CITY OF WOLVERHAMPTON COUNCIL	**Cabinet (Resources) Panel** 16 January 2018

Report title	Review of contributions to non-residential adult social care - outcome of public consultation and final proposals	
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	David Watts, Adult Social Care	
Originating service	Community Financial Support, Adult Social Care	
Accountable employee(s)	Helen Winfield	Head of Service – Community Financial Support
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Report to be/has been considered by	Adult Social Care Management Team	1 December 2017
	People Leadership Team	4 December 2017
	Strategic Executive Board	19 December 2017
	Scrutiny Board	9 January 2018

Recommendations for decision:

The Cabinet (Resources) Panel is recommended to approve:

1. Approve the final proposals, following consultation, for a new approach to non-residential contributions scheme based on individual financial assessments that are fair and equitable and Care Act compliant and:
   - Allow for a £12.00 disregard on disability benefits for disability-related expenditure **(paragraph 5.3)**;
   - Allow for an additional 30% of the enhanced disability premium (currently £4.77) for working-age customers to help mitigate against the lower Minimum Income

Guarantee set by Government for working-age people than for pensioners **(paragraph 5.2 and 5.3)**;

- Cap any non-residential weekly contribution at no more than the weekly personal budget rate for a residential care home, currently £394.94 **(paragraph 5.4)**;
- Maintain a £150 charge for the administration costs for self-funders who request that the Council arrange for their care and support and add £75 per year thereafter to cover on-going costs **(paragraph 5.7)**;
- Maintain exemptions from contributions for terminally ill customers and carers **(paragraph 5.6)**;

2. Approve transitional protection for current service users by limiting any significant increases **(paragraph 6.8)**
3. Approve implementation of the new contributions scheme from April 2018.

Recommendations for noting:

The Cabinet (Resources) Panel is asked to note:

4. The report on the outcome of the public consultation on the review of contributions to non-residential adult social care **(**see **Appendix 1)**

1.0 Purpose

1.1 This report gives details on the outcome of the public consultation, approved by Cabinet on 19 July 2017, on the review of contributions to non-residential adult social care which took place from 4 September 2017 to 26 November 2017. The consultation was later than the original dates proposed (24 July to 15 October) in order to avoid the summer holiday period and therefore maximise participation.

1.2 This report also sets out revised proposals, following consultation, for a scheme based on individual financial assessment to replace the current banded contributions scheme for those in receipt of non-residential council support under the provisions of the Care Act 2014.

2.0 Background

2.1 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.

2.2 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.

2.3 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.

2.4 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.

2.5 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.

2.6 Since the implementation of the Care Act 2014, all other local authorities have charging schemes based on individual assessments of income and capital **(**see **Appendix 3A)**.

3.0 Introduction

3.1 Under the Care Act 2014, the amount that an individual pays towards their non-residential care and support must be assessed by an individual financial assessment of both their capital and income. The rules governing the financial assessment are detailed in the Care and Support statutory guidance. They are not reproduced in full here however they will be explained in more detail in the Council's final policy.

3.2 It is proposed that a new and fairer contributions policy is introduced which takes into account the comments received during the public consultation. The consultation outcome report is attached at **Appendix 1**.

3.3 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.

4.0 Key Care Act considerations

4.1 If an individual has capital above the upper threshold (currently £23,250) set by government, they are required to pay for all of their non-residential care. If their capital is below the upper threshold, means-tested support is available, depending on what they can afford to pay.

4.2 When the means-test is applied, their income will be assessed. Any capital that they have above the lower threshold (currently £14,250) set by government will be treated as if it gives rise to an income of £1 a week for every £250 of capital. Capital below the lower threshold will be disregarded.

4.3 The means test works on the principle that non-residential contributions must not reduce that person's 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.

4.4 The statutory scheme for the financial assessment of means lays down detailed rules for what capital and income can be taken into account and what capital and income must be disregarded. For example:

a. Individuals provided with care and support under the Care Act are usually in receipt of Department for Work and Pensions (DWP) disability benefits (Attendance Allowance/Disability Living Allowance care component/Personal Independence Payment daily living component). The local authority can take this income into account in the financial assessment however, it must ensure that individuals have enough money to cover the costs of meeting their disability-related expenditure (DRE).

b. The mobility component of Disability Living Allowance (DLA) or Personal Independence Payment (PIP), in accordance with guidance, must be disregarded in the financial assessment as must earnings.

c. 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 are not met by the local authority and therefore should be allowed for in the financial assessment. Local authorities have a discretion to disregard further capital or income thus reducing an individual's contribution but they are not permitted to charge more than is allowed by the statutory scheme.

4.5 The Care and Support statutory guidance suggests various alternative ideas for how local authorities might do this. For example, local authorities can set a maximum percentage of disposable income (over and above the guaranteed minimum income), which may be taken into account in the financial assessment. Having considered these alternatives, it was felt that establishing a maximum percentage of disposable income would favour those individuals with more income and additional protection of income for housing costs was a fairer proposal.

5.0 Proposals put to consultation and revised proposals

5.1 As part of the consultation, comments were invited on the proposal to apply a 20% disregard of disability benefits to allow for disability-related expenditure without any requirement for evidence of such expenditure but with the option of requesting an enhanced financial assessment and providing evidence if disability-related expenditure (DRE) was more. There was a general consensus that intrusive questions and needing to provide evidence of expenditure should be avoided. From the Council's perspective, enhanced financial assessments are significantly more resource intensive and therefore proposals seek to minimize the need for such assessments by making sufficient allowance for DRE.

5.2 A number of people stated that the MIG amounts were clearly more generous for people of pension age and that the proposals should seek to address this inequity as working age service users had similar financial commitments and requirements in connection with their needs. In particular, it was noted that those people who were considered to be substantially disabled and have "limited capability for work-related activity" by the DWP were entitled to the enhanced disability premium in their benefits in recognition of their needs and that there should be a similar provision made in the contributions scheme.

5.3 It is therefore proposed that instead of a 20% disregard of disability benefits for DRE which would involve different amounts being applied dependent on the level of disability benefits received, a standard disregard of £12.00 per week is allowed for all service users in receipt of a disability benefit plus a 30% disregard of the enhanced disability premium (EDP) where it is included in a person's individual MIG. Currently, the EDP is £15.90 and therefore the disregard would be £4.77 per week (see **Appendix 2**). Those service users with more significant DRE would still be able to request an enhanced

financial assessment which would look at all evidenced DRE to consider higher disregards where applicable. However, with standard disregards at this level it is anticipated that such assessments would be kept to a minimum.

5.4 The guidance 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 fee level for a residential care home. This means that the contribution would be capped at £394.94 per week which is Wolverhampton's current fee level for residential care.

5.5 The Care Act creates a series of exemptions from charging for certain individuals or the provision of certain services. This includes the following:

- Individuals with Creutzfeldt-Jacob Disease (CJD)
- Intermediate (including re-ablement) care of up to six weeks
- Aids and minor adaptations of less than £1,000
- Aftercare under s.117 of the Mental Health Act 1983
- Services that they are required to provide under other Acts.

5.6 The current contributions policy also exempts individuals who are terminally ill and 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 charging could lead to carer breakdown and therefore cost the Council more in meeting eligible need for the individual. Therefore, it is proposed to maintain exemption from contributions for carers in addition to exemption for terminally ill service users.

5.7 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 (commissioning and managing the contract not undertaking the assessments or care and support plan) but this must be set at a level which does not exceed the costs the local authority actually incurs. Under the current contributions policy a one-off fee of £150 is charged in these circumstances. However, this amount does not take into account the cost to the Council of maintaining and reviewing support over subsequent years. Therefore, it is proposed that in the new scheme an initial charge of £150 is made with a yearly charge of £75 thereafter, for as long as the authority continues to arrange the care.

6.0 Key considerations for a revised contributions policy

6.1 The most important consideration when introducing this policy is that the Council's charging and financial assessment must become compliant with the current statutory scheme.

6.2 We also believe that the new system will be a fairer approach, since it will be based on an assessment of individuals' circumstances and their ability to contribute to the care and support provided by the Council.

6.3 Further, it is now easier and more practical to conduct individual financial assessments than it used to be. 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 has implemented 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) individual financial assessments will determine a contribution that is appropriate for their individual income. Whilst an 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.

4.6 Comments submitted during the consultation made clear that where contributions are significantly more as a result of any changes implemented, there should be protection considered. It is proposed that transitional protection which limits any increase to between £1 and £6.00 per year (depending on an individual's current banded contribution rate) is applied for a period of two years (or until the new contribution rate is reached) for current service users:

- Band A – Not applicable as no charge
- Band B/C - £1.00
- Band D/E & Supported Living on Means-tested Benefits - £4.00
- Band F - £4.00
- Band G/H - & Supported Living not on Means-tested Benefits- £6.00

7.0 Proposals - summary and impact

7.1

Contributions to non-residential Adult Social Care and Support		
Current Banded Contributions (capital below £23,250)	**Proposed Individual Assessment (capital below £23,250)**	**Summary of Changes**
A (MTB Only) **£0.00**	• £12.00 disregard on DBs for DRE • Additional 30% of the EDP (currently £4.77) • Cap on contribution at no more than the weekly personal budget rate for a residential care home, currently £394.94	• Individual assessment instead of banded contribution • Standard disregard on DBs • Additional disregard for working-age people entitled to the EDP • Cap on amount of contribution
B (MTB plus middle/standard DB) **£8.08**		
C (MTB plus higher/enhanced DB) **£8.08**		
D (MTB plus middle/standard DB and SDP) **£65.61**		
E (MTB plus higher/enhanced DB and SDP) **£65.61**		
VSH/SL Low (middle/standard DB and SDP) **£77.03**		
VSH/SL High (higher/enhanced DB and SDP) **£90.63**		
Full Financial Assessment upon request to establish actual DRE	**Enhanced Financial Assessment** upon request to establish actual DRE	No change
Exemption for terminal illness	Exemption for terminal illness	No change
Exemption for Carers Services	Exemption for Carers Services	No change
Administrative charge of £150 for self-funders who request that the Council arrange for their care and support	Maintain a £150 charge for the administration costs for self-funders who request that the Council arrange for their care and support and add £75 per year thereafter to cover on-going costs	Additional £75 per year for on-going administration costs for self-funders who request that the Council arrange for their care and support
	Transitional protection limiting any increase to between £1 and £6.00 per year (depending on an individual's current banded contribution rate) for two years (or until the new contribution rate is reached) for current service users	

DRE = Disability-related Expenditure; **MTB** = Means-tested Benefits; **DB** = Disability Benefits (Attendance Allowance/Disability Living Allowance care component/Personal Independence Payment daily living component); **SDP** = Severe Disability Premium); **EDP** = Enhanced Disability Premium.

7.2 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 when undertaking a financial assessment.

7.3 To implement a new scheme for non-residential contributions to adult social care from April 2018 which would be based on an assessment of each individual's income and capital and would reflect their disposable income (less a protected amount for housing costs) with standard allowances/income disregards for disability-related expenditure (DRE) applied and with the option of actual DRE being considered upon request in an enhanced financial assessment (see paragraph 5.3).

7.4 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 (see paragraph 5.4).

7.5 To charge individuals with resources above the financial limit where they request support from the Council in arranging care and support for meeting their needs at the rate of an initial charge of £150 with a yearly charge of £75 thereafter (see paragraph 5.7).

7.6 To maintain the current exemption from contributions for carers receiving support and for service users who are terminally ill in addition to the statutory exemptions from charging (see paragraphs 5.5 and 5.6).

7.7 To utilize the DWP system to identify benefits in payment to the individual to ensure a structured and improved implementation process (see paragraph 6.3).

7.8 To allow for transitional protection for current service users by applying a limit on any significant increase in contribution for two years (see paragraph 6.8).

7.9 As the proposal is to introduce a 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 – an estimate of the likely effect can be provided (subject to varying amounts allowed for housing costs and any enhanced financial assessment of additional disability-related expenditure). See **Appendix 3**.

7.10 Some individuals not in receipt of means-tested benefits may be significantly affected by the proposals but their contribution to the cost of the care and support received would still be determined by an individual financial assessment based on their individual income and ability to pay.

7.11 If the new policy is implemented in April 2018, a review of the financial impact on individuals and the Council can be undertaken when individual assessments have been completed in February/March 2018. Some case study examples are provided at **Appendix 4** to illustrate the potential impact of the proposals.

8.0 Financial implications

8.1 In 2016-2017 the current banded policy generated in the region of £4.1 million in contributions towards the cost of non-residential care and support.

8.2 It is not possible to quantify the total level of income that will be received as a result of this policy change as actual contributions will depend on individuals circumstances. However, it is not expected that the new policy will have an adverse effect on the Council. Over the medium term once the transitional protection period has ended it is anticipated that income received towards the cost of non-residential care and support will increase.
[AS/02012018/K]

9.0 Legal implications

9.1 The proposals are fully compliant with the Care Act 2014 and the Care and Support statutory guidance (as updated 17 August 2017).
[TC/03012018/F]

10.0 Equalities implications

10.1 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.

11.0 Environmental implications

11.1 There are no environmental implications.

12.0 Human resources implications

12.1 There are no direct Human Resources implications.

13.0 Corporate landlord implications

13.1 There are no Corporate Landlord implications.

14.0 Schedule of background papers

14.1 Report to Cabinet 19 July 2017 - Approval to Consult on Review of Non-residential Contributions to Adult Social Care.

15.0 Appendices

15.1 Appendix 1 – Consultation Outcome

15.2 Appendix 1A – Consultation Flyer

15.3 Appendix 1B – Consultation Form

15.4 Appendix 2 – Protected Income Standard

15.4 Appendix 3 – Current Charge Band to Individuals

15.5 Appendix 3A – Amended Local Authority Comparators

15.6 Appendix 4 – Case examples