

Adult Social Care Scrutiny Commission Report

Revision to Charging Policy

Meeting Date: 25 January 2024

Lead director: Ruth Lake

Useful information

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1. Summary

- 1.1 This report will update the Adult Social Care (ASC) Scrutiny Commission on a consultation exercise in relation to proposed changes to the ASC charging policy. The commission was advised of the consultation prior to its commencement on 9 October 2023. The consultation concluded on 31 December 2023 and the responses are currently being analysed to inform the decision-making process.
- 1.2 The purpose of this report is threefold:
- a) Firstly, to outline proposals for changes to how disability benefits paid by the Department of Work and Pensions for Attendance Allowance and Disability Living Allowance - Care Component (now being replaced by Personal Independence Payments) are treated within the financial means test.
 - b) Secondly, to outline proposals for the introduction of an administration charge when acting as an appointee for people who lack capacity to manage their own financial affairs or have complex care needs that require support with managing their finances. This would either be via a third-party provider, appointed by the Council for this specific purpose or an internal resource.
 - c) Thirdly, to confirm the decision-making timeline

2. Recommendations

- 2.1 The ASC Scrutiny Commission is advised to note the consultation and make any comments, prior to a further report which will outline the consultation findings.

3. Supporting information, including options considered:

3.1 Revenue Budget Pressures

- 3.1.1 The Council is in the middle of the most severe period of spending cuts it has ever experienced. As part of its approach to achieving substantial budget reductions, like other Council Departments, Adult Social Care has to achieve targeted savings in the region of £12m.

- 3.1.2 Previously, 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 undertaken for non-residential care individuals that draw upon our services. This resulted in a change to the Council's Charging Policy from April 2019, in that the standard level DRE disregard has been reduced in the financial assessment from £20 to £10 per week for individuals (or from £15 to £10 per week, if one of a couple). This has delivered the targeted savings sought against DRE.
- 3.1.3 To contribute further to the savings target, the Council previously consulted on proposals to change how disability benefits paid by the Department of Work and Pensions are treated within the Council's Charging Policy, in 2019. Whilst the Executive took the decision at that time not to proceed with the proposals, the financial constraints faced by local authorities now necessitate the need to revisit options to ensure that people who draw upon our services are being assessed fairly and that their charges are appropriate.
- 3.1.4 The Council can manage a service internally or appoint a third party to act as an appointee, assuming responsibility to manage the financial affairs on behalf of an individual, whilst also making and maintaining any benefit claims. Acting as an appointee is currently provided at no cost by the Council but it is not a statutory service and therefore, an administration charge can be applied, or discharged completely
- 3.1.5 The decision to consult (and reconsult on the treatment of disability benefits in a persons' financial assessment) is driven by the need to contribute further to the savings target. The remaining sections of this report deal specifically with these proposals.

3.2 Treatment of Disability Benefits

- 3.2.1 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.
- 3.2.2 In relation to disability benefits, the guidance refers to Attendance Allowance (AA), Disability Living Allowance - Care Component (DLA) and Personal Independence Payment (PIP) explicitly. Paragraph 16 within that guidance requires that local authorities must consider any income from benefits, when assessing if a person can afford to pay from their income towards the cost of their care. This is known as a means test.
- 3.2.3 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) and Disability Living Allowance - Care Component (for under 65's). DLA is being phased out for people aged 16 to 64 and is being replaced by a Personal Independence Payment (PIP).

- 3.2.4 AA is paid to people at two rates, a lower rate of £68.10 per week (where frequent help / constant supervision is needed during the day or night) and a higher rate of £101.75 per week (where help/supervision is needed during the day and night).
- 3.2.5 DLA 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 components of DLA and PIP must be fully disregarded in the assessment of income calculation. The DLA care component is paid to people at 3 rates: a low rate of £26.90 per week (where help is needed for some of the day or with preparing cooked meals), a middle rate of £68.10 per week (where frequent help/constant supervision is needed during the day or night), and a high rate of £101.75 per week (where help/supervision is needed during the day and night).
- 3.2.6 A current financial assessment for non-residential care would consider £68.10 a person receives per week from these benefits as income. It would therefore be included in the calculation of assessable income for the purposes of financially assessing a person’s ability to contribute towards the costs of the care they receive. If a person receives the higher rate, it is currently disregarded (to the lower rate of AA, or middle rate of DLA). This is in line with previous Department of Health guidance.
- 3.2.7 However, Annex C of the Care and Support Guidance (paragraphs 14-18) deal with benefits and state that Local authorities may take most of the benefits people receive into account. 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) must be taken fully into account when assessing a person’s ability to contribute towards the costs of residential care services.
- 3.2.8 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 for the costs of their care needs which are not being met by the local authority, from their income.
- 3.2.9 Research has shown that the application of the discretion to include the high rate of AA and DLA Care in non-residential financial assessments varies between local authorities. Some Councils now include the high rate of AA and DLA/PIP Care/Daily Living in all non-residential financial assessments, whilst other Councils allow a disregard of £33.65 per week (difference between £101.75 and £68.10) where they do not provide night care services to the individual.
- 3.2.10 For AA and DLA Care Component benefits, since the higher rate can only be awarded if a person has both daytime and night time care needs, then potentially, the basis on which a local authority could justify taking into account the extra income would be where:

- 1) The local authority was providing a care package that involved meeting night-time care needs, or
- 2) The cost of the claimant's night-time care needs that are not arranged by the local authority, does not equate to that of the higher benefit payment.

3.2.11 PIP Daily Living payments are awarded (standard and enhanced) by virtue of an assessment of a person's ability to perform activities related to daily living rather than a narrative description of needs during different parts of the day and or night. At least one local authority has previously indicated that they have included the PIP Daily Living enhanced rate in their financial assessments, even where no night-time care is provided by the authority. This policy was applied following consultation.

3.2.12 For those local authorities who had previously implemented the higher rates across all non-residential care financial assessments, three authorities were known to have received some form of challenge. Two authorities had a challenge raised via the Local Government Ombudsman and a debt court. In both cases the outcome ruling was in favour of the local authority concerned. In the case involving the LGO, the findings did state that there was no fault in the Council's use of Attendance Allowance as income in the financial assessment even if it was partly paid to meet night-time needs where the Council was only providing day care. Any issue of unlawfulness and irrationality would have to be tested at court.

3.2.13 The third local authority (Norfolk County Council) had its Charging Policy successfully challenged via Judicial Review in Dec 2020, on the basis that it was considered to have discriminated against the most severely disabled (i.e., those more likely to be on enhanced disability benefits). The policy sought to consider the higher benefit rates, and only allow for the minimum level of Minimum Income Guarantee (MIG)¹ rates and was found not to have complied with sections 8.46 & 8.47 of the Care & Support statutory guidance regarding what a person can afford to contribute towards their care costs.

3.2.14 The government considered that it is inconsistent with promoting independent living to assume, without further consideration, that all a person's income above the MIG is available to be taken in charges (paragraph 8.46). Local authorities should therefore consider whether it is appropriate to set a maximum percentage of disposable income (over and above a level of guaranteed minimum income) which may be considered in charges (paragraph 8.47).

3.2.15 The statutory guidance (paragraph 8.42) also states that where a person receives benefits to meet their disability needs that do not meet the eligibility criteria for local authority care and support, the charging arrangements should ensure that they keep enough money to cover the cost of meeting these disability-related costs.

¹ 'Protected Income' or Minimum Income Guarantee (MIG) is the amount that the Department of Health guidance states should remain free from charges and is calculated by adding 25% to an individual'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).

- 3.2.16 If the AA and DLA/PIP benefits were treated as income in full within the financial assessment, then this would affect those people that are currently paid at the higher benefit rates. The Council does not record the rate of these benefits for individuals (as currently all higher level payments are disregarded to the lower rate), so only rough estimates can be made of the numbers that would be affected by using DWP statistics of cases in payment within Leicester, across the 3 benefit categories.
- 3.2.17 With reference to these statistics, of the approximate 3,860 people with a financial assessment for non-residential services, it is estimated that approximately 1,236 potentially receive the higher-level AA or DLA/PIP Care/Daily Living Component. This equates to around 55% of those people who currently have at least the lower-level benefit in their current financial assessment).
- 3.2.18 Based on existing caseload and applying the DWP statistics on cases in payment at the higher rates, these higher benefits could initially increase potential income levels by approximately £1.86m, per annum. However, this figure needs to be considered with significant caution given there will be several people who will likely seek to demonstrate, through reassessment, that they incur additional costs of care which is not provided by the Council and for which they use the higher benefit payment to cover such costs, which would need to be disregarded in the financial assessment.
- 3.2.19 Within the above estimate, the element of income that could be generated from including the enhanced level PIP Daily Living component in the financial assessment is estimated to be in the region of £1.1m. Given this benefit is awarded by virtue of points linked to tasks, rather than a narrative description of need during different parts of the day and/or night, there may be potential for the Council to consider using the full benefit payment in the financial assessment without any disregard (see also paragraph 3.2.11 above).
- 3.2.20 In any event, under the regulations, the Council is permitted to include the higher benefit rates in a financial assessment for non-residential charges where the Council provides some element of night-time care – please see the Financial Implications at section 5.1 of this report.
- 3.2.21 In the first year, any additional income would be offset by additional costs associated with undertaking updated financial assessments for all those affected. Additionally, given that full or part adoption of the higher rates within any financial assessment may also need to have regard for the package of care received by the individual, and greater collaboration between the financial Assessment team and Social Work Teams, this would likely require a change to how the assessment process is undertaken in the future and could impact on administrative costs associated with undertaking the assessment process.
- 3.3 Treatment of Appointeeship**
- 3.3.1 The Council acts as an appointee for approximately 689 people. The Business Service Centre is responsible for managing the finances for people if they lack the capacity to manage their own financial affairs or have complex care needs

that require support with managing their finances. This may include concerns around safeguarding or financial abuse.

- 3.3.2 To act as an appointee, the Council must attain permission from the Department for Work & Pensions (DWP). This is only exercised if there is no one else willing or able to carry out the role for the individual, and a social worker has subsequently requested for the Council to do so.
- 3.3.3 Acting as an appointee provides a legal mandate to receive a person's social security benefits (this does not extend to any jurisdiction of an occupational pension). As an appointee, the Council does not have power to access the person's bank accounts or any other money held. When acting as an appointee, the Council will receive the persons' benefits and then pay rent (including HRA houses), Council Tax, utilities, and costs towards any care they receive.
- 3.3.4 Once the DWP has given authorisation for the Council to start receiving an individual's benefits, the Council will pay all their bills and discharge any debts they may have, on their behalf. Being an appointee on behalf of the individual can provide social economic benefits in our communities, by way of improved health, education & employment outcomes.
- 3.3.5 In certain circumstances, the Council may act as a deputy, which has wider ranging powers to manage over and above a person's benefit. Usually, this is where occupational pensions are in payment. Being a deputy is already chargeable and incurs court approved fees, in accordance with fees as set by HM Courts & Tribunals service, or administrative costs set out by The Courts & Tribunals Judiciary. Deputyship is out of the scope of this report.

3.4 Impact for Individuals:

People receiving disability benefits

- 3.4.1 Of the approximate 3,860 people with a financial assessment for non-residential services, some 2,228 people are currently in receipt of some form of Disability Allowance (AA/DLA/PIP Care/Daily Living component) as part of their income calculation within the financial assessment. It is estimated that approximately 1,236 people may be receiving the higher-level AA or DLA/PIP Care/Daily Living Component.
- 3.4.2 The maximum increase in a person's charge would be £33.65 per week, being the difference between the higher/enhanced and middle/standard 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 do not currently pay a contribution towards their care costs could have to start doing so. Simplified examples of how disability benefits would be treated within a financial assessment under these proposals are shown in Appendix A.
- 3.4.3 However, under these proposals it must be stressed that the Council would need to continue to exercise discretion in its application of this policy change in line with the requirements of the statutory guidance (paragraph 8.42 and

Annex C, Para 39). This requires that where disability-related benefits are considered, 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. In this regard, Para 41 of the statutory guidance identifies the care plan as a good starting point for considering what is eligible and necessary disability-related expenditure, as the care assessment is fundamentally about need.

People who use the Council's appointee service

- 3.4.4 The proposal is to introduce a charge for people using an appointee service. This administrative charge would only be levied against people who have a savings balance of over £1,000. Of the approximate 689 people who currently use the Council's appointee service, some 600 individuals would be required to pay this charge as they have a savings balance of over £1,000, though numbers fluctuate.
- 3.4.5 Under these proposals, these individuals would be liable to pay a fee of between £14 and £16 per week depending upon service provider, resulting in a maximum total charge of between £728 and £832 per annum. Based on the existing caseload, this could save the Council approximately £260k per annum (noting consideration of additional administration impacts, such as invoicing) as this service is currently provided free of charge. Take-up of the appointee service is non-statutory.
- 3.4.6 From a sample of authorities for which information was available, there appears to be a large variance in the approach of charging for the role of appointee. Some authorities operate a fixed rate, whilst others use a banded rate approach. Certain local authorities only apply a charge when the individual has savings above a £15k threshold. Details of the sample are as follows:

| <u>Local Authority</u> | <u>Weekly Charge</u> |
|------------------------|--|
| Staffordshire | £5 - £7.50 (over £1k savings) |
| Wigan | £15 |
| Portsmouth | £4 - £10 |
| York | £6.65 + costs for transactional activity |
| Bromley | £10.77 - £12.50 |
| Northamptonshire | £10 - £12.50 |
| Nottinghamshire | £12 (over £1k savings) |
| Derby | £6.68 - £12.03 |

- 3.4.7 The proposed charge is representative of the staffing costs currently incurred by the Council's Business Service Centre (BSC) or passed on from a third party provider to administer the service. Inflation may apply to this charge but it is unlikely that the rate would be increased annually and would only be reviewed if administration costs rise significantly.
- 3.4.8 For individuals who receive the higher rate disability benefit (and who can't evidence this being spent on their non-council arranged care), coupled with a proposed charge for the appointee service, the potential impact on their retained weekly income could be significant.

3.4.9 Some protection does remain for people in the form of the MIG within the assessment of a person's charge towards their care (under the Care Act 2014, charges must not reduce a person's income below a universal guarantee in the form of an income floor). However, individuals will likely feel the impact of what was previously allowed as retained income above the MIG level which they are potentially using to contribute towards their other daily living costs. There could therefore be a social well-being or physical health consequence to some people as result of any reduction to their retained income.

3.5 Costs associated with undertaking more re-assessments and appeals

3.5.1 If the proposed increase to the Disability Allowance disregard were to go ahead, then everyone who receives a non-residential commissioned service or Direct Payment would need to be re-assessed.

3.5.2 The re-assessment process is largely an administrative one. Initially this would involve sending out a form to all people to collect updated details, assisting with basic queries and chasing the return of the forms.

3.5.3 Some people could challenge any initial assessed charge on the basis that they have new information which needs to be included in the assessment or they believe the charge is incorrect or is not in accordance with the Policy. The latter would form a right to appeal. Appeals are accepted within 35 days from notification of the weekly charge being applied and are dealt with under a two stage appeals process:

Stage 1: A different assessment officer reviews the case, independent of the original decision maker. Those that remain dissatisfied from this outcome can request a stage 2 appeal.

Stage 2: This includes independent review by 2 senior officers. This decision is final.

3.5.4 It is difficult to predict the number of people who would request this, but it would result in significant additional work for financial assessment officers (band 5, 6 or 8, depending on the stage of the appeal).

3.5.5 Additional resources would be needed to assist with this work.

3.5.6 The proposals would not have a negative effect on the workload of the business service centre, as they already provide the appointee service. If people were to move to a third party as an alternative provider, the administrative burden on the team would be reduced.

3.6 Risks

3.6.1 The main risks of consulting, introducing changes to the financial assessment and charges to managing finances are captured below:

| Attendance Allowance Risks | Actions / Strategy for mitigation |
|----------------------------|-----------------------------------|
|----------------------------|-----------------------------------|

| | | |
|----|---|---|
| 1. | Changes would affect large numbers of people (as detailed in section 3.4 above). | Some people will be impacted by the proposals covering Disability Benefits. As stated in the report, the Council does not record the rate of these disability benefits for individuals, so only rough estimates can be made of the numbers that would be affected (based on DWP statistics of eligibility). |
| 2. | The Council consulted on increased charges in the form of DRE minimum disregards in 2018 and implemented changes to those minimum thresholds effective from April 2019. The changes increased some people's contributions towards the cost of their care by up to a maximum of £10 per week. | Public facing documentation will clearly outline the rationale and relevant legislation behind the consultation, to ensure customers are well informed and that processes remain transparent. The Council will undertake individual assessments on a case-by-case basis, ensuring appeals are dealt with swiftly and efficiently. Discretion will remain where people can evidence additional expenditure incurred on provision of qualifying care and support not provided by the Council. |
| 3. | Any savings made through increased income from charges for services because of re-assessments would be offset by the additional time taken to resolve queries and challenges to individual assessments, in the initial policy review year. This would include the time of Social Workers as well as Financial Operations staff. | Staffing resources will need to be considered to support the additional assessment work at implementation. At minimum, an extra finance officer at Scale 5 (£26,845 per annum, or £35,972 with on costs) will be required. |
| 4. | The financial assessments are complex and require a sound knowledge base so would require input from suitably experienced staff rather than agency/temporary workers. | Recruitment of additional staff resource would need to be prioritised and undertaken prior to the commencement of the reassessments to allow time for mobilisation of required staff changes including training. |
| 5. | Additional resource to undertake the assessment work is likely to come from existing Social Care Finance staff due to the skills and knowledge needed. This creates issues in other areas as those staff moving from the payments function (for example) will need to have those roles backfilled to keep the work of those areas up to date. There is a risk that whilst | Please see section 4 above. |

| | | |
|----|---|--|
| | the assessment roles are filled, other areas may fall behind. | |
| 6. | New Minimum Income Guarantee (MIG) rates and capital limits are set by the Department of Health to apply from April each year. Limits for April 2024 will not be made public until late February 2024 at the earliest, therefore any reassessments done prior to notification of the new MIG may have to be redone. | Additional staffing resources will be in place to help alleviate this burden. Where further reassessment is required, this will be delivered as soon as is practicable in line with any publication of revised limits. |
| 7. | There could be social well-being or physical health consequences to some people, and hence increased demand for services, as a result of any reduction to their retained income. | Protection is provided in the form of the MIG within the assessment of a person's charge towards their care. Assessments will be handled on a case-by-case basis to ensure discretion is applied to people's individual circumstances. |

| | Appointee Risks | Actions / Strategy for mitigation |
|-----|---|--|
| 8. | Consultation with those who lack capacity is difficult if they are unable to understand the reasons behind the charging and extra measures will need to be put in place to ensure it is meaningful. | Easy read and simplified material will be made available for people who require it, and social workers will be briefed to ensure accurate dialogue can be delivered during visits or assessments. |
| 9. | There will be more clients with increasingly complex financial requirements due to an increase of people being supported to live in their communities. | Administrative burden to be offset by charging people to support the staffing resources required. |
| 10. | It is recognised that appointees will be in receipt of state benefits and minimal alternative sources of income. | The proposals will support those with the lowest levels of income by only applying charges to those with savings above £1k and keeping fees to the cost of running the service. |
| 11. | Clients affected by this change may cite the cost of the appointee service as a direct cost because of their disability/illness and seek for this to be treated as an allowable disregard within their DRE costs. | LCC being an appointee is entirely voluntary, as another third party can take on this role. LCC would normally take the role due to safeguarding or financial abuse issues, this is not related to the specific illness or disability of the individual, but the safeguarding issue. |

3.6.2 Consideration was given to the possibility that the change in the treatment of disability benefits rate be applied at the date of a person's next financial assessment. This would mean that people would experience changes to their charges at different points in time (up to a year apart). However, due to the

volume of people that would need to be reassessed, there is no viable alternative option as the finance team does not have sufficient capacity or resources to handle all cases simultaneously. This would also result in some of the savings for 2024/25 being realised later in the year.

3.7 Consultation Approach

3.7.1 A 12-week consultation was appropriate in this instance, given the number of people to be consulted (up to 3,860 people), and the fact that some consultees may require additional efforts to engage them to ensure the consultation is meaningful.

3.7.2 Staff from the SC&E Projects Team managed the consultation process. They will also collate and monitor responses, carry out an analysis of the responses and produce a 'findings' report. This will inform the recommendations in the final report.

3.7.3 The following stakeholders were identified for consultation:

- People who draw upon our services, which are affected by the proposals.
- Relatives/carers, where appropriate.
- Independent sector organisations (including advocacy organisations) which support, or provide services for, people in receipt of care services.
- Local forums that represent people in receipt of care services.
- Elected members, who will have people in their wards/ constituencies.
- Local media, whose audience includes people who may be affected.
- The wider Leicester community.

3.7.4 The following consultation approach was implemented:

- A survey for people who draw upon our services (or carers/relatives, where appropriate.)
- Hold public meetings to which people and carers/relatives will be invited.
- Press release for local media directing people to Citizen Space.
- Publicity through LCC's consultation Twitter account.
- A helpline will be staffed during working hours to deal with queries.
- Customer Services will be provided with a briefing note and contact details for further information.

3.8 Decision Timeline

3.8.1 Given the timescales required for consultation (including the evaluation of consultation responses), subsequent decision-making and system amendments (ContrOCC), the earliest that the changes could take effect is April 2024.

3.8.2 A further report to ASC Scrutiny Commission is planned for its meeting on 7 March 2024, prior to a decision being taken by the Assistant Mayor / Lead Member for Social Care.

4. Details of Scrutiny

- 4.1 ASC Scrutiny will receive a further report, setting out the consultation findings, prior to any decision.

5. Financial, legal and other implications

5.1 Financial implications

Attendance Allowance

- 5.1.1 If the proposals to be consulted upon in this report proceed, it is estimated that up to £1.86m of additional income could be generated from April 2024. This is based on the current caseload. There are however areas of uncertainty with the income projections:

- i) The number of people getting the higher rate of AA has had to be estimated based on overall city eligibility figures from the DWP, including non-council individuals.
 - ii) These DWP stats would also include people in receipt of residential care services, who would attract the higher-level attendance allowance, so potentially that would artificially 'inflate' the overall level of actual eligibility.
 - iii) The extent of the night-time care provided privately for people is unknown. Liquid logic information indicates that there is very little waking night support provided by the Council. Night-time support provided (either through commissioned packages of care or within Direct Payment care packages) would account for approximately £144k of the figure set out in 5.1.1 above.
- i) What the person is obtaining privately and the cost, or whether this night-time care is provided by a spouse for example free of charge, is unknown. If a carer was providing the support, we would need to be clear in our policy whether we are treating this as cost free, as we do generally. This could only be established through re-assessing all people as part of the implementation process of this new policy.
 - ii) There is therefore a significant degree of uncertainty regarding the ultimate savings. The decision as to whether to proceed with this policy change will have to be made with this mind. The rationale of taking into account a person's income benefit which is intended to cover night-time care, in their financial assessment, net of any actual costs they incur for that provision is justifiable. The issue is that we are not able to give any certainty on the actual savings for the Council to determine whether it is worthwhile going through the process to change our policy.
 - iii) Any level of savings will be reduced in year 1 as there will be some 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.

Appointeeship Charges

- iv) The proposal to make a weekly charge of between £14 and £16 for the Council's appointee service could generate an estimated additional income of approximately £260k per annum (noting consideration of additional administration impacts, such as invoicing), towards covering the cost of this service. It should be noted however, if this cost was successfully challenged as to be treated as an allowable cost because of an individuals' disability/illness, then the charge levied would be treated as an allowable disregard within their DRE costs. As such, this would increase the total allowances element of the financial assessment and reduce the actual level of chargeable income that could be levied by the Council for the care services that the individual receives. In such an instance, this will have a direct negative impact on the chargeable income levels generated within the Adult Social Care service.

Matt Cooper, Business & Finance Manager. 0116 454 2145

5.2 Legal implications

5.2.1 This report outlines 2 proposals for further consultation.

- iv) to take the higher rate of disability benefits for Attendance Allowance, Disability Living Allowance (Care Component) and Personal Independence Payment (PIP – Daily Living Component) where claimed, into account during the financial assessment for non-residential charges; and
- v) to levy an administration charge when acting as, or appointing a third party to act as an appointee for a person who lacks capacity or has complex care needs where they require support for the management of their finances.

5.2.2 The Local Authority has the power to charge for meeting a person's care and support needs. If it decides to exercise that power, then it must undertake a financial assessment to assess what a person can afford to pay towards their care. The Local Authority exercises its discretion to charge in accordance with its charging policy. This policy considers various disregards to include Disability Related Expenditure (DRE) and also provides for the application of discretion.

5.2.3 When levying an administration charge the Local Authority should only seek to recover actual internal or external costs incurred. Consideration should be given to the impact of levying any charges and any deemed conflict with existing charging policies. For example, persons who lack capacity to make decisions around finances, due to an illness such as dementia, may have an arguable case to seek to have such charges disregarded as a disability related expenditure.

5.2.4 The Local Authority must adhere to the relevant provisions within the Care Act 2014 (sections 14 & 17), Statutory guidance for Care and Support 2014 (Chapter 8.38-8.48 and Annex C (Treatment of Income) and the Care and Support (Charging and Assessment of Resources) Regulations 2014 which provides a framework for the application of charging for care and support.

5.2.5 When undertaking a consultation, the Local Authority should have due regard to the public sector equality duties as referred to under Section 149 of the Equality Act 2010. It is advised that legal advice should continue to be sought if matters progress to consultation and thereafter.

Pretty Patel, Head of Law, Social Care & Safeguarding. 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. 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 changes to how disability benefits paid by the Department of Work and Pensions for Attendance Allowance and Disability Living Allowance - Care Component (now being replaced by Personal Independence Payments) are treated within the financial means test and that an administration charge is introduced for adults that use the Council's Appointeeship service, to manage their finances. The report is recommending that a formal consultation be approved on the proposals.

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 and therefore work must be undertaken to establish whether there are any indirect impacts disproportionately affecting other

protected characteristic groups. To fully explore the likely impacts of the change across all protected characteristics, a full Equality Impact Assessment, using the corporate template, must be undertaken, taking into account the range of information included in the report, in addition to findings from consultation and engagement and any other relevant evidence. The consultation should seek to establish whether there would be any disproportionate negative impacts on protected characteristic groups and what the impacts would be specifically. Where there are disproportionate negative impacts for protected characteristic/s case mitigations to reduce or remove the impact should be identified and implemented.

- 5.4.6 It is important that the consultation is accessible and meaningful. It is also recommended that equality monitoring is undertaken as part of the consultation, in order that the equalities implications, including peoples' views with regards how the proposals are likely to affect them, can be fully explored by protected characteristics.

Surinder Singh, Equalities Officer. 0116 454 4148

- 5.5 Other Implications (You will need to have considered other implications in preparing this report. Please indicate which ones apply?)

Not Applicable

6. **Background information and other papers:**
None
7. **Summary of appendices:**
Appendix A – Simplified Charging Calculation Examples
8. **Is this a private report (If so, please indicated the reasons and state why it is not in the public interest to be dealt with publicly)?**
No
9. **Is this a “key decision”?**
No
10. **If a key decision, please explain reason:**
N/A - This report seeks a decision to consult, which is not considered key. The final decision on whether to introduce changes to the financial assessment and which may introduce a change or an increase in charge for people will be a key decision.