

**ADULT SOCIAL CARE CHARGING POLICY REVIEW**

*To:* **Adults Committee**

*Meeting Date:* **12 September 2019**

*From:* **Executive Director, People & Communities**

*Electoral division(s):* **All**

*Forward Plan ref:* **2019/058**                      Key decision: **Yes**

*Purpose:* **The purpose of this report is to put forward for consideration a number of proposed changes to the Council's adult social care charging policy in order to bring it into line with those of other local authorities following changes arising from the Care Act 2014.**

*Recommendation:* **The Committee is asked to consider the proposals to change the Council's care charging policy to bring it into line with those of other local authorities following changes arising from the Care Act 2014 and to consent to undertake a full public consultation on these proposals.**

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## 1. BACKGROUND

- 1.1 Thousands of people in Cambridgeshire currently arrange and pay for their care and support with no involvement from the Council. Of those people in receipt of Council arranged care and support, around 60% contribute financially towards the cost of their care, which significantly reduces the demands on the overall Adult Social Care budget. This allows the Council to invest in prevention services that support people before they become eligible for a formal care package.
- 1.2 Under the Care Act 2014 Local Authorities that provide adult social care services are able to decide whether to charge for certain types of care and support on a means tested basis, but are restricted to only charging people what they can afford to pay, through protected minimum income levels set by national Government. This means that people must be left with a guaranteed minimum income, on which to live, after charging has taken place.
- 1.3 The 2017 Cambridgeshire Budget Consultation Survey found that almost six out of ten (59%) residents supported the Council's proposal to change its charging policy for adult social care to charge for the same things and at similar levels as other Local Authorities.
- 1.4 Many people in receipt of social care support receive disability benefits which are paid specifically to help people pay for their care and support. People can either use their benefits to arrange and pay for care and support privately, or they can use them to pay for care and support arranged for them by the Local Authority. In addition to this, the Council also provides many services free of charge to those in need of care and support, including: reablement, community equipment, minor property adaptations, comprehensive information advice & signposting to a range of community and voluntary sector organisations, carers support, falls prevention services and technology enabled care.
- 1.5 The Care Act 2014 came into force in April 2015, and sets out a single legal framework and associated guidance for charging for care and support services. In response to this, Cambridgeshire's policy on charging for adult social care services was reviewed during 2017, culminating in a report to Adults Committee of 9<sup>th</sup> November 2017. A number of changes were proposed to the charging policy at this time for consideration (proposals listed at 2.2 i) to iii) in this report). Following a 12 week period of public consultation which ended on 23<sup>rd</sup> February 2018, these proposals were considered carefully by Adults Committee in March 2018, and after taking into account the consultation responses and the financial position of the Authority at that time, Adults Committee chose not to introduce these changes.
- 1.6 In common with all other Councils with social services responsibilities, Cambridgeshire continues to face significant financial and demographic pressures, particularly in Adult Social Care. Setting the Council's 2019/20 budget proved to be particularly challenging because of continuing and ongoing reductions in Government funding levels and increasing levels of demand. The worsening financial context that Councils now face and the increasing demand for Council arranged care and support has consequently obliged Cambridgeshire to revisit its Adult Social Care charging policy and re-examine the issue in the current and future financial context. Cambridgeshire's charging policy has therefore been carefully reviewed having regard to the Care Act charging legislation and guidance, and through close and detailed comparison with other Councils to identify changes for consideration to how clients contribute towards the cost of their care and support.

- 1.7 The charging policy changes proposed have been agreed and implemented by many other Councils (including Peterborough and most other neighbouring Councils – see Appendix 1) in response to the scale of the financial pressures now being faced by Local Authorities, and they provide an opportunity to limit and offset the impact of these pressures without reducing or withdrawing services. The Council is obliged to publicly consult on any proposals where it exercises its discretion to change its care charging policy.
- 1.8 The scope for such changes has however now become more limited as successive year's savings and efficiency measures have been applied across all key areas of adult social care business - and the Council's statutory duty of care obligations as prescribed by the Care Act are minimum requirements that cannot be compromised. The choice facing the Authority is therefore between increasing charges for people who have incomes that are deemed to be above Government defined minimum levels in line with the majority of other Councils with social services responsibilities, or reducing the extent and reach of Cambridgeshire's adult social care offer- which would be likely to impact negatively on outcomes and be increasingly challenging to deliver successfully. Particularly so if additional revenue opportunities afforded by a fair and reasonable change to the charging policy were not adopted.

## **2. ADULT SOCIAL CARE CHARGING POLICY REVIEW**

- 2.1 Following a comprehensive recent review of Cambridgeshire's charging policy, a total of five proposed changes have been identified. These proposed changes will increase the contribution made by many Adult Social Care service users, but a number of established key protections are in place to ensure that everyone is able to afford their contribution towards the cost of their care. In summary these protections are:
- Financial assessment – if implemented, everyone would receive a new financial assessment to ensure their income (after charges have been paid) meets the Government's Minimum Income Guarantee (see below)
  - Minimum Income Guarantee – protected income levels set by Government and reviewed annually, and below which no person's income is permitted to fall after care charges have been paid
  - Disability Related Expenditure – allowance must be made within the means-test calculation for the reasonable cost of any additional items or expenses incurred by a service user as a result of their disability
  - The Care Act 2014 statute and charging guidance sets out a range of income types and capital that must be disregarded in the financial assessment (e.g. the mobility component of both Disability Living Allowance and Personal Independence Payment, and also earnings from paid employment)
  - Councils continue to retain discretionary powers to set charging levels for individuals - taking into account their personal and individual financial circumstances and other relevant factors to ensure that the contribution they are assessed as needing to make is reasonable, fair and affordable.
- 2.2 The five proposed changes to the charging policy to bring it into line with guidance and common practice, and the estimated additional charging income arising from these are:
- i) Disability benefits review – Disability benefits are paid by central Government to help people pay for their care and support - including towards the cost of care where it is

arranged and funded by the Council. Cambridgeshire's charging policy has previously included only the lower and middle rates of these benefits, based on historic charging rules and guidance - however the Care Act charging and assessment guidance allows Local Authorities to include all rates. It is therefore proposed to now include all rates (low, middle or high) of the following disability benefits in the financial assessment calculation:

- Attendance Allowance (AA)
- Care component of Disability Living Allowance (DLA Care)
- Care component of Personal Independence Payment (PIP Care - Enhanced rate)

These changes could increase charges for some clients by up to £28.95 per week, resulting in estimated additional income from contributions of £1.2m per annum. See Appendix 2 for a worked example of this proposed charging change.

- ii) Respite care contributions – the Council currently calculates the client contribution for people accessing short term / respite care using 'non-residential' care charging rules, however the Care Act allows financial assessments to be calculated using 'residential' care charging rules. It is proposed to financially assess short term / respite care home stays using 'residential' charging rules.

Subject to the outcome of individual financial assessments, individual client contributions for around 90 clients could potentially increase by up to £140 per week, resulting in estimated additional income from contributions of up to £50k per annum. This is based on the current average of four weeks respite taken by a service user in a year.

- iii) Appointee charges – introduce a new charge to Adult Social Care service users whose social security benefits and finances are managed by the Council acting as their DWP corporate appointee (because these individuals lack the mental capacity or physical ability to undertake this themselves). Although the Council does not have a statutory obligation to provide an appointeeship service, it chooses to do so in some cases because it fulfils an important need for vulnerable people, and helps significantly to combat financial abuse. The proposal is to charge only those who have a capital balance above £1000 – applying a weekly charge of £10 for those in residential care, and £12.50 for those living in the community. These charges are broadly comparable with neighbouring and other Councils, but are significantly lower compared to the charges made for the appointeeship service by external not-for-profit organisations (around £16 per week) and independent private sector organisations (such as solicitors), where charges are considerably higher. Around 40 clients will be affected by this proposal.

Subject to confirming the individual levels of capital held by appointee clients, this proposal could result in an estimated additional income from contributions of £20k per annum, which would help enable the service to be made available to more people in the future.

- iv) Minimum Income Guarantee (MIG) – Cambridgeshire has previously used a higher MIG protected level of income in its financial assessment calculations, but is permitted to use a slightly lower figure, which would in turn increase the level of contribution

made by individuals towards the cost of their care. The proposal therefore is to change the MIG figure used to the level permitted by the Department of Health & Social Care. This proposed change will affect approximately 1150 clients, who could experience a contribution increase of up to £5.50 per week.

Subject to the outcome of individual financial assessments, this proposal could result in an estimated additional income from contributions of £328k per annum.

- v) Care arrangement fees - increase the current care arrangement fee applied to those people living in the community who are able to afford the cost of their own care but have chosen the Council to arrange this for them - from the existing one-off fee of £75, to an annual (recurring) fee of up to a maximum of £400 (dependent on the actual cost of arranging care – to be determined after detailed analysis of the actual cost is identified). People in this position typically have capital above the Government funding threshold (£23,250), and choose to have the Council arrange their care for them for convenience and security – and often benefit from favourable rates of care. In turn the Council sources and arranges the care provision, contracts with care providers, makes payment, reviews provider performance, monitors quality levels and produces invoices for the care delivered. Around 200 people have been charged the one-off arrangement fee so far in Cambridgeshire, but there is potential to apply the proposed annual charge to around 800 people in total.

Subject to the outcome of individual financial assessments, this proposal could result in an estimated additional income from contributions of £320k per annum.

### 2.3 Overall impact of these proposals

If all the proposals were to be fully adopted and implemented, some 800 people could experience a weekly increase in the share of their homecare costs that they contribute of up to £35. These individuals will have higher incomes that will not previously have been taken into account in the financial assessment – but after paying their increased share towards the cost of their care and support will nevertheless be left with income levels that are above protected minimum income levels after care charges. In addition to this cohort of 800 people, a further c.500 will face lesser increases of varying levels, dependent on individual incomes and circumstances identified within their financial assessment. If approved and implemented, the Council's revised care charging policy will be aligned to changes arising from the Care Act and have parity with Peterborough's charging policy and many other neighbouring and other Local Authorities.

### 2.4 Options

Members have the following options to choose from in respect of the charging policy proposals:

- a) Publicly consult on all the proposed changes
- b) Publicly consult on some of the proposed changes
- c) Leave the Council's charging policy unchanged

Option a), if adopted post consultation, will bring the Council's Charging Policy into line with neighbouring and other Local Authorities following the changes in the Care Act 2014 and will

allow the Council to continue to invest in prevention services that support people before they become eligible for a formal care package,

Option b), if adopted post consultation, will partially bring the Council's Charging Policy into line with neighbouring and other Local Authorities following changes in the Care Act 2014, but will require the Council to consider changes elsewhere in the Adult Social Care budget to meet short, medium and long term financial challenges.

Option c), if no changes are made post consultation, this will see the Council retaining a different, more generous charging policy to other Local Authorities, but will require the Council to consider changes elsewhere in the Adult Social Care budget to meet short, medium and long term financial challenges.

2.5 If approved, the charging policy changes can be applied as follows:

- On an immediate basis across all affected cohorts from the earliest date possible (January 2020) by the application of changes to the financial assessment computer system.
- To all new clients from January 2020 onwards, and on a rolling basis from this date to all existing clients - offering the option of a new financial assessment taking into account individual client financial circumstances, and to be completed for all affected cohorts by the end of the 2020/21 financial year where practicably possible.
- Phased application of the charge increases across the County over a longer period of time (e.g. 2 years) commencing from April 2020, and limiting the charge increase that would apply to each individual to, for example, half of the total increase figure in the first year of application and increasing this to the full increased cost in the second year.

Implementation in the way described in the last two bullet points will adversely impact on revenue levels generated. The recommended option is the second bullet point – if the changes are approved following consultation.

## 2.6 **Consultation**

As the proposals and the clients who are affected by these have changed since the charging policy was last considered in 2017/18, a full and comprehensive public consultation that captures the views of all the community will be required - this will include liaison and close engagement with Partnership Boards and other relevant service user fora as well as the wider general public. Concerted efforts will be made through the development of a comprehensive communications and consultation plan to reach all audiences with a range of different opportunities and ways for people to make their comments known. This will include targeting specific communities of interest (particularly those with protected characteristics in line with the Equality Act 2010), and engaging the support of Healthwatch and the Voluntary and Community Sector. In addition, consultation currently being undertaken around the Council's 'Think Communities' approach will provide valuable insight as it includes broader general questions about where responsibility lies for making provision for care costs in older age - and a county-wide Council Tax consultation commencing in October and concluding in early December should also reveal a wider understanding of the general public's views on care affordability and paying for care. If Members agree to proceed, the public consultation must run for at least 12 weeks, commencing at the earliest after the Adults Committee meeting of 12 September 2019, and ending in January 2020. Feedback from the charging consultation itself and from other relevant consultations will be collated and will form part of

the report to return to Adults Committee on 16 January 2020 for final consideration and decision.

### **3. ALIGNMENT WITH CORPORATE PRIORITIES**

#### **3.1 Developing the local economy for the benefit of all**

There are no significant implications for this priority.

#### **3.2 Helping people live healthy and independent lives**

The proposals above have been considered alongside the need to support people to live healthy and independent lives, and continue to meet the requirements of Government guidance on financial assessments for service user contributions to care and support packages.

#### **3.3 Supporting and protecting vulnerable people**

The following bullet points set out the details of implications identified by officers:

- Financial contributions made by people in receipt of care and support services help to protect, sustain and enhance essential care services for vulnerable adults in the county
- Comprehensive statutory protections are in place to ensure that care charges are reasonable and affordable for people who receive care and support services, and that individual circumstances are fully considered and taken into account when determining the level of charge.
- Care charging policies must comply with statute and guidance which ensures that people continue to be charged in a fair, reasonable, consistent and equitable way.

### **4. SIGNIFICANT IMPLICATIONS**

#### **4.1 Resource Implications**

The following bullet points set out details of significant implications identified by officers:

- The overall net Adult Social Care budget for 2019/2020 is approximately £150m and in 18/19 Cambridgeshire had the lowest budgeted Adult Social Care spend per head of its statistical neighbours.
- Adult social care has delivered around £25m of savings over 2017/18 and 2018/19, mainly by reducing spend and making efficiencies, rather than through increased income generation.
- The Adult Social Care budget needs to grow by around 5% each year just to stand still and without making savings, due to demographic, legislative and market pressures – in that context additional revenue generated through changes to the care charging policy significantly help to offset the pressures faced in a way that doesn't reduce services.
- Within the proposals there are some risks that will have associated costs, particularly where additional resources may be required - such as financial assessment staffing resource costs. Overall revenue levels from care charges could be adversely impacted by this.

## **4.2 Procurement/Contractual/Council Contract Procedure Rules Implications**

There are no significant implications within this category.

## **4.3 Statutory, Legal and Risk Implications**

- 4.3.1 The Care Act provides a single legal framework for charging for care and support, and enables Local Authorities to decide whether or not to charge individuals for the care and support they receive, except where it is expressly stated in the Act, regulations and guidance that charges must not apply. The overarching charging principle is that people should only pay what they can afford, and will be entitled to local authority financial support on a means-tested basis, and some will be entitled to free care.
- 4.3.2 The Care Act provides a number of broad powers for Councils to carry out certain functions. Where a Council chooses to exercise these powers, it may be necessary to consult on how it intends to do so. A Council would only usually be expected to consult locally where it is using its discretion in the exercise of a particular function.
- 4.3.3 With regard to the disability benefits review proposal, concerns have previously been raised that these changes could be vulnerable to legal challenge in cases where the service user was not receiving night care for which the higher disability benefit rates are intended. The Care Act and associated guidance specifically does not prohibit the inclusion of the higher rates of Attendance Allowance and Disability Living Allowance (Care Component) in the financial assessment.
- 4.3.4 Precedent has been set in this regard, as many other Local Authorities now routinely include higher rates of disability benefits in their financial assessments and charging policies - and have done for some time now. In one Local Authority's case, Counsel's advice was sought on this specific point to confirm its legitimacy. The Local Government Ombudsman, responding to a recent complaint by an individual about this issue, has upheld the affected Council's decision and practice to include the higher rate of disability benefits in the financial assessment calculation.
- 4.3.5 Approving and implementing the charging proposals could lead to a higher risk of unpaid care charge invoices and subsequent increased bad debt provision, and potentially also an increase in concerns and complaints raised by service users and their families. There is also a risk that people may decide not to go ahead with the provision of care services or cancel services as a result of increased charges – however the application of the policy will ensure that charges are calculated consistently and in a way that does not result in people being charged more than is reasonably practicable for them to pay.

## **4.4 Equality and Diversity Implications**

The proposals only impact on those people assessed as having eligible needs for social care support which is a means tested service, and requires the Council to undertake financial assessments on a fair, consistent and equitable basis to determine the contribution that each individual should make towards the cost of their care and support.

## **4.5 Engagement and Communications Implications**

The report proposes a 12 week public consultation, in line with the Cambridgeshire Compact, with feedback to the Adults Committee in January 2020.

#### 4.6 Localism and Local Member Involvement

There are no significant implications within this category.

#### 4.7 Public Health Implications

There are no significant implications within this category.

Implications	Officer Clearance
<b>Have the resource implications been cleared by Finance?</b>	Yes or No: Yes Name of Financial Officer: Stephen Howarth / Tom Kelly
<b>Have the procurement/contractual/ Council Contract Procedure Rules implications been cleared by the LGSS Head of Procurement?</b>	Yes or No: N/A Name of Officer:
<b>Has the impact on statutory, legal and risk implications been cleared by LGSS Law?</b>	Yes or No: Yes Name of Legal Officer: Salma Kantharia (LGSS Law)
<b>Have the equality and diversity implications been cleared by your Service Contact?</b>	Yes or No: Yes Name of Officer:
<b>Have any engagement and communication implications been cleared by Communications?</b>	Yes or No: Yes Name of Officer: Matthew Hall
<b>Have any localism and Local Member involvement issues been cleared by your Service Contact?</b>	Yes or No: N/A Name of Officer:
<b>Have any Public Health implications been cleared by Public Health</b>	Yes or No: N/A Name of Officer:

Source Documents	Location
N/A	

## Appendix 1

This table shows the charging practices and rates that have been confirmed by other local authorities.

<b>Local Authority</b>	<b>Increased amount of disability benefits included in financial assessment</b>	<b>Respite charged under residential rules</b>	<b>Appointee charging</b>
Cambridgeshire County Council	No	No	No
Northamptonshire County Council	Yes	Yes	Yes £10 / £12.50 per week
Milton Keynes Council	Yes	Yes	Yes £12.50 per week
Peterborough City Council	Yes	Yes	Yes £8 per week
Nottinghamshire County Council	Yes	Yes	Yes £12 per week
Oxfordshire County Council	Yes	No	No
Hertfordshire County Council	No	Yes	No
Buckinghamshire County Council	Yes	Yes	Unknown
Leicestershire County Council	Yes (PIP only)	Yes	No
Gloucestershire County Council	Yes (PIP only)	Yes	No
Hampshire County Council	Yes (New PIP only)	No	No
East Sussex	Yes	Yes	Yes
West Sussex County Council	Yes	Yes	No
Cumbria County Council	Yes	Yes	No
Isle of Wight	Yes	Unknown	Unknown
Essex County Council	Yes	No	Unknown
Somerset County Council	No	Yes	Unknown
Sussex County Council	Yes	Yes	Unknown

## Appendix 2

### Example of financial assessment calculation (2019/20) taking into account higher rate of disability benefits (Personal Independence Payment [PIP] – Enhanced Rate)

Weekly income:

Employment & Support Allowance (ESA): £128.45

PIP (Enhanced rate) £87.65

**Total weekly income: £216.10**

<b>Current Policy</b>	<b>Weekly</b>	<b>Proposed Policy</b>	<b>Weekly</b>
Total assessable income (£216.10 - £28.95)	£187.15	Total assessable income (£216.10)	£216.10
Less protected income allowance (minimum income guarantee)	-£151.45	Less protected income allowance (minimum income guarantee)	-£151.45
Less disability related expenditure standard allowance	-£20.00	Less disability related expenditure standard allowance	-£20.00
<b>Remaining income or weekly care contribution</b>	<b>£15.70</b>	<b>Remaining income or weekly care contribution</b>	<b>£44.65</b>