it, such as a 25th birthday, will commence at the start of the following week.
- That a new method of ensuring non-residential and residential financial assessments will take account of the position of a partner, where the partner's income and capital details are disclosed. This replaces the existing complex couples' adjustment calculation and will reduce the need for individual waiver requests.
- To add to the list of potential allowable disability-related expenditure in a financial assessment, Court of Protection deputyship fees and costs relating to professional Appointeeship services, where a person lacks mental capacity to manage their own property and finances.
- To enable the Council to obtain additional evidence to consider potential disability-related expenditure.
- The right to appeal and waivers sections have been separated out to clarify differences.

Consultation

- 13 Subject to the Cabinet's approval on 24 November 2023, the Policy will be the subject of a formal consultation exercise which is expected to commence in November 2023 and will run for eight weeks.
- 14 The consultation details are being developed, but will include an on-line survey, in paper and alternative formats and engagement with voluntary organisations within the sector. The Engagement Panel in Adults and Communities will also be involved in this process.
- 15 There is also the opportunity to promote the survey through front line staff and include as an attachment to invoices issued.

- 16 The consultation will be led by Adults and Communities Department's Adult Social Care Finance Team, in conjunction with the Council's Policy, Business Intelligence and Communications Teams.

Resource Implications

- 17 If the changes proposed are approved by the Cabinet in due course, training and awareness raising will be required within Adult Social Care Finance, the Localities and the Corporate Resources Finance Operations Teams. Initial consideration has also been explored to identify whether any amendments to the ContrOCC finance system would be required.
- 18 The changes will need to be reflected, as far as possible, on the Council's On-line Financial Assessment Tool (Care Contribution Estimator).
- 19 The Director of Corporate Resources and Director of Law and Governance have been consulted on the content of this report.

Timetable

- 20 Subject to the Cabinet's approval on 24 November 2023, the Policy will be the subject of a formal consultation exercise as outlined above which is expected to commence in November 2023 and will run for eight weeks.
- 21 It is proposed that a further report will be presented to the Cabinet on 9 February 2024 which will present the outcome of the consultation, feedback from this Committee, and seeking approval of the revised Charging for Care support Policy subject to any amendments which may emerge as a result of the consultation process. If approved the Policy will be implemented from 8 April 2024.

Conclusions

- 22 A robust, up to date and comprehensive charging policy is required to ensure that the Council is able to charge and collect contributions towards the cost of care and support services, and to support the Council in response to any future legal challenges regarding the policy.
- 23 This report sets out the proposed amendments to the Charging for Care and Support Policy from April 2024.

Recommendation

- 24 The Committee is asked to note the report and is invited to make comments on its content.

Background papers

Care and support statutory guidance – 5 October 2023

<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>

Charging Policy for Social Care and Support

<https://www.leicestershire.gov.uk/sites/default/files/field/pdf/2022/1/31/lcc-charging-policy-care-act.pdf>

Report to the Cabinet: 29 March 2022 – Charging for Social Care and Support Policy

<https://politics.leics.gov.uk/ieListDocuments.aspx?Mid=6774> (item 114)

Circulation under the Local Issues Alert Procedure

25 None.

Equality Implications

- 26 All users of chargeable care and support services will have been assessed as having eligible care and support needs under the Care Act 2014. In reviewing the policy regard has been had to the Council's legal duty to have due regard to the Armed Forces Covenant.
- 27 This report is a briefing document, and as such is not subject to an Equalities and Human Rights Impact Assessment (EHRIA). However, an EHRIA screening has been completed and will be discussed at the Department's Departmental Equalities Group on 7 November 2023.
- 28 The screening indicated that there will be positive impacts for some disregards to offset against charges and partner adjustments. There will be a mixed impact as a result of financially assessing short-term residential care and support on a non-residential basis, where non-residential care and support services are also utilised in the same week. Depending on a person's individual circumstances, including their package of care and their financial assessment, this would have a positive impact but could potentially have a negative impact for some individuals.
- 29 As detailed above there is an existing dispute and appeal mechanism in the Policy, in addition to the statutory complaints process that enables people to challenge the Council's decision on their assessed contribution.

Human Rights Implications

30 There are no Human Rights Implications arising from this report.

Appendices

Appendix A – Proposed Charging Policy for Social Care and Support

Appendix B – Proposed changes to Social Care and Support Policy

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