

# Adult Social Care Scrutiny Commission Report

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## ***Revision to Charging Policy (ASC Non-Residential)***

Meeting Date: 10 September 2019

Lead director: Ruth Lake

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### **Useful information**

- Ward(s) affected: All
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- Report version number: 1

### **1. Summary**

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

### **2. Recommendations**

- 2.2 The ASC Scrutiny Commission is recommended to note the consultation and make any comments.

### **3. Supporting information:**

#### **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 as part of the Spending Review 4 Programme of £5.7m.
- 3.1.2 These targeted savings included a review of income generation in the form of how Disability Related Expenditure (DRE) and other disability benefits are treated within the Council's Charging Policy. Accordingly, in 2018 the Council undertook a formal consultation covering the treatment of Disability Related Expenditure (DRE) within the financial assessment undertaken for non-residential care service users. ASC Scrutiny Commission received the consultation report at its meeting on 4<sup>th</sup> December 2018. 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 Department is now undertaking a formal consultation to outline proposals for changes to how disability benefits paid by the Department of Work and Pensions are treated within the Council's Charging Policy.

## **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, Disability Living Allowance (Care Component) and Personal Independence Payment (PIP) explicitly. Paragraph 47 within that guidance requires that local authorities must take into account any income from benefits, when considering what a person can afford to pay from their income towards the cost of their care, as part of their financial assessment.

- 3.2.3 Disability benefits are paid by the Department of Work and Pensions 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 (AA) (for over 65's) and Disability Living Allowance - Care Component (DLA) (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 service users at two rates, a lower rate of £58.70 per week (where frequent help / constant supervision is needed during the day or night) and a higher rate of £87.65 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 service users at 3 rates: a low rate of £23.20 per week (where help is needed for some of the day or with preparing cooked meals), a middle rate of £58.70 per week (where frequent help/constant supervision is needed during the day or night), and a high rate of £87.65 per week (where help/supervision is needed during the day and night).

- 3.2.6 The current financial assessment for non-residential care counts the lower rate, up to £58.70 a person receives per week from these benefits as income and is therefore included in the calculation of assessable income for the purposes of assessing a person's ability to contribute towards the costs of the care they receive. If a person receives the higher rate, it is currently disregarded (to the lower rate). 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 from their income the costs of their care needs which are not being met by the local authority.
- 3.2.9 If the AA and DLA/PIP benefits were treated as income in full within the financial assessment then this would affect those service users currently paid at the higher benefit rates. The Council does not record the rate of these benefits for service users (as currently all higher level payments are disregarded to the lower rate), so only rough estimates can be made of the numbers that would be affected by using DWP statistics of cases in payment within Leicester, across the 3 benefit categories.
- 3.2.10 Of the approximate 3,380 service users with a financial assessment for non-residential services, it is estimated that approximately 940 potentially receive the higher level AA or DLA/PIP Care/Daily Living Component. This equates to around 36% of those service users who currently have at least the lower level benefit in their current financial assessment.
- 3.2.11 In the first year, any additional income would be offset by additional costs associated with undertaking updated financial assessments for all those affected.

### **3.3 Impact for Individuals**

- 3.3.1 Of the approximate 3,380 service users with a financial assessment for non-residential services, some 2,710 service users are currently in receipt of some form of Disability Allowance (AA /DLA/PIP Care/Daily Living element) as part of their income calculation within the financial assessment. It is estimated that approximately 940 people receive the higher level AA or DLA/PIP Care/Daily Living Component.
- 3.3.2 The maximum increase in a person's charge would be £28.95 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.
- 3.3.3 However, under these proposals the Council would continue to exercise discretion in its application of this policy change in line with the requirements

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

3.3.4 There does also remain some further protection for service users in the form of the 'Minimum Income Guarantee (MIG)'<sup>1</sup> within the assessment of a person's charge towards their care. The financial assessment is based on a comparison between their total income and an allowable amount that they should be left with in order to meet living expenses. Inclusion of the MIG calculation (also known as 'Protected Income') in the financial assessment should help to ensure any potential increase in charges for local authority arranged care is affordable. Simplified examples of how disability benefits would be treated within a financial assessment under these proposals are shown in Appendix A.

### **3.4 Costs associated with undertaking more re—assessments and appeals**

3.4.1 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.

3.4.2 The re-assessment process is largely an administrative one and would initially involve admin band 3 work in sending out a form to all service users to collect updated details, assisting with basic queries and chasing return of the forms. More detailed queries and issues with completing the form may involve a visit from a Visiting Officer (band 5).

3.4.3 Some Service Users 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 – includes independent review by 2 senior officers. This decision is final.

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

3.4.4 It is difficult to predict the number of people who would request this, but it would result in additional work for financial assessment officers (band 5, 7 or 9, depending on the stage of the appeal).

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

### **3.5 Consultation**

3.5.1 Consultation commenced on 1<sup>st</sup> September 2019 and will continue until 22<sup>nd</sup> November 2019.

3.5.2 Although a period of 12 weeks is no longer mandatory for consultation, it is considered to be appropriate in this instance, given the number of people to be consulted (up to 3,380 service users), and the fact that some consultees may require additional efforts to engage them to ensure the consultation is meaningful.

3.5.3 Staff from the SC&E Commissioning/Projects will manage 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.

3.5.4 Who are we consulting?

The following stakeholders have been identified:

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

3.5.5 How are we consulting?

The following consultation approach is being taken:

- A survey for service users (or carers/relatives where appropriate).
- Holding public meetings to which service users 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 is staffed during working hours to deal with queries;
- Customer Services have been provided with a briefing note and contact details for further information

#### **4. Details of Scrutiny**

4.1 ASC Scrutiny Commission are receiving this report on 10 September 2019, during the consultation period.

#### **5. Financial, legal and other implications**

##### 5.1 Financial implications

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

5.1.2 The proposals in this report would generate up to an estimated £1.3m of additional income from April 2020, based on current caseload. There is a degree of uncertainty regarding the ultimate savings figure that could be achieved as any finalised income projections would be subject to:

- a) The number of service users getting the higher rate of disability benefits. This has had to be estimated based on overall city eligibility figures from the DWP, including non-Council service users.
- b) The extent of the night time care provided privately for services users at a cost and which would need to be disregarded in the financial assessment.

5.1.3 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.

5.1.4 The SR4 programme includes £800k pa of target savings from April 2020.

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

## 5.2 Legal implications

- 5.2.1 This report puts forward a proposal to take the higher rate of disability benefits for Attendance Allowance, Disability Living Allowance (Care Component) and Personal Independence Payment (PIP) where claimed, into account during the financial assessment for non-residential charges.
- 5.2.2 Sections 14-17 of the Care Act 2014 enables the Council to decide whether or not to charge a person when arranging to meet their care and support needs or their carer's support needs in a non-residential setting. Where the Council exercises its discretion to charge, it must follow the Care and Support (Charging and Assessment of Resources) Regulations 2014 and the Care and Support Statutory Guidance.
- 5.2.3 Annex C, paragraph 47 of the Guidance allows the Council to consider higher rate disability allowances when assessing a person's financial contribution towards their care in non-residential settings, when considering what a person can afford to pay from their income towards the cost of their care. If the full amount of benefit is to be taken into account for the purposes of a financial assessment, then it is crucial that there is careful application of what is considered to be necessary for that specific service user. The local authority must disregard expenditure to meet any disability related needs they are not meeting, with discretion applied accordingly.
- 5.2.4 Whilst risks have been highlighted it is important to note that the Council retains discretion in respect of its charging policy and must not apply a blanket policy to charge where circumstances would deem it unreasonable to do so. This would need to be assessed on a case by case basis.
- 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 during the consultation and thereafter.

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

## 5.3 Climate Change and Carbon Reduction implications

None identified.



## 5.4 Equalities Implications

- 5.4.1 When making decisions, the Council must comply with the Public Sector Equality Duty (PSED) (Equality Act 2010) by paying due regard, when carrying out their functions, to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people who share a 'protected characteristic' and those who do not.
- 5.4.2 In doing so, the council must consider the possible impact on those who are likely to be affected by the recommendation and their protected characteristics.
- 5.4.3 Protected groups under the Equality Act 2010 are age, disability, gender re-assignment, pregnancy/maternity, marriage and civil partnership, race, religion or belief, sex and sexual orientation.
- 5.4.4 The report sets out proposals for the higher rate of all disability benefits, where claimed, are taken into account in the financial assessment for non-residential charges and that the charging policy be amended to reflect this. The formal consultation underway needs to ensure equality considerations have been taken into account.
- 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. In order 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.
- 5.4.6 The consultation findings should seek to establish whether there would be any disproportionate negative impacts on particular protected characteristic groups and what the impacts would be specifically. Where there are disproportionate negative impacts for particular protected characteristic/s case mitigations to reduce or remove the impact should be identified and implemented.
- 5.4.7 The equalities monitoring undertaken as part of the consultation, should be used to inform the equality impact assessment, which includes peoples' views with regards how the proposals are likely to affect them, can be fully explored by protected characteristic. It will also be useful to ensure that a representative sample of views from those who are currently eligible, or representatives/ carers of those who are eligible, have been sought.

Sukhi Biring, Corporate Equalities Officer, ext. 374175

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