



Cabinet Meeting

19 July 2017

Report title	Approval to Consult on Review of Non-residential Contributions to Adult Social Care	
Decision designation	AMBER	
Cabinet member with lead responsibility	Councillor Sandra Samuels OBE Adults	
Key decision	Yes	
In forward plan	Yes	
Wards affected	All	
Accountable director	Linda Sanders Strategic Director - People	
Originating service	Adult Social Care	
Accountable employee(s)	Helen Winfield Tel Email	Head of Service – Community Financial Support 01902 553353 helen.winfield@wolverhampton.gov.uk
Report to be/has been considered by	People Leadership Team Strategic Executive Board Adults Budget Working Group Scrutiny Board	15 May 2017 25 May 2017 13 June 2017 4 July 2017

Recommendation(s) for action or decision:

Cabinet is recommended to:

1. Approve a period of public consultation on the review of the policy for Adult Social Care non-residential contributions towards care and support
2. Agree the proposed model to take forward for public consultation as set out in the report
3. Agree to receive a report on the outcome of public consultation and final proposals for a new policy at Cabinet (Resources) Panel on 14 November 2017
4. Agree to maintain the provision of up to six weeks non-residential reablement support free of charge under the intermediate provisions of the Care Act 2014.

1. Purpose

- 1.1 Approval is sought to undertake a public consultation from 24 July to 15 October 2017 as part of this year's review of non-residential contributions. It is proposed that the Council change from a banded contributions scheme to a system of full financial assessment of individuals in receipt of non-residential Council support under the provisions of the Care Act 2014. The outcome of the consultation with recommendations for the new scheme would be presented to Cabinet (Resources) Panel on 14 November 2017.

2. Background

- 1.1 The City of Wolverhampton (CWC) Council's current Non-residential Banded Contributions scheme is long-standing (since July 1999) and has been reviewed annually with public consultation as part of the review process when there has been an above-inflationary increase in the proposed contribution rates. The current rates were approved by Cabinet Resources Panel in 2015. There was no review in 2016 as relevant working-age social security benefits were frozen.
- 1.2 Prior to the implementation of the Care Act 2014 from April 2015, Section 17 of the Health and Social Services and Social Security Adjudications (HASSASSA) Act 1983 gave councils a discretionary power to charge adult recipients of non-residential services and statutory guidance to Councils was provided by 'Fairer Charging' and 'Fairer Contributions' guidance. The CWC banded contribution scheme, with the option to request a full financial assessment, was fully compliant with these provisions.
- 1.3 Section 14 of the Care Act 2014 and the Care and Support statutory guidance is the current provision giving councils the power to charge individuals for the care and support they receive.
- 1.4 A recent independent review of Wolverhampton's charging scheme concluded that the operation of a banded contributions scheme as opposed to full financial assessment of individuals' resources according to their ability to pay a contribution towards their non-residential care and support, may be open to legal challenge.
- 1.5 It is also recognised that under the current banded contributions scheme, individuals with a higher income who are not in receipt of a means-tested benefit may be contributing significantly less of their overall income than an individual with less income in receipt of a means-tested benefit.
- 1.6 This report was considered as a pre-decision scrutiny item by the Scrutiny Board on the 4 July 2017 and will therefore not be available to call-in once a decision is made by the Executive.

3. Introduction

- 3.1 In response to the Care Act 2014 provisions and the recommendations of the independent review, it is proposed that a new and fairer contributions policy based on assessment of an individual's income and capital is introduced following public consultation. The proposed new contributions policy would be subject to annual review (as has been the practice with the current contributions policy) following the annual review of social security benefit rates by the Departments for Work and Pensions and the Care and Support (Charging and Assessment of Resources) Regulations by the Department of Health.
- 3.2 The proposed charging model will also need to ensure that we are prepared for any future changes to the funding of social care in terms of the individual assessment of income and capital.
- 3.3 Since the implementation of the Care Act 2014, all other local authorities have charging schemes based on individual assessments of income and capital.

4. Care Act considerations and proposals

- 4.1 Under the Care Act 2014, for individuals with capital below the threshold (currently £23,250), non-residential charges must not reduce their income to below a certain amount. This amount is known as the Minimum Income Guarantee (MIG) and is reviewed yearly in April. Income above the MIG is described as a person's 'disposable income' and is considered to be available to make a contribution towards the cost of their care and support.
- 4.2 The Care and Support statutory guidance states that local authorities should 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 in the financial assessment. It is proposed that a simple and fair way of allowing individuals to keep more of their disposable income is through a combination of an allowance for housing costs not met by Housing Benefit and/or Council Tax Reduction and a disability benefit disregard (see 3.5 and 3.6 below). This would allow a set amount for all individuals whereas a maximum percentage of disposable income would favour those individuals with more income.
- 4.3 Individuals provided with care and support under the Care Act are usually also in receipt of Department for Work and Pensions (DWP) disability benefits (Attendance Allowance/Disability Living Allowance care component/Personal Independence Payment daily living component) from which, in accordance with the guidance, contributions to care and support can be reasonably expected.

- 4.4 The mobility component of Disability Living Allowance (DLA) or Personal Independence Payment (PIP), in accordance with guidance, would be disregarded in the financial assessment.
- 4.5 The guidance recognises that where individuals are in receipt of disability benefits they may also have additional expenditure related to their disability, such as additional heating requirements or laundry, which is not met by the local authority and therefore should be allowed for in the financial assessment.
- 4.6 To minimise the complexity of the financial assessment which determines an individual's contribution, it is proposed to combine some protection of an individual's disposable income with an allowance for disability-related expenditure by disregarding 20% of an individual's disability benefit, with an option for requesting an enhanced financial assessment using actual evidenced expenditure on disability needs to determine any higher allowance. This model, for example, has been implemented by Dudley Metropolitan Borough Council.
- 4.7 The Guidance also states that local authorities should consider whether it is appropriate to set a maximum charge such as a maximum percentage of care home charges in the local area which could help ensure that people are encouraged to remain in their own homes, promoting individual wellbeing and independence. It is proposed that for individuals with capital below the capital threshold, the maximum contribution should be set at the average Personal Budget rate for a residential care home. This means that the contribution would be capped at £394.94, currently per week, Wolverhampton's current fee level for residential care.
- 4.8 The current contributions policy exempts carers from charges. The Guidance suggests that council's recognise that it unlikely to be efficient to charge carers for meeting their eligible needs as this could potentially lead to carers refusing support. It is considered that for those carers who do not have the means to self-fund, charging could lead to carer breakdown and therefore cost the Council more in meeting eligible need for the individual. However, based upon the principle of care and support provision being based upon the ability to contribute, it is proposed that eligibility for carer support should have a ceiling set at the self-funding capital threshold (currently £23,250).
- 4.9 The Care Act requires that individuals with Creutzfeldt-Jacob Disease (CJD) are exempt from charges. The Care Act also requires intermediate care of up to six weeks to be exempt from charge.
- 4.10 Where a person's resources are above the financial limit (and they would therefore be a self-funder paying the full cost of care and support themselves) there is a right, under the Care Act, for them to request local authority support in making arrangements to meet their needs. The Guidance states that it may be appropriate for local authorities to charge

a flat rate fee for arranging care but this must be set at a level which does not exceed the costs the local authority actually incurs. The current contributions policy is to charge a one-off fee of £150 in these circumstances. However, this amount does not take into account the cost to the Council of maintaining and reviewing support over subsequent years and therefore it is proposed that in the new scheme an initial charge of £150 is made with a yearly charge of £75 thereafter.

5. Key considerations for a revised contributions policy

- 5.1 Following consultation by the Department for Work and Pensions (DWP), there was a programme to develop local authority access to the DWP Customer Information System (CIS) to allow verification of individuals' benefits information for financial assessment purposes. The Council's Financial Assessments Service has recently secured access to the system and is in the process of implementing the software provided.
- 4.2 This increased availability of DWP information provides an opportunity to undertake a more detailed financial assessment for those individuals in receipt of DWP means-tested benefits (currently in Bands A to E) without it impacting considerably on the resource required to undertake the assessment.
- 4.3 For those cases where individuals who are not in receipt of a means-tested benefit as they receive higher income than (currently in Bands F to H) a full financial assessment will determine a contribution that is appropriate for their individual income. Whilst a full assessment in these cases will be more resource intensive there are far fewer in number and would be managed within existing resources.
- 4.4 The financial assessment guidance for non-residential care and support states that disability-related expenditure (DRE) should be taken into account when a full financial assessment is undertaken which includes disability benefits. A review of other local authority's contributions policies and information provided by the independent review has highlighted that many authorities set standard levels of disability-related expenditure applied to each assessment with the option of a more detailed/enhanced assessment of disability-related expenditure if requested; an approach which would be built into our implementation process.
- 4.5 Clearly this proposal is a significant change of approach but it will bring the Council into line with the approach of other local authorities and will be based on an assessment of individuals' circumstances and their ability to contribute to the care and support provided by the Council.

5. Proposal summary and impact

- 6.1 It is proposed that a public consultation to implement a contributions policy for those in receipt of non-residential care, based on the full assessment of each individual's income

is commenced. Service user's contributions to non-residential adult social care and support would reflect their disposable income (less a protected amount for housing costs) with a standard allowance for disability-related expenditure (DRE) applied and with the option of actual DRE being considered upon request.

- 6.2 To cap individuals' contribution to non-residential care and support, where their capital is below the threshold, at the average Personal Budget rate for a residential care home.
 - 6.3 To charge individuals with resources above the financial limit where they request support from the Council in meeting their needs at the rate of an initial charge of £150 with a yearly charge of £75 thereafter.
 - 6.4 To apply the capital limit (currently £23,250) above which individuals are required to self-fund, equally to carers.
 - 6.5 To utilize the DWP system to identify benefits in payment to the individual to ensure a structured and improved implementation process.
 - 6.6 To introduce a policy which is Care Act compliant, consistent with approaches used in other local authorities and adheres to the Personalisation Agenda by focusing on the individual and their individual income and capital when undertaking a financial assessment.
 - 6.7 As the proposal is to introduce a full financial assessment of each individual's resources, the amount of the actual contribution will depend on the outcome of the individual financial assessment. For those individuals where we know the level of income because means-tested benefits are in payment – about 70% of the total number in receipt of non-residential care and support as at 9 May 2017 – an estimate of the likely effect can be provided (subject to varying amounts allowed for housing costs).
 - 6.8 Under the proposal, for those individuals in receipt of a means-tested benefit there is likely to be:
 - 7% paying no contribution
 - 34% ranging from between having a £1.50 reduction to paying a £2.50 increase in contributions per week
 - 44% ranging from between paying a £3.40 to a £9.60 increase in contributions per week
 - 15% ranging from between paying a £10.50 to a £14.60 increase in contributions per week
- Note:** There are a range of increases as there are differences between the amounts of means-tested benefits. Employment and Support Allowance income is about £4.00 more than Income Support per week and Pension Credit is about £17 per week more with pensioners also having a higher set Minimum Income Guarantee set by the Department of Health.
- 6.9 Some individuals not in receipt of means-tested benefits may be more significantly affected by the proposals but their contribution to the cost of the care and support

received would still be determined by a full financial assessment based on their individual income and ability to pay.

- 6.10 Some case study examples are provided at **Appendix 1** to illustrate the potential impact of the proposals.

7.0 Financial implications

- 7.1 In 2016-17 the current banded policy generated in the region of £4.1 million in contributions towards the cost of non-residential care and support.
- 7.2 It is not able to quantify the total level of income that will be received as a result of this policy change as the actual contribution will depend on the outcome of the individual financial assessments. However, it is not expected that the new policy will have an adverse effect on the Council. [AS/25052017/Y]

8.0 Legal implications

- 8.1 The legal implications are contained within the body of the report. The proposals are fully compliant with the Care Act 2014 and the Care and Support statutory guidance (as updated 24 February 2017). [BS/26062017/R]

9.0 Equalities implications

- 9.1 An Equality Analysis has been undertaken which shows an adverse impact of these proposals on disabled people. This is to be expected as disabled people with eligible needs are the customer base for non-residential care and support under the Care Act 2014. However, the proposed contributions scheme is an equitable system in line with Care Act 2014 requirements and will achieve fairness across all age groups based on an assessment of individuals' circumstances and their ability to contribute to the care and support provided by the Council. The means employed to achieve the aims of the proposed policy are proportionate, necessary and appropriate.

10.0 Environmental implications

- 10.1 There are no environmental implications.

11.0 Human resources implications

- 11.1 There are no direct Human Resources implications.

12.0 Corporate landlord implications

- 12.1 There are no Corporate Landlord implications.

13.0 Schedule of background papers

- 13.1 None

Appendix 1

Case Study Examples

Olive (Aged 59):

Olive suffered a stroke which has left her with difficulty mobilising and short-term memory problems. She is a home owner living with her adult son in the community. Olive receives 5 hours of personal care during the day each week at £14.12 per hour and she has Telecare at £9.00 per week – **a total cost of £79.60 per week for her care and support package.**

Olive has savings of £15,000 and an income of £276.65 per week (£109.65 Contributory Employment and Support Allowance plus £83.90 Occupational pension plus £83.10 enhanced rate Personal Independence Payment for daily living). She receives a Council Tax Reduction but is required to pay £17.02 per week towards her Council Tax which will be allowed for in the financial assessment

Olive would be **expected to contribute £67.11 per week (£1.50 more than her current contribution)** towards the cost of her care, leaving £209.54 per week for her to live on.

Note: As Olive has £750 savings above the lower threshold, a further £3.00 per week is added to her income in the financial assessment. If Olive had £23,250 or more in savings/capital then she would be expected to pay the full £79.60 per week cost of her care. Although Olive owns her own home the value of his property is not taken into account when assessing her savings/capital because this is where she is living.

Kishan (Aged 25):

Kishan has a learning disability. When his mother passed away he moved to live in a Wolverhampton homes flat in the community. He receives 7 hours of personal care per week at £14.12 per hour and 3 hours of outreach support at £13.00 per hour by way of an Individual Service Fund. **His total care and support package costs £123.00 per week.**

Kishan has an **income of £236.15 per week** (£180.50 Employment & Support Allowance including an amount for severe disability as he lives on his own, plus £55.65, standard rate Personal Independence Payment for daily living). He also receives Housing Benefit and a Council Tax Reduction but he has to pay £4.67 per week towards his Council Tax which will be allowed for in the financial assessment.

Kishan would be **expected to contribute £68.90 per week (£3.29 more than his current contribution)** to his care and support, leaving £167.25 per week for him to live on.

Albert (Aged 71):

Albert suffers with dementia and is physically frail. He lives in on his own in a privately rented house in the community. Albert receives 10.5 hours of personal care during the day each week at £14.12 per hour and he has Telecare at £9.00 per week – **a total cost of £157.26 per week for his care and support package.**

Albert has savings of £10,000 and an **income of £304.90 per week** (£221.80 State Retirement Pension/Pension Credit including an amount for severe disability as he lives on his own, plus £83.10 higher rate Attendance Allowance). He also receives Housing Benefit and a Council Tax Reduction.

Albert would be **expected to contribute £71.83 per week (£6.22 more than his current contribution)** towards his care, leaving £233.07 per week for him to live on.

Note: Albert's savings are disregarded as they are below the £14,250 lower threshold.

Financial Assessment Calculation: Income (including Disability Benefits*) + tariff income from capital over £14,250 minus **Minimum Income Guarantee** (as set by the Department of Health) = **Disposable Income**; minus **housing allowance** for costs not met by Housing Benefit/Council Tax Reduction; minus difference between lower and higher disability benefit where no night-time needs being met and minus **20% of Disability Benefits*** = **Contribution to costs of non-residential care and support.**

* Attendance Allowance/Disability Living Allowance care component/Personal Independence Payment daily living component