

Adult Social Care Scrutiny Commission Report

Revision to Charging Policy

Meeting Date: 07 March 2024

Lead director: Ruth Lake

Useful information

- Ward(s) affected: All
- Report author: Prashant Patel & Matt Cooper
- Author contact details: 37 2145
- Report version number: 8.0

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 proposals to change the treatment of disability benefits and to introduce a charge for appointeeship.

2. Recommendations

- 2.1 The ASC Scrutiny Commission is recommended to note:
- a) the consultation findings and take into account the views of people who access our services and their carers or representatives (Appendix C).
 - b) the preferred options, so that:
 - i. the higher rate of all disability benefits where claimed, is taken into account in the financial assessment for non-residential charges (Option A.3), subject to the considerations outlined in paragraph 3.6.4 of this report.
 - ii. an administration charge is introduced for adults that ask the Council to act as their appointee (Option B.3), subject to the considerations outlined in paragraph 3.6.10 of this report.

3. Supporting information, including options considered:

3.1 Supporting Information

- 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 the service can be discharged completely.

3.1.5 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 and for the introduction of an administration charge for appointeeship.

3.2 Rationale

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. Some people accessing non-residential social care 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) 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).

3.2.3 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).

3.2.4 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).

- 3.2.5 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 or standard rate of AA, or middle rate of DLA). This is in line with previous Department of Health guidance.
- 3.2.6 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.
- 3.2.7 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 for the costs of their care needs which are not being met by the local authority, from their income.
- 3.3.1 The Council acts as an appointee for approximately 689 people. The Business Service Centre (BSC) 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 Consultation Proposal

3.3.1 A dual 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.
- 2) That an administration charge is introduced for adults that ask the Council's to act as their appointee

3.3.2 If the proposals were to be approved, the maximum additional amount that a person would have to contribute would be £33.65 per week for charges against the higher rate of disability benefits and £14-£16 for using the appointee service (if they have a savings balance of over £1k). Therefore, people were also asked how they would be impacted by the potential increase towards their weekly charge and any other considerations the Council should take into account, prior to making a decision.

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 4,593 people that were either in receipt of non-residential care or were using the appointee service (or their carers or representatives), 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 Clarendon Park), where people were provided with an opportunity to meet officers face to face, 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 were sent to collaborative working groups, 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 Chair of Scrutiny Commission and Labour Group) and local MP's to ensure they were fully informed about the proposals, particularly to provide support to any enquiries from constituents.

3.5 Consultation Findings

3.5.1 In total, 804 surveys were completed and returned, which represents a response rate of around 18% (of original mailout 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 the cohort

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 grouped response received from the Making It Real (MiR) co-production group. The full findings report is shown in Appendix C.

Impact of increase to the weekly charge

3.5.3 This question was asked to assess what the impact would be for people if their weekly contribution increased. At the time of the consultation, approximately 3,860 people had a financial assessment for non-residential services, whilst 689 people were using the Councils appointee service. Of those in receipt of a financial assessment, some 2,228 people 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 disability benefit proposal was introduced, the maximum increase in a person's charge would be £33.65, 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 If the appointeeship proposal was introduced, the maximum increase in a person's charge would be £14-£16, per week (only if they have a savings balance of over £1k).

3.5.6 Over half of all the respondents (approx 51%) reported that an increase to their weekly charge would affect them (or someone they represent) a lot, including how much they have for essentials. Under a quarter (approx 12%) of respondents indicated that they would be affected a little, including how much they have for extras or treats. Other respondents noted that they would either be able to manage the increased charge (approx 5%) or they would consider stopping the Adult Social Care services they receive (approx 12%). The remainder of respondents stated that they were either not receiving a disability benefit or were not using the appointee service.

3.5.7 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 32% of all people 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 disability benefits proposal.
- Some people will not meet the £1k savings balance threshold and would therefore not be affected by the appointeeship proposal.

3.5.8 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.

3.5.9 If the disability 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 or standard 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.

3.5.10 Of the approximate 3,860 people with a financial assessment for non-residential services, it is estimated that approximately 1,236 people potentially receive the higher level AA or DLA/PIP Care/Daily Living Component. This equates to around 32% of those people that currently have at least the lower level benefit in their current financial assessment.

3.5.11 Of the approximate 689 people that use the appointee service, 600 people currently have a savings balance of over £1k, though this number fluctuates. This equates to 87% of people that would see the introduction of £14-£16 weekly charge.

Additional Feedback

3.5.12 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.

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

- The most frequent comment (28%) 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 or be unfamiliar with the legislation.
- The second most frequent comment (13%) 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 other general living costs.

- 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 see any changes to their weekly charge, in reality.
- 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:

- A.1) To continue disregarding the higher or enhanced rate of disability benefits down to the lower or standard rate, within the financial assessment.
- A.2) To disregard all disability benefits as income, within the financial assessment.
- A.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:
 - i. 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,
 - ii. Paragraph 41 - The care plan should be used as a starting point for considering what is necessary disability-related expenditure.

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

3.6.2 The consultation findings appear to show that people would prefer to leave the treatment of benefits unchanged from its current form. By retaining the current approach, people 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 A.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 might be favoured by people 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. It would put at risk the Council's ability to provide care to people who require it. This approach 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 A.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 people in payment at the higher rates, it is estimated that this option could increase potential income levels by anywhere up to approximately £1.86m. However, **this figure needs to be considered with considerable caution** given that the Council is currently only able to estimate the number of people in receipt of a higher level disability benefit payment and in addition would need to apply discretion where:

- a) People accessing our services 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 person 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.

3.6.6 It should be noted that one further 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 the higher of enhanced disability benefits). The policy sought to consider the higher benefit rates, and only allow for the minimum level of Minimum Income Guarantee (MIG) 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.

3.6.7 The following options have been identified for consideration, in relation to charging for appointeeship:

B.1) To continue offering the appointee service internally, at no cost

B.2) To switch to an external third party provider, at no cost

B.3) To introduce a charge for appointeeship, at the rate specified within the consultation

B.4) To introduce a charge for appointeeship, at a rate lower than that specified within the consultation

Option B.1: To continue offering the appointee service internally, with no charge:

3.6.8 The consultation offered no objections to the current service, but this would mean the budget pressures on the council would continue. In addition, no enhancement to the current service would be possible, in contrast to utilising an external provider for the more complex elements required.

Option B.2: To switch to an external third party provider, with no charge:

3.6.9 This option would have a considerable impact on the Councils budget as it would require the Council to subsidise any additional resources/expenditure required. It would benefit people accessing appointeeship as they would gain access to all the added benefits of using an external provider, but this would be entirely at the Councils cost.

Option B.3: To introduce an administration charge for appointeeship, at the rate specified within the consultation (The recommended option):

3.6.10 The consultation offered no objections to this arrangement and would result in an additional cost for people using the appointee service (if they have a savings balance of over £1k). It would mean the Council could operate this service on both an internal and external basis with no additional costs, ensuring a consistent service without the need for further reviews in the near future. 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.

Option B.4: To introduce an administration charge for appointeeship, at a rate lower than that specified within the consultation:

3.6.11 Although not as severe financially for the Council as option B.1 and B.2, this would mean an increased cost for both the people accessing appointeeship and the Council. It would also require frequent reviews to potentially increase the charge rate, in the near future.

3.7 Impact for Individuals

People receiving disability benefits

- 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 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.
- 3.7.3 Taking the above guidance forward, any decision to include the care element of any disability benefit at the higher or enhanced rate within an individual's financial assessment would need to be clearly set out within our charging policy document and should cover the approach we would adopt to assess an individual's circumstances and ultimately, grounds (or not) for any discretion around the inclusion of the full benefit level to be applied.
- 3.7.4 There does also remain some further protection for individuals in the form of the 'Minimum Income Guarantee (MIG)' 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 of income 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.

People who use the Council's appointee service

- 3.7.5 All individuals would contribute financially for a service that was previously provided at no cost (if they have a savings balance of over £1k). However, the Council cannot continue to provide this service in the same way without introducing a charge and therefore, the appointee service may not continue to be managed effectively. Also, people would certainly not benefit from additional advice and guidance.
- 3.7.6 Individuals would continue to receive a high-quality service with the additional benefit of having an external agency, if this option is chosen, with the Council acting on their behalf to ensure financial matters are dealt with quickly and accurately.

3.8 Implementation of Changes

- 3.8.1 Subject to the decisions made by the Executive, further work will be required to implement any necessary changes. The main pieces of work are anticipated to be:
- Advising people of any decisions made, via our consultation portal
 - Obtaining details of change of circumstances for all people drawing on non-residential services
 - Reviewing the financial assessments for all affected people, alongside existing care plans as part of the implementation process of this proposed policy change.
- 3.8.2 If a decision was taken to implement the disability benefits proposal, all people drawing on our services 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 individuals are paying an accurate charge, with appropriate discretion applied, where relevant.
- 3.8.3 Initially, resources would be focused on undertaking reassessments for those people receiving the higher or enhanced rates of disability benefits, whose charge could increase as a result of the changes.
- 3.8.4 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 may be offset by the cost of potential additional resources required to support the Financial Operations Team in undertaking work to implement the changes.
- 3.8.5 If a decision was taken to implement the appointeeship proposal, all affected parties would be notified in writing of any changes. It should be noted that many people who access the service may lack capacity to understand the changes being introduced, however, a minimal savings balance threshold of £1k has been identified to protect their financial position. If no objections are received from individuals, the charging would likely commence a month after the date of correspondence. The individual may also opt out of the service altogether if they wish to find an alternative provider to act as an appointee or select a suitable family member or trusted person to act as their lasting power of attorney. The implementation would be handled by BSC, either in-house or in liaison with an external provider.

4. Details of Scrutiny

- 4.1 The ASC Scrutiny Commission are receiving this report on 07.03.24, 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

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. Any impact of introducing this charge on adult social care fee income will need to be monitored.

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 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.

5.2.4 When levying an administration charge the Local Authority should only seek to recover actual internal or external costs incurred.

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

ADDENDUM

- 5.2.6 This report also outlines a proposal to introduce proposed changes to the appointee service by levying an administration charge.
- 5.2.7 In general terms, there a person is in receipt of income from state benefits and has no capital which justifies the appointment of a deputy by the Court of Protection, the Secretary of State for Work and Pensions may appoint someone ('the appointee') to collect such benefit income on their behalf. Where people who access our services lack the mental capacity to manage their own finances (and has neither a person with a registered enduring or lasting power of attorney nor a court-appointed deputy for their property and affairs), the local authority has a duty to assist the person and may perform this duty itself by applying to be appointee.
- 5.2.8 Further to 5.2.3 above, section 1 of the Localism Act 2011 ('LA 2011'), English local authorities have the power to do anything that individuals generally of full capacity may do. The Competence Power in LA 2011 enables authorities to charge on a cost-recovery basis for new or existing services, where there is no pre-existing statutory authority. Accordingly, Council has the legal powers necessary to implement the proposed charge.
- 5.2.9 As set out in Section 3.4.1 herein, the Council has carried out a comprehensive consultation process, in line with the Council's duties pursuant to the Public Sector Equality Duty and the Adult Social Care Accessible Information Standards, to ensure that all stakeholders had an opportunity to provide their view. The survey responses and comments received have been considered, and 'Appendix C – Full Consultation Findings Report' will enable members to consider stakeholder views before deciding whether to adopt the new policy as proposed.

Mark Kamlow, Principal Solicitor, Social Care & Safeguarding. 0116 454 0123

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 the higher rate of all disability benefits where claimed, are taken into account in the financial assessment for non-residential charges and that an administration charge is introduced for adults that use the Council's Appointeeship service.
- 5.4.5 The proposals affect those who are claiming the higher rate of disability benefits and those that use the Council's Appointeeship service, therefore they impact 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, an Equality Impact Assessment (EIA), has been undertaken.

The EIA shows that a number of protected characteristics will be affected by the proposed changes with disability and age being key characteristics. The council has identified that further work needs to be undertaken to ascertain the exact numbers affected by the higher rate of disability benefits being taken into account, as part of the financial assessment. A number of mitigating actions have been identified and these include, directing users of services to organisations that can provide further support and guidance, individuals having the right to appeal council decisions with regard to their financial assessments, with discretion being applied on a case-by-case basis where appropriate. Any equality issues/impacts identified as part of this process, will be need to be addressed as appropriate. The council need to ensure appropriate monitoring systems are in place to ensure individuals are not being disproportionately impacted by the proposed changes and any issues are addressed.

Sukhi Biring, Equalities Officer. 0116 454 4175

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

Appendix B – Consultation Survey

Appendix C – Full Consultation Findings Report

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

Appendix D – Equalities Impact Assessment