

<b>DECISION-MAKER:</b>	CABINET		
<b>SUBJECT:</b>	PROPOSED CHANGES TO THE NON RESIDENTIAL ADULT SOCIAL CARE CHARGING POLICY		
<b>DATE OF DECISION:</b>	23 APRIL 2013		
<b>REPORT OF:</b>	CABINET MEMBER FOR ADULT SERVICES		
<b><u>CONTACT DETAILS</u></b>			
<b>AUTHOR:</b>	<b>Name:</b>	<b>Carol Valentine</b>	<b>Tel: 023 80834856</b>
	<b>E-mail:</b>	<b>carol.valentine@southampton.gov.uk</b>	
<b>Director</b>	<b>Name:</b>	<b>Alison Elliot</b>	<b>Tel: 023 80832548</b>
	<b>E-mail:</b>	<b>Alison.Elliot@southampton.gov.uk</b>	

### **BRIEF SUMMARY**

Appendix 4 and 5 of this report are not for publication by virtue of category 5 (legal professional privilege – appendix 5) and category 3 (financial and business affairs of the Authority – appendix 4) of paragraph 10.4 of the Council’s Access to Information procedure Rules as contained in the Council’s Constitution. It is not in the public interest to disclose this information because the overriding principle in relation to legal professional privilege favours maintaining openness of communication between lawyer and client as a fundamental principle in relation to the administration of justice in the UK. Such communications would only be disclosed in very limited circumstances where a strong argument in favour of release outweighed the primary principle of privilege. The release of such privileged advice would undermine the Council’s ability to take timely and appropriate confidential legal advice in the future. The financial information contained in appendix 4 is not in the public interest to disclose as it would prejudice the Council’s ability to meet its statutory duties in relation to Best Value if the information was released into the public domain.

This report is supplemental to the Cabinet report of 29<sup>th</sup> January 2013 on the same subject. The report details further consultation undertaken, the response to the consultation, the response to the recommendations made by Overview and Scrutiny Management Committee on 19<sup>th</sup> February 2013 and recommends changes to the proposed policy as a consequence.

### **RECOMMENDATIONS:**

- (i) To approve changes to the non residential care (NRC) contributions policy for adult social care as set out in Appendix 1.
- (ii) To delegate authority to the Senior Manager: Safeguarding Adults, following consultation with the Cabinet Member for Adult Care and the Head of Legal, HR and Democratic Services to review the format and content of the current non-residential care contributions policy for adult social care, to make any textual, formatting or administrative

or other minor changes required to update the policy, give effect to recommendation 1 above and ensure it is fit for purpose for 2013 and beyond.

- (iii) To delegate authority to the People Director to determine which 'one off' services should be included within the Policy as chargeable services and to determine the scale of fees and charges to be applied for these services (Proposal 10 in Appendix 1 – changes to Policy).
- (iv) To note that recommendation 2 above does not extend to making any major or substantive changes to either the services to be provided under the policy or the charges to be applied to any such service, Such matters would require reference to Cabinet for determination following appropriate public consultation.
- (v) To respond to the recommendations of the Overview and Scrutiny Committee made on 19<sup>th</sup> February 2013 as set out in paragraphs 15 – 17 of this report.
- (vi) Having regard to the Council's transformation programme and this review of charging policy, to delegate authority to the People Director, following consultation with the Cabinet Member for Adult Services, to undertake a review of the Financial Assessment process for non residential care charging and to thereafter to regularly review and update assessment processes in line with current and future policy and legislative requirements.

## **REASONS FOR REPORT RECOMMENDATIONS**

1. The changes will
  - Ensure the policy meets national guidance
  - Supports the development of personalisation in adult social care
  - Ensure equity and fairness in the application of the policy
  - Maximises income from those who are assessed as being able to contribute to support the Council to meet the costs of providing for the increased demand due to demographic changes

## **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

2. To take no action would mean the policy was unable to meet national guidance, would not be applied equitably and would not support the development of personalised social care.
3. Respondents to the consultation asked the City Council to consider the long term impact of the proposed changes. They suggested that if individuals felt they could not afford services they would wait till crisis point and require higher cost services such as residential care. They felt this was counter intuitive to prevention and health and well-being agendas and therefore the changes should not be taken forward.

This proposal was rejected since;

- The Council as a whole is addressing the prevention and health and well being agendas, this is not solely the role of social care.
- No one will ever be asked to contribute more than they can afford
- Individual circumstances can be taken into account and the Council can waive or reduce charges in exceptional circumstances.
- If the Council does not take forward the proposals there will be a need to consider alternative service reductions in order to meet budget reductions which are likely to have a relatively greater negative impact on residents or to consider restricting social care to those with critical needs only, which would significantly reduce the numbers of individuals receiving support.

4. Respondents to the consultation asked that the Council consider leaving the maximum contribution level at 95% of the figure the individual is assessed as being able to afford rather than the proposed 100% since this was felt to negatively impact on service users both financially and in terms of quality of life

This proposal was rejected since;

- To take 100% of the contribution which the individual is assessed as being able to contribute leaves service users with 25% above nationally set minimum income levels.
- A 100% contribution meets national guidance, which was set in recognition of the fact that social care users are likely to have additional expenditure related to their needs.
- Individual circumstances can be taken into account in assessing contributions and in particular any disability related expenditure must be considered.
- If the Council does not take forward the proposals there will be a need to consider alternative service reductions which are likely to have an impact on residents or to consider restricting social care to those with critical needs only, which would significantly reduce the numbers of individuals receiving support.

5. Respondents suggested that the specific rent allowance that the Council is proposing to end funds additional daily living expenses for people with severe learning disabilities. They thought that stopping this payment will have a significant impact on these service users' quality of life. They considered that this group should be treated differently because their condition was life long and did not afford them the opportunities open to others. They suggested the allowance was retained in recognition of the life long caring role of their family carers

This proposal was rejected since;

- Having regard to the national charging guidance and the various groups of persons who have protected characteristics of one category or another, there is no justification for the giving of a rent allowance to this group and not to other groups who have an equal claim to such a need.

- To offer the allowance to all those receiving social care would reduce NRC income by approximately £900,000. Such a reduction in income would impact on the ability to deliver social care support at current levels.
- It is recognised that locally and nationally the contribution made by carers to the care of individuals with social care needs is significant. The Council provides support to carers via a range of commissioned services. Local Authority funding cannot be paid to families to pay for their care.
- There is no rationale for the rent allowance since the policy takes account of day to day living expenses, allowing the individual receiving care to contribute towards board and lodging costs.
- Parents who qualify for Housing Benefit have this reduced when their adult son or daughter lives in their home. However, an allowance is made in the social care financial assessment of the son or daughter to take account of the lost Housing Benefit. This ensures the individual can contribute appropriately to household expenses and parent is not financially disadvantaged.

6. The proposal to change the policy to ask those with more than £23,250 organise to their own care raised a concern that this placed an inappropriate burden on family carers. Concern was also raised about the need to handle any changes to current arrangements for this group sensitively.

The removal of the proposal was rejected since;

- Setting this limit brings the NRC policy in line with the national residential care charging policy and is felt to be fair and equitable.
- The approach supports the direction of travel for the Council in promoting personalisation and choice and control over service provision for all service users.
- A range of support will be offered to those choosing to commission their own arrangements including; continued right to social care assessment; support with care planning both from the Council and via services set up by the Council.
- Those who do not have capacity and do not have family carer support will continue to have their arrangements managed by the Council; work will be undertaken throughout the year to support those already receiving services to set up their own arrangements.

7. Paying full cost for services was a key concern. Contributors expressed the opinion they are already “charged a lot” for services and contributions should not be raised.

This proposal was rejected since;

- No one will ever pay more than they are assessed as being able to afford.
- Individual circumstances can be taken into account and charges waived or reduced for welfare reasons.
- The proposal is put forward to support the service to meet the national

agenda to offer choice and control to service care users and to increase the level of Direct Payments used. The current approach is disincentive to this in that if the individual arranges their own care they are financially assessed on the real cost of the service, whilst if services are arranged by the Council a maximum charge of £13.46 per day or hour is made.

8. The proposal to ask for up to the full contribution towards the cost of two carers raised concerns that this may increase the burden on service users and family carers who might try to cope without a second carer on the basis of cost. There was also a concern that this may be inequitable.

To remove this proposal was rejected since;

- No one will ever pay more than they are assessed as being able to afford.
- Carers needs are assessed as part of the assessment process and Individual circumstances can be taken into account and charges waived or reduced for welfare reasons.
- The proposal is put forward to support the service to meet the national agenda to offer choice and control to service care users and to increase the level of Direct Payments used. The current approach is disincentive to this in that if the individual arranges their own care they are financially assessed on the real cost of the service, whilst if services are arranged by the Council the maximum charge is based on 1 carer support.
- The policy is based on ability to contribute and takes individual circumstances into account and it is therefore equitable and conforms with the relevant equalities duties.

9. Tenants of Extra Care Housing were concerned that they would be charged for overnight care services which they currently did not need and suggested only charging those who used night time care.

This proposal was rejected since;

- Individuals make the decision to move to extra care to ensure access to immediate support should they need it. It would therefore be inequitable to charge only those who receive hands on care when all tenants are benefitting from the service.
- Tenants who do not wish to receive or pay for the full extra care package offered at an extra care facility have a choice to move to more appropriate accommodation to meet their needs.
- If the Council does not take forward the proposals there will be a need to consider alternative service reductions which are likely to have an impact on residents or to consider restricting social care to those with critical needs only, which would significantly reduce the numbers of individuals receiving support.

## **DETAIL (Including consultation carried out)**

### **10. Background**

Currently there are 2264 individuals receiving non residential social care support who are subject to charging. Of these, 155 are legally exempt from charging, 610 do not contribute due to their level of income, 1186 contribute less than the full current level of contribution and 313 contribute at the full current level.

11. The Council has discretionary power to levy contributions towards the costs of NRC provided these are in line with national guidance. The NRC policy was reviewed in 2008. A further review was completed in October 2012. This was undertaken to ensure the policy met revised national guidance, supported the development of personalisation in adult social care, was equitable and fair and maximised income from those assessed as being able to afford to pay to ensure future sustainability of services given the increasing demands due to demographic changes. The proposals from the initial officer led review outline the original proposals, and assess the impact on those using services in August 2012. Appendix 2 and 2A of the original report provided detailed information about the proposals and the benchmarking exercise undertaken.

### **12. Financial Assessment Process**

As a result of the transformation programme and the review of policy, it will be necessary to review the financial assessment process on an ongoing basis to ensure that financial assessments are made taking into account changes to SCC policy and legislative requirements.

### **13. Consultation Process**

The report of 29<sup>th</sup> January set out consultation undertaken between 8<sup>th</sup> October 2012 and 11<sup>th</sup> January 2013. This was led by a facilitator commissioned by the Council and included letters to current service users and their appointees, a website, a helpline, meetings with customer groups potentially affected by the proposals, meetings with advocacy organisations and the commissioning of 2 DVDs for older people attending day services and for individuals with learning disabilities. Appendix 3 and 3A of the original report detailed the consultation methodology.

Although satisfied that a full and appropriate consultation was undertaken that meets both national guidance and the Council's policy, a deferral of the decision was undertaken to allow further consultation with groups on specific areas of concern. The consultation has included providing further information about the impact assessment of each specific aspect of the proposals and worked examples of financial assessments which, while not representative of any specific individual or group of customers, served to demonstrate how financial assessments are undertaken in detail and what matter are and are not taken into account in determining liability to pay charges. These 'illustrations', while not tailored to individual circumstances

due to the sheer number of variables inherent in each individual's charging assessment, provided some transparency and clarity about how charges were arrived at and how the proposed changes could affect some individuals in real terms when compared with their own personal circumstances.

Further letters were sent to current service users and their appointees, the website and Helpline were re launched, and a range of meetings were held with service users and advocacy groups. For detail see Appendix 2.

#### 14. **Consultation Response**

Appendix 3 details all key consultation themes and officer responses to these. Responses to the recent phase of the consultation have been similar to earlier responses.

The proposal to remove the rent allowance has been a major theme in the responses. This included the potential impact on individuals and their carers. As stated earlier, the proposal is put forward for reasons of equity following legal advice. However, it is proposed to phase the removal over 2 years and the implementation plan should the proposal be accepted will be developed with advocacy groups and will offer new financial assessment to ensure all expenditure has been considered. Social care and carers assessments will also be offered.

Concern was expressed about the financial and wellbeing impact of asking those on fixed income to contribute 100% of their disposable income and to contribute at a higher rate for services. National guidance stipulates that no-one will be left with less than 25% above nationally set minimum income levels and individual circumstances are taken into account in determining the level of contributions. No-one will ever pay more than they are assessed as being able to contribute.

There was concern expressed about the proposal to ask those who receive 2 carer support to contribute up to the maximum cost of their care. This was felt to be inequitable and it was felt could lead to individuals and their carers refusing services. However, as stated above, contributions are based on individual financial assessment and no-one will ever contribute more than they are assessed as being able to contribute. As the policy is based on ability to pay there is unlikely to be an issue of equity.

Concerns were expressed about the cumulative impact of the proposals and other benefit changes. All benefit changes can be reflected in the financial assessment ensuring no individual would be doubly impacted.

Responses to the proposal to ask those with over £23,250 to commission their own services largely requested clarification of the process. The implementation plan, should the proposal be agreed, will include individual reviews of all of the current service user group and the development of information packs for future users.

#### 15. **Changes to Proposals following Further Consultation**

As a result of the first stage of the consultation it was suggested that the proposal to ask those who could afford to do so to contribute up to the full economic costs of day service provision should be introduced over a 2 year period, with maximum contribution for 2013/2014 being £22. This was

suggested to allow time for individuals to adjust to the change in spending. It was felt that to do otherwise would have an impact on attendance such as to destabilise individual care arrangements, increase pressure on carers and affect the stability of the market.

The Local Authority Circular; Charging for Residential Accommodation and Non Residential Care was received on 15<sup>th</sup> October 2012, after the consultation commenced. This stated Councils could not take account of the purchasing function or the costs of operating the charging system when setting rates. For this reason the proposals in the January 2013 Cabinet report were amended to remove overhead costs from the maximum rates.

Whilst there is no justification for giving a rent allowance to one group and not other groups who have an equal claim to such a need on the basis of their specific protected characteristics it is however recognised that a 'rent' allowance has been paid to this limited group of individuals for some time and spending and care decisions have been based on the receipt of this allowance. It is therefore proposed to phase the removal of the allowance over 2 financial years to ameliorate the impact of its removal on care choices and to re-assess all recipients financial contributions to take into account a wider range of income and expense factors to ensure that, going forward, net disposable income takes appropriate expenses into account.

16. **Scrutiny Recommendations**

The proposals were discussed at Overview and Scrutiny Management Committee on 24<sup>th</sup> January 2013. The report went to Cabinet on 29<sup>th</sup> January 2013. The report was then called in by Overview and Scrutiny Management Committee on 19<sup>th</sup> February 2013. The recommendations from Overview and Scrutiny Management Committee and responses to these are outlined below:

- (i) That the decision be referred back to Cabinet for further consideration; and
  - (ii) The Overview and Scrutiny Management Committee recommended that Cabinet:-
17. • Defers the decision to enable further consideration and thorough consultation with all parties affected. Should this impact on the Council's Budget, funding should be drawn from reserves;

Response: Although satisfied that a full and appropriate consultation was undertaken that meets both national guidance and Council policy a deferral of the decision for further consultation was taken to allow further consultation with groups on specific areas of concern. Loss of income has been accommodated from reserves.

- Ensures, if the proposals are implemented, that by 31<sup>st</sup> December 2013 every carer and service user that requires a one to one assessment will receive one, and provides assurance that one to one advice will not be just through telephone advice;

Response: All those who request a financial, social care or carer's assessment are currently offered this on a one to one basis if this is their



preference. The implementation plan, should the changes to the policy be agreed, will include “surgeries” to offer one to one review of financial assessments and a number of individual visits. The approach will be developed with the support of voluntary agencies.

- Evaluates the effectiveness of the People’s Panel in this process from the Council’s, facilitators’ and participants’ perspective;

Response: The People’s Panel was one approach to consultation. The Cabinet reports detail the various methods used throughout the process. An evaluation of the People’s Panel process will be undertaken and lessons learned disseminated.

- Explores ways to improve information provision for service users and carers on issues such as assessment of need and financial assessment;

Response: The service will review the information provided on assessment of need and financial assessment

- Have worked examples of the impact of the proposals on individuals in advance of the Cabinet meeting to ensure the decision is informed;

Response: The approach to financial assessment is based on individual circumstances therefore individuals who appear to have the same income or services are likely to contribute at different levels. Worked examples have been made available which, while not representative of any specific group of service users, serve to demonstrate how financial reassessments are undertaken in detail.

- Ensures future communications are sent to both service users and carers;

Response: Communication was sent to both individuals receiving care and their advocates or appointees when this was known and recorded in the case file.

- Monitors the impact of the proposals, if implemented, on admissions to Accident and Emergency within the City;

Response: The use of Accident and Emergency unit is impacted by a wide range of factors including GP availability, public understanding of alternatives, work in health and social care to prevent admission, epidemics such as flu and norovirus etc. It is not predicted the proposals will have a direct impact on hospital use and it would be difficult to design specific performance measures to monitor this.

- Ensures that the advocacy groups are involved and fully engaged throughout the process;

Response: Advocacy groups have been involved in the consultation and will be involved the implementation plan should changes to the policy be agreed

- Identifies how, if changes proceed, the service will improve and how the future model will ensure rising standards and evidence improvements;

Response: A separate report will be developed for Cabinet on the approach the Service is taking to improve service standards and how this performance is being measured.

- Monitor and review the impact of the charging proposals, if implemented, and report them to the Overview and Scrutiny Management Committee within the first year of implementation.

Response: Arrangements are in place as part of the implementation plan should the policy be agreed to monitor the impact and this will be reported to the Committee.

## RESOURCE IMPLICATIONS

### Capital/Revenue

18. The full financial implications are set out in confidential appendix 4.
19. The estimated financial implications from the proposed Non Residential Charging Policy were achieved through a model comprising of live client data as at August 2012. Therefore it is possible, due to changes in clients, patterns of care etc that the actual impact regarding achievable income and client numbers affected may vary. To acknowledge this and mitigate risk a reduction for a 5% margin for error has been applied to the achievable income. Furthermore an allowance for both additional bad debt requirement and the potential impact of requests for financial assessments to take account of additional expenditure or hardship has been made.
20. There are five key recommendations that are included within Appendix 1 that will raise additional income. These are:
  - amending the net disposable income figure used within the financial assessment from 95% to 100%
  - increasing the full cost rate for day care to the full economic cost
  - increasing the contribution from clients in receipt of two carers up to a maximum full economic cost of provision
  - providing consistency for charging clients in receipt of overnight care
  - providing consistency across all client groups in respect of Rent Allowance

Please note that the proposed changes to the full cost rates and the level of Net Disposable income have an impact on the level of income estimated under the other three key financial recommendations.

21. The 2013/14 and 2014/15 budgets include the following savings agreed by Full Council in respect of client income from NRC, £285,000 and £410,000 respectively. However after taking into account the proposed changes in this report there is an anticipated pressure of £369,000 in and £149,000 in 2013/14 and 2014/15 respectively as set out in confidential appendix 5. The pressure in 2014/15 will be recurring.
22. It should be noted that all figures are quoted at 2012/13 rates and have been subject to an annual uplifting in April 2013, in line with increases in rates paid to providers. This uplifting was subject to a separate approval by the Executive Director under Delegated Authority.

**Property/Other** No implications

23. There are no implications in relation to property or other assets.

## **LEGAL IMPLICATIONS**

### **Statutory power to undertake proposals in the report:**

24. Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 (HASSASSA Act 1983) gives the Council discretionary power to charge adult recipients of non-residential services. The Council may recover such charges as are reasonable in respect of relevant services
25. Section 7 of the Local Authority Social Services Act 1970 allowed the Secretary of State to issue guidance to Councils on the exercise of their social services functions, including those which are exercised under discretionary powers. In exercising those functions, Councils must have regard to guidance issued under section 7.
26. In 2003, The Department of Health issued guidance entitled 'Fairer Charging Policies for Home Care and other non-residential Social Services. In 2010 guidance entitled "Fairer Contributions Guidance: Calculating an individual's contribution towards their personal budget" was also issued. The proposed policy changes comply with the relevant provisions of the guidance documents.
27. Local Authorities may also charge for services provided directly to carers under the provisions of the Carers and Disabled Children's Act 2000.
28. Where the 'Fairer Charging Policies for Home Care and other non-residential Social Services does not provide clarity in a general area, the Council also observes the Department of Health's Charging for Residential Accommodation Guide (CRAG) and the Guidance for Council's with Social Services Responsibilities published in October 2012 for fairness, clarity and consistency reasons.
29. Further legal implications are set out in confidential appendix 5.

**Other Legal Implications:**

30. The proposals in the report are compliant with the requirements of both the Human Rights Act 1998 and the Equalities Act 2010. Consideration of the impact of the proposed changes under these Acts has been carried out as part of the preparatory work and ongoing consultation process and, taking the overall changes into account, the Council is satisfied that the proposals are necessary and proportionate in terms of individual impact having regard to the needs of the wider community and the need to target available resources at the most vulnerable. Detailed consideration of the impacts of the proposals is as set out in the report and appendices.

**POLICY FRAMEWORK IMPLICATIONS**

31. The proposals in this report are wholly in accordance with the Council's budget and policy framework.

**KEY DECISION?** Yes

<b>WARDS/COMMUNITIES AFFECTED:</b>	All
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## SUPPORTING DOCUMENTATION

**Non-confidential appendices are in the Members' Rooms and can be accessed on-line**

### **Appendices**

- 1 NRC Charging Policy Review – Proposal to Cabinet
- 2 NRC Charging Policy Review – Public Consultation Process
- 3 NRC Charging Policy Review – Consultation Response
- 4 Confidential – Finance Implications
- 5 Confidential – Legal Implications

### **Documents In Members' Rooms**

1.	None
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### **Equality Impact Assessment**

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	Yes
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### **Other Background Documents**

**Equality Impact Assessment and Other Background documents available for inspection at:**

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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Impact Assessments:

1.	General	
2.	Rent Allowance	
3.	Net Disposable Income	
4.	Overnight Care	
5.	Day Care	
6.	Capital	