

Adult Social Care Scrutiny Commission Report

Revision to Adult Social Care Charging Policy

Meeting Date: 30th June 2020

Lead director: Ruth Lake

Useful information

- Ward(s) affected: All
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- Report version number: 5.1

1. Summary

- 1.1 The purpose of this report is to inform the ASC Scrutiny Commission of the findings of a consultation exercise in relation to proposed changes to the charging policy for non-residential care services.

2. Recommendations

- 2.1 The ASC Scrutiny Commission is recommended to note:
- a) the consultation findings and make any comments
 - b) the implications of Covid-19 on the approach to implementation of any decision

3. Supporting information including options considered:

3.1 Supporting Information

- 3.1.1 As part of the Council's approach to achieving substantial budget reductions, like other Council Departments, Adult Social Care has to achieve targeted savings as part of the Spending Review 4 Programme target of £5.7m.
- 3.1.2 These targeted savings included a review of income generation in the form of how Disability Related Expenditure (DRE) and other disability benefits are treated within the Council's Charging Policy. Accordingly, in 2018 the Council undertook a formal consultation covering the treatment of Disability Related Expenditure (DRE) within the financial assessment for non-residential care service users. This resulted in a change to the Council's Charging Policy from April 2019, which delivered the targeted savings sought against DRE.
- 3.1.3 To contribute further to the savings target, the Department undertook a formal consultation with proposals for changes to how disability benefits are treated within the Council's Charging Policy.

3.2 Rationale

- 3.2.1 Some non-residential social care service users pay a charge towards the cost of their services, based on a means test which assesses how much they can afford to pay.

- 3.2.2 Disability benefits are paid by the Department of Work and Pensions (DWP) to people who require frequent help or constant supervision during the day and/or night. These benefits are paid in the form of an Attendance Allowance for over 65's (AA) and Disability Living Allowance - Care Component for under 65's (DLA). DLA is being phased out for people aged 16 to 64 and is being replaced by a Personal Independence Payment (PIP).
- 3.2.3 AA is paid to service users at two rates, a lower rate of £59.70 per week (where frequent help / constant supervision is needed during the day or night) and a higher rate of £89.15 per week (where help/supervision is needed during the day and night).
- 3.2.4 PIP is made up of 2 components – care and mobility. The mobility component is out of the scope of this report as the Care Act guidance is specific in that the mobility component of PIP must be fully disregarded in the assessment of income calculation. The PIP care component is paid to service users at 2 rates depending on how their condition affects them: a standard rate of £59.70 per week or an enhanced rate of £89.15 per week.
- 3.2.5 The current financial assessment for non-residential care counts the lower or standard rate, up to £59.70 a person receives per week from these benefits, as income and is therefore included in the calculation of assessable income for the purposes of assessing a person's ability to contribute towards the costs of the care they receive. If a person receives the higher or enhanced rate, it is currently disregarded (to the lower rate). This is in line with previous Department of Health guidance, pre-Care Act.
- 3.2.6 Annex C of the Care and Support Guidance to the Care Act 2014 covers the treatment of income when conducting a financial assessment to calculate what a person can afford to contribute to the cost of their eligible care needs. Whilst the guidance (paragraph 15) is specific about some income sources which must still be fully disregarded (i.e. DLA/PIP mobility component payments), all income from AA and the DLA/PIP (Care/Daily Living Component) is eligible to be taken fully into account when assessing a person's ability to contribute towards the costs of residential care services
- 3.2.7 The guidance also gives the Council further discretion over charging for non-residential care services and to include AA and any DLA/PIP Care/Daily Living components at the higher rate in the assessment of income for the purposes of the financial assessment. However, the guidance also sets out that a person must be able to afford to pay from their income the costs of their care needs which are not being met by the local authority.

3.3 Consultation Proposal

3.3.1 The A single proposal was consulted on:

- 1) to treat the higher rate of all disability benefits, where claimed, as income in full within the financial assessment for non-residential charges.

3.3.2 If the proposals were to be approved, the maximum additional amount that a person would have to contribute would be £29.45 per week, based on the

current rates. Therefore, people were also asked how they would be impacted by the potential increase towards their weekly charge.

3.4 Consultation Approach

3.4.1 A comprehensive approach was taken to ensure that all stakeholders had an opportunity to provide their views. Stakeholders and members of the public were engaged through the following means:

- Surveys were sent by post to approximately 3,100 service users (or their carers or representatives) in receipt of non-residential care, which included a letter outlining the consultation process and a pre-paid return envelope (Appendix B);
- The survey was made available on the Council's consultation Hub (Citizen Portal);
- Public Meetings were held in three locations across the city (City Centre, Belgrave and Braunstone), where people were provided with an opportunity to express their views and discuss the proposals in more detail;
- A dedicated telephone helpline was set up to assist people with the completion of surveys and to note any comments or concerns raised;
- A generic e-mail was set up to provide a supplementary route of contact for those who wanted to write in electronically;
- E-mails (or letter) were sent to providers and organisations that represent the interests of people in receipt of adult social care services.

3.4.2 Detailed correspondence was sent to all city Councillors (including the Chairs of Scrutiny Commission) and local MP's to ensure they were fully informed about the proposals, particularly to provide support to any constituent enquiries.

3.5 Consultation Findings

3.5.1 In total, 1011 surveys were completed and returned, which represents a response rate of 32.8% (of original cohort). Given the complexity of the issues raised, this is considered to be a very good response rate. This helps to provide greater assurance that the responses received are representative of the wider views of the full population of service users.

3.5.2 The survey responses and comments received have been considered below, with specific attention to the additional comments provided by respondents. In addition to the survey, the findings also consider the content from the three public meetings and a letter received from The Carers Centre. The full findings report is shown in Appendix C.

Impact of a £29.45 increase to the weekly charge

3.5.3 This question was asked to assess what the impact would be for service users if their contribution increased by the maximum amount per week. At the time of the consultation, approximately 3,380 service users had a financial assessment for non-residential services. Of this figure, some 2,710 service users were currently in receipt of some form of Disability benefit (AA /DLA/PIP Care/Daily Living element) as part of their income calculation within the financial

assessment.

- 3.5.4 If the proposals were introduced, the maximum increase in a person's charge would be £29.45 per week, being the difference between the higher and middle benefit rates, although the impact for many would be much lower than this based on their individual income levels and/or the value of their package of care. Some people who don't currently pay a contribution towards their care costs could have to start doing so.
- 3.5.5 Over half of all the respondents (64%) reported that the maximum increase to their weekly charge would affect them (or someone they represent) a lot, including how much they have for essentials. Under a quarter (17%) of respondents indicated that they would be affected a little, including how much they have for extras or treats. The remaining respondents noted that they would either be able to manage the increased charge (6%) or they would consider stopping the Adult Social Care services they receive (13%).
- 3.5.6 It should be noted that this consultation was open to all members of the public. As it was not limited to those individuals that would be affected by the proposal, it needs to be noted that:
- A portion of respondents will not be in receipt of any services and would therefore be unaffected.
 - Not all respondents will be in receipt of the higher level of benefits and would therefore be unaffected - using DWP statistics of cases in payment within Leicester, only 36% of all service users receiving a non-residential package of care are estimated to be in receipt of higher-level benefits
 - Some people will already be paying the full cost of services and would not be affected by the proposal
- 3.5.7 Therefore, whilst it is not possible to individually identify which of the respondents would or would not be affected by the change, a majority of people would not be impacted by the proposals.
- 3.5.8 If the AA and DLA/PIP benefits were treated as income in full within the financial assessment, then this would affect those service users currently paid at the higher benefit rates. The Council does not record the rate of these benefits for service users (as currently all higher level payments are disregarded to the lower rate), so only rough estimates can be made of the numbers that would likely be affected by using DWP statistics of cases in payment within Leicester, across the 3 benefit categories.
- 3.5.9 Of the approximate 3,380 service users with a financial assessment for non-residential services, it is estimated that approximately 940 potentially receive the higher level AA or DLA/PIP Care/Daily Living Component. This equates to around 36% of those service users who currently have at least the lower level benefit in their current financial assessment.

Additional Feedback

- 3.5.10 Those who responded in favour of the proposal frequently referred to its

equitable and fair approach. Respondents also mentioned that this would help the Council to support greater numbers of people with social care needs.

3.5.11 Respondents that were against the proposals provided comments that covered the following themes:

- The most frequent comment (25%) was in relation to the potential to have negative effects on people's finances, and the risk of causing financial hardship. In most cases, this was a reference to their own situation, in other cases it was a reference made to disabled or elderly people in general. It is entirely possible that many people use any unspent funds from disability benefits to top up their weekly income and therefore, become dependent on it. Whilst understandable, this is not income that would be available to people who were not in receipt of these benefits, which are paid specifically to meet the costs of disability rather than general living costs.
- The second most frequent comment (16%) was around people feeling that the proposal was unfair or unsatisfactory. This may be due to the complexity of the topic or from being unfamiliar with relevant legislation and guidance. People may disagree with the Care Act itself.
- Another frequent comment centered on the potential inability to spend money on 'extras,' due to increased charges. As previously stated, it is not possible to identify exactly how an individual would be affected by the proposal at this stage and it is possible that those who raised this concern would not in reality see any changes to their weekly charge.
- The remaining comments centered around alternative themes, including previous increases to charges, needing more funding, changes to personal circumstances and worrying around uncertainty of charges. A full breakdown of all themes can be found in Appendix C.

3.6 Options

3.6.1 The following options have been identified for consideration, in relation to the treatment of disability benefits that are provided via DWP:

- 1) To continue disregarding the higher or enhanced rate of disability benefits down to the lower or standard rate, within the financial assessment.
- 2) To disregard all disability benefits as income, within the financial assessment.
- 3) To treat the higher rate of all disability benefits as income in full, within the financial assessment, subject to the key provisions within the Care and Support Guidance to the Care Act 2014, namely:
 - a) Paragraph 39 - Where disability-related benefits are taken into account, the local authority should make an assessment and allow the person to keep enough benefit to pay for necessary disability-related expenditure to meet any needs which are not being met by the local authority,

and

- b) Paragraph 41 - The care plan should be used as a starting point for considering what is necessary disability-related expenditure.

Option 1: To continue disregarding the higher or enhanced rate of disability benefits:

- 3.6.2 The consultation findings appear to show that service users would prefer to leave the treatment of benefits unchanged from its current form. By retaining the current approach, service users would benefit from not having to contribute more to charges, but conversely, the Council would face additional financial pressure by having to find savings through alternative measures. The Council has discretion to charge in accordance with the Care Act 2014 and Statutory guidance and would be charging less than most other comparator local authorities, if the status quo was maintained.

Option 2: To disregard all disability benefits:

- 3.6.3 The complete removal of charging against all disability benefits would drastically reduce the Council's annual income generation. Whilst this would be the best outcome for all service users in receipt of any disability benefits, this would not be financially viable for the Council and would add an additional financial burden to the targeted savings programme for Adult Social Care. This approach has not been implemented by any other local authority, as it would not be fully compliant with the latest Care Act 2014 legislation. Further, as benefits are paid to meet the costs of care, it is rational to include this income where that care is arranged by the Council.

Option 3: To treat the higher or enhanced rate of disability benefits as income, in full (The recommended option):

- 3.6.4 Based on existing caseload and applying the DWP statistics on cases in payment at the higher rates, it is estimated that this option could increase potential income levels by approximately £1.3m. However, this figure needs to be considered with considerable caution given that the Council would need to apply discretion where:
- a. Service users demonstrate, through reassessment, that they incur additional costs for care in the day or night which is not being arranged by the Council and for which they use the higher benefit payment to cover such costs. In such situations, these costs would need to be offset against the higher benefit payment in the financial assessment.
 - b. A service user is receiving night time care provided by a spouse or family member for example, free of charge, but is considered to be a qualifying 'cost' alongside the care needs of the individual as articulated within their care plan (in that the care would otherwise need to be provided by a third party who would charge for the delivery of that care).

- 3.6.5 This option has been implemented by several other local authorities, including Leeds, Peterborough and Bristol. Should the Council choose to exercise the power to treat all the noted benefits as income, that approach would be in

compliance with the Care Act 2014 legislation.

3.7 Impact for Individuals

- 3.7.1 Some people may already be affected by other welfare changes and benefit cuts. Most of the changes brought in by central government affect people of working age, with those aged over 65 being largely protected.
- 3.7.2 However, under these proposals the Council would continue to exercise discretion in its application of this policy change in line with the requirements of the statutory guidance (as set out under section 3.6.1 part 3 above).
- 3.7.3 There does also remain some further protection for service users in the form of the 'Minimum Income Guarantee (MIG)'¹ within the assessment of a person's charge towards their care. The financial assessment is based on a comparison between their total income and an allowable amount that they should be left with in order to meet living expenses. Inclusion of the MIG calculation (also known as 'Protected Income') in the financial assessment should help to ensure any potential increase in charges for local authority arranged care is affordable.

3.8 Implementation of Changes

- 3.8.1 The impact of Covid-19 (Coronavirus) has led to the disruption of usual business processes. Specifically, in relation to charging the Covid-19 Discharge Guidance, effective from March 19th of this year, introduced a suspension of charging for people leaving hospital or receiving care to avoid an admission to hospital. Therefore, a group of people that receive services are currently not required to contribute towards the cost of their care at all. It is not yet clear when this may change and there are indications from Government departments that a funded discharge pathway may be retained into the future.
- 3.8.2 Further, the staff capacity to undertake the care and financial assessments required to implement any changes to the charging policy is restricted, as a result of other priority work and the limitations to non-essential face to face assessments from social distancing guidance.
- 3.8.3 In addition, the impact of Covid-19 on the Council's financial position and on the financial resilience of individuals is not fully understood.
- 3.8.4 As such, were there to be a decision to make changes to the charging policy, the implementation of any actual change would not take place prior to April 2021.
- 3.8.5 Subject to the decisions made by the Executive, and in the context of the Covid-19 impact, further work will be required to implement any necessary changes from April 2021. The main pieces of work are anticipated to be:
- Advising service users in writing of any decisions made

¹ 'Protected Income' or MIG is the amount that the Department of Health guidance states should remain free from charges and is calculated by adding 25% to a service-user's Income Support allowances and premiums (excluding Severe Disability Premium) according to age, level of disability and family status or the appropriate Pension Guarantee Credit or Pension Credit (excluding Severe Disability Premium).

- Obtaining details of change of circumstances for all non-residential service users
- Reviewing the financial assessments for all affected service users alongside existing care plans as part of the implementation process of this proposed policy change.

3.8.6 If a decision was taken to implement the proposals, all service users would need to have a review of their financial assessment. This process entails updating all of the income and benefit levels for each person as well as identifying any incurred costs for care not arranged by the Council. This is a resource intense process, but one that has the benefit of ensuring that all service users are paying an accurate charge, with appropriate discretion applied, where relevant. It also allows the Council to identify whether all benefit entitlement is being claimed by the person receiving services.

3.8.7 Initially, resources would be focused on undertaking reassessments for those service users receiving the higher or enhanced rates of disability benefits, whose charge could increase as a result of the changes. Additional resources have been identified at an approximate cost of £150k in year 1 to support the Financial Operations Team in undertaking this work, if necessary.

3.8.8 It is vital that the staff undertaking these assessments are adequately trained for the task, for consistency and to mitigate risks of legal challenges. This work is not straightforward and cannot reliably be undertaken by agency staff. Therefore, although increases in income would accrue from the proposed changes, the actual savings achievable in year 1 will be offset by the cost of the additional resources required to implement the changes.

4. Details of Scrutiny

4.1 ASC Scrutiny Commission are receiving this report on 30.06.20, alongside the full findings report and supporting appendices, prior to any decision being made by the Assistant Mayor for Social Care, in consultation with the Executive Team

5. Financial, legal and other implications

5.1 Financial implications

5.1.1 There is a legislative basis for taking into account full disability benefits in a person's financial assessment. The inclusion of a service users' income benefit intended to cover night time care, net of any actual costs they incur for that provision is justifiable.

- 5.1.2 The levels of additional income that could be generated from the proposals in this report would be subject to a considerable degree of uncertainty regarding the ultimate savings figure that could be achieved as any finalised income projections would be subject to:
- a) Any finalised numbers of service users getting the higher rate of disability benefits. The Council does not currently record this information, so numbers have had to be estimated based on overall city eligibility figures from the DWP, including non-Council service users.
 - b) The extent of qualifying care provided privately for services users (i.e. not arranged by the Council) but which would need to be offset in the financial assessment as qualifying disability related expenditure when considered alongside care needs identified within service user care plans.
- 5.1.3 Any level of savings will be reduced in year 1, due to:
- a) a delay in the final decision against the initial timetable, and any subsequent implementation of the proposed changes.
 - b) additional costs incurred to gather information and undertake the necessary financial re-assessments. Changes to the assessment process could also require additional resources in future years.
- 5.1.4 Based on the uncertainty of actual savings that might accrue, the estimated income target to support the SR4 programme had been revised to £350k in 2020/21, rising to £500k by 2021/22. However, given the implementation of any actual change to the charging policy would not now take effect prior to April 2021, the savings estimates would need to be revised to £350k in 2021/22, rising to £500k by 2022/23..

Matt Cooper, Business & Finance Manager. Tel. 0116 454 2145

5.2 Legal implications

- 5.2.1 This report along with the appendices attached, summarise the outcome of the public consultation on a proposal to take the higher or enhanced rate of disability benefits for Attendance Allowance, Disability Living Allowance (Care Component) and Personal Independence Payment (PIP) where claimed, into account during the financial assessment for non-residential charges.
- 5.2.2 Previous legal advice has been provided and this report highlights the relevant applicable legislation, namely the Care Act 2014 and Statutory Care and Support guidance 2014, which enables the Council to apply charges in line with option 3.
- 5.2.3 It is important to note that the Council exercises discretion in respect of its charging policy and must not apply a blanket approach to charge where circumstances would deem it unreasonable to do so, for example resulting in hardship. This would need to be assessed on a case by case basis. Paragraphs 3.6.1 (3), 3.6.4 and 3.7 above highlight the relevant considerations when

undertaking a financial assessment.

5.2.4 When making a decision, the Local Authority should have due regard to the public sector equality duties as referred to under Section 149 of the Equality Act 2010.

Pretty Patel, Head of Law, Social Care & Safeguarding. Tel. 0116 454 1457

5.3 Climate Change and Carbon Reduction implications

5.3.1 There are no significant climate change implications associated with this report.

Aidan Davis, Sustainability Officer. Tel. 0116 454 2284

5.4 Equalities Implications

5.4.1 When making decisions, the Council must comply with the Public Sector Equality Duty (PSED) (Equality Act 2010) by paying due regard, when carrying out their functions, to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people who share a 'protected characteristic' and those who do not.

5.4.2 In doing so, the council must consider the possible impact on those who are likely to be affected by the recommendation and their protected characteristics.

5.4.3 Protected groups under the Equality Act 2010 are age, disability, gender re-assignment, pregnancy/maternity, marriage and civil partnership, race, religion or belief, sex and sexual orientation.

5.4.4 The report sets out proposals for the higher rate of all disability benefits, where claimed, are taken into account in the financial assessment for non-residential charges and that the charging policy be amended to reflect this.

5.4.5 The proposal affects those who are claiming the higher rate of disability benefits and therefore the proposal impacts on those with the protected characteristic of disability. However, those affected will also be from across all protected characteristics.

5.4.6 An Equality Impact Assessment has been carried out which has identified that age and disability are the protected characteristics most likely to be negatively impacted. Whilst the consultation exercise feedback highlights that 64% of respondents indicated that they would be negatively impacted, the council will apply discretion to disregard costs that are incurred and evidenced for night time care, on a case by case basis. The mitigating actions identified in the equality impact assessment aim to provide support and guidance to those service users who would see an increase to their weekly charge if the proposal

is agreed. Such as when the decision notice is communicated, people will be signposted to the Welfare Rights Service, Citizens Advice Bureau and Community Advice and Law Service for advice and guidance.

Sukhi Biring, Corporate Equalities Officer. Tel. 0116 454 4175

5.5 Other Implications

Not Applicable

6. Background information and other papers:

Leicester City Council Charging Policy

The Care Act 2014

7. Summary of appendices:

Appendix A – Simplified Charging Calculation Examples

Appendix B – Charging Policy Consultation Survey

Appendix C – Full Consultation Findings Report

- Appendix Ci – Stakeholder Engagement Plan
- Appendix Cii – Consultation Responses (Raw Data)
- Appendix Ciii – DRE Public Meeting Notes

Appendix D – Equalities Impact Assessment