

## **Title of report: Care and Support Charging Policy**

**Meeting:** Adults and Wellbeing Scrutiny Committee

**Meeting date:** Monday 7 March 2022

**Report by:** Cabinet member health and adult wellbeing;

### **Classification**

Open

### **Decision type**

This is not an executive decision

### **Wards affected**

(All Wards);

### **Purpose**

For the Adults and Wellbeing Scrutiny Committee to consider and comment on the proposed changes to the care and support charging policy.

### **Recommendation(s)**

**That:**

That the Committee:

- a) Considers and comments on the proposed changes to the care and support charging policy
  
- b) Considers any recommendations it wishes to make to the Executive

### **Alternative options**

1. Continue with the current policy. This could leave the majority of service users with insufficient disposable income for living costs, it fails to address inequitable application of discretionary income disregards and the complex approach to charging for short stays in a care home.

2. Allow an additional percentage of disposable income to be retained. This is rejected on the basis that the policy provides a minimum income guarantee (MIG) that is above the levels set in the care and support (assessment of resources) regulations 2014 and currently published by the Department for Health and Social Care (DHSC). It also ensures that after paying for care people are left with sufficient income to meet any household expenses (such as council tax and rent) and disability related expenses, and provides an income guarantee that is 25% above the income guarantee in Department for Work and Pensions income related benefits. If 90% of disposable income was included in the financial means-test in addition to the proposed MIG, this would benefit all charge payers but cost the council an additional £498,000 per annum.
3. Apply an income disregard to all enhanced disability benefits equivalent to the disregarded amount for Disability Living Allowance and Attendance Allowance benefits (currently £29.60 a week, increasing to £30.55 from 11 April 2022). This would ensure that the treatment of income from disability benefits is equitable but will result in a loss of budgeted income circa £661,000 based on the current cohort of service users.

## Key considerations

1. The care and support charging policy was last reviewed in 2016. A Key Cabinet Member decision was taken on 30 March 2016.
2. The amount of financial support a person may get is based on individual circumstances. A financial assessment or means-test works is undertaken to work out how much people pay for care. Some people don't have to pay anything because of the type of service they receive, or because the financial assessment shows they can't afford to.
3. There are different rules for charging for care depending on whether a person is receiving care in a care home, or in their own home or other setting. Central government decides how councils must charge for care in a care home, and each council must have its own policy for charging in other settings, but must still follow the regulations and guidance set by government.
4. Currently around 78% of people in Herefordshire who receive council funded care and support in the community or at home pay towards it, around 22% do not have to pay following a financial assessment.
5. Statutory guidance states local authorities may choose to disregard additional sources of income, set maximum charges, or charge a person a percentage of their disposable income for people receiving care in the community, but this should not lead to two people with similar needs, and receiving similar types of care and support, being charged differently".
6. Herefordshire's current care and support charging policy disregards disability benefit income paid for night time care when the council only provides care during the day, it sets maximum service charges for home care based on the lower urban rate paid to care providers regardless of whether the service user lives in an urban or rural area, and takes 100% of disposable income into account.
7. The care and support (assessment of resources) regulations 2014 state a person must be left with a minimum income guarantee (MIG) after paying charges for care to pay for daily living costs. The Department for Health and Social Care (DHSC) publishes this amount every year. Current figures can be found [here](#). At the time of drafting this report the amounts for 2022/23 have not yet been published.

8. Statutory guidance requires local authorities to consult people with care and support needs when deciding how to exercise discretion. In doing this, local authorities should consider how to protect a person's income. The government considers that it is inconsistent with promoting independent living to assume, without further consideration, that all of a person's income above the minimum income guarantee (MIG) is available to be taken in charges.
9. A full review of the policy has been undertaken to ensure it continues to be compliant with the Care Act 2014 regulations and statutory guidance, and to make sure we are taking a fair and consistent approach to charging for care, where everyone pays the appropriate amount for the services they receive, based on their needs and their ability to pay.
10. A benchmarking exercise has also been undertaken to see how Herefordshire's approach to charging compares to other areas in the region. The results can be found at appendix 1. These show that the majority of local authorities currently apply the MIG rates set by the DHSC, and those that do not use means tested benefits with a 25% buffer. None apply an overall maximum charge, and the majority take 100% of disposable income into account.
11. Four proposals to change the policy approach to charging are recommended and have been consulted upon. Details of the consultation can be found [here](#). It is recommended that the fifth proposal is not taken forward as this would affect a very small minority of charge payers. Analysis of the consultation responses is set out at appendix 2 and full details of each proposal and recommendation can be found at appendix 3.

A summary of each recommendation is presented below:

- 11.1 Recommendation 1: Increase the minimum income guarantee amount (MIG) a person is left with after paying for care in line with national means-tested benefits with an additional 25% buffer.** The MIG is set in Care Act regulations that came into effect in April 2015. It was originally based on Department for Work and Pensions (DWP) pension credit and income support benefit rates with an additional 25% buffer. However as it has been frozen by DHSC since it became law the buffer has eroded to 13.8% for pension age people and 22.8% for working age people. This recommendation restores the buffer to 25% for 2022/23 and future years.
- 11.2 Recommendation 2: Set the minimum income guarantee amount (MIG) for working age people under 25 to the same level as the MIG for working age people aged 25 and over.** The Care Act regulations set a lower minimum income guarantee for working age people under 25. Currently this is £19 per week less the MIG for those aged 25 and over. This recommendation provides the same level of income protection for all working age people receiving social care services.
- 11.3 Recommendation 3: Remove the discretionary income disregard applied to Disability Living Allowance and Attendance Allowance paid at the high rate and replace it with an allowance for any disability related expenses paid for private care.** The care and support statutory guidance allows local authorities to take all disability benefit income paid for care into account when setting care charges, provided that an allowance for disability related costs is made, this includes payments for private care. Currently Herefordshire's policy disregards the value of any disability benefits paid for night time care if the council is only providing social care support during the day. This disregard (currently £29.60 a week) is applied regardless of whether the person pays for night time care. However, as most people of working age with disabilities now receive personal independence payment and this benefit doesn't differentiate between day and

night time needs, this disregard is not applied. Removing this discretionary disregard will ensure that people in receipt of disability benefits of all ages will be treated equitably, but those that don't pay for night time care may pay more. Approximately 300 people could be affected adversely from this proposal.

- 11.4 Recommendation 4 : Charge for short stays in a care home (sometimes called respite care) for up to 8 weeks over a year under the same rules as paying for care and support in own home, or in the community.** Central government decides how councils must charge for care provided in a care home, but the care and support statutory guidance gives local authorities discretion to charge people for short stays in care home under the same rules as charging for care in their own home or in the community. This recommendation makes charging for short stays simpler to administer, provides a consistent approach to charging, and removes uncertainty about charges applied for part of a week, which will subsequently reduce invoice disputes.
12. If all of the proposals outlined in this report went ahead we expect 73% of people who are currently paying for care and support at home or in the community will have a reduction in charges, 8% of those people will no longer have to pay for care, and 27% may have an average increase in charges of circa £6 a week based on current circumstances.
  13. Currently around 22% of people receiving care and support at home or in the community don't pay towards it following a financial assessment, 24% of these people may have to pay towards their care and support as a result of these proposals. These people will have a full financial review of their circumstances to establish their charges.
  14. The current policy to not set an overall maximum charge for care will remain, but the policy will be updated to make clear the reasons for taking this approach, i.e. currently only 0.35% of charge payers pay a weekly charge for care at home or in the community which is on average £16 a week higher than the usual cost the council pays for residential care in a care home. Furthermore as the council is receiving more requests from self-funders to arrange care and support for them at home, setting a maximum charge would result in them receiving subsidised services.
  15. When a financial assessment is undertaken for people receiving care and support services, any council tax liability they have after applying council tax reduction scheme entitlement is taken into account as a household expense when calculating how much they should contribute towards their care. It is important that any payments made to council tax payers resulting from the central government response to support households with rising energy costs are disregarded so the charging policy will be updated to ensure households receive the full benefit from this.
  16. Following the decision the council will be writing to all people currently receiving care and support services, or their financial representative or advocate, who will be affected. The letters will inform them of the amount they should contribute as well as how the charge has been calculated, and how they can ask for a review of their assessment if their circumstances have changed. The letters will also explain their right to appeal against the charges, how they can make an appeal, and request the information in a different format.
  17. The impact of these proposals will be monitored through the directorate management team on a monthly basis, including any trends in appeals and service charge debt.

## **Community impact**

18. Currently around 78% of Herefordshire people who receive council funded care and support at home or in the community are paying towards it, and 22% do not have to pay following a financial assessment.
19. In the last financial year Herefordshire Council spent just over £29million providing care and support to almost 1,900 people in their own home or in the community, including people who had direct payments to buy their own care, and it charged just over £4.1million in service user contributions towards that cost.
20. In 2019 there were an estimated 84,000 households in Herefordshire, 16.5% of which were in fuel poverty (13,900); a higher proportion than in England as a whole (13.4%). The majority of households affected by fuel poverty live in rural areas.
21. A report by BRE conducted on behalf of Herefordshire council in 2019 found that higher concentrations of private sector households in fuel poverty are found in the more rural parts of Herefordshire. There are noticeably lower concentrations around urban areas, particularly around the outskirts of Hereford.
22. Financial assessments to establish care charges take into consideration any excessive fuel costs due to someone having a disability, and an allowance is made for any costs that are above average. Currently only 7% of charge payers have an allowance for excessive fuel costs that are above average.
23. It is recognised that a small number of services users (28) may face increased charges of approximately £23 per week as a result of these proposals. These individuals will be offered a full review of their financial assessment to ensure charges reflect their current circumstances and any disability related and household costs they have.

## **Environmental Impact**

24. Herefordshire Council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.
25. The consultation documentation was restricted to a single page letter sent by post inviting service users to complete the consultation on-line, with an offer to talk through proposals by phone. This saved sending out lots of paper to each household. Paper copies of the survey were posted to those that requested one. 69% were completed on-line.
26. If approved, the recommended policy changes will be applied at the same time service users are informed of their annual re-assessments to save multiple letters being sent.

## **Equality duty**

27. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
28. The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine 'protected characteristics' (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes.
29. Where a decision is likely to result in detrimental impact on any group with a protected characteristic it must be justified objectively. This means that attempts to mitigate the harm need to be explored. If the harm cannot be avoided, the decision maker must balance this detrimental impact against the strength of legitimate public need to pursue the service change.
30. An equality impact assessment (EIA) has been undertaken and some potential negative impacts have been identified due to regulations. Details of these, including actions being taken to mitigate the possible impact can be found at appendix 4. These will be monitored three months post implementation and reported to directorate management.

## **Resource implications**

31. The costs and impact of the recommendations as shown below are based on the current cohort of service users and their current circumstances with an assumption that benefit and pension income from 11 April 2022 will be inflated by the same percentage as the minimum income guarantee (MIG).
32. Increasing the minimum income guarantee (MIG) in accordance with recommendation 1 will increase community wellbeing directorate costs by £975,000. The minimum income rates for 2022/23 can be found at appendix 7 and the financial impact on charge payers is available at appendix 8.
33. Additional increases to the MIG for working age people under 25 in accordance with recommendation 2 will cost the community wellbeing directorate an additional £68,000. The financial impact on charge payers can be found at appendix 8.
34. It is estimated that removing the discretionary income disregard from disability related benefits paid for night time care and replacing with disability related expenses paid for private care will generate a saving of £510,000.
35. The combined financial impact on charge payers of the above can be found at appendix 8.
36. The changes to the approach for charging for short stays in care homes will cost the community wellbeing directorate an additional £63,000.
37. The overall financial implications for the proposed changes is a budget pressure for the community wellbeing directorate of £596,000 (which has been included within the budget approved by Full Council on 11 February 2022).

<b>Revenue budget implications</b>	<b>2022/23</b>
<i>Increasing the MIG in accordance with recommendation 1</i>	975,000
<i>Additional increases to the MIG for working age people under 25 – recommendation 2</i>	68,000
<i>Removing the discretionary income disregard – recommendation 3</i>	(510,000)
Changes to charging for short stays – recommendation 4	63,000
<b>TOTAL</b>	<b>596,000</b>

## **Legal implications**

38. The Care Act 2014, provides a legal framework which allows the Council to charge for Adult Social Care, namely Section 14 of the Care Act provides Local Authorities with the power to ask adults to make a contribution for the cost of their social care. Section 17 of the Care Act allows Local Authorities to carry out a financial assessment to determine the amount a customer can afford to contribute towards the care services they receive.
39. Any policy must also take into account the Care and Support Regulation and Care and Support Guidance and Annexes issued under the Care Act 2014. Part 2 of the 2014 Regulations governs the power of local authorities to charge for care and support, and identifies services which cannot be charged for.
40. The role of the Scrutiny Committee, in accordance with Article 6 of the Constitution, is to oversee and scrutinise the work of the council as a whole. Section 4 sets out the power that the committee has, which with regards to this report, relates to the directorate budget and policy framework

## **Risk management**

41. The costs and impact of these recommendations is based on the current cohort of service users with an assumption that there will be a 3.1% inflationary increase to benefit and pension income from 11 April 2022 with an equivalent increase to the minimum income guarantee (MIG) from the same date. As the cohort of service users, and their financial circumstances will change over time this could result in uncertainty as to the impact on charges which will be kept under review and addressed accordingly.
42. The Department for Health and Social Care hasn't published the MIG rates for 2022/23 but central government has indicated that an inflationary increase will be applied to the current MIG levels that have been frozen since 2016. If the DHSC publishes MIG rates that are higher than the proposed rates, the rates set by DHSC must be applied and will have an adverse effect on the community wellbeing directorate budget for 2022/23.
43. As the financial means test to establish care charges takes into account council tax and rent paid net of any benefits, the charges for 2022/23 cannot be concluded until people's council tax and rent increases have been applied for 2022/23. This information is usually available towards the middle of March. Any delay in receiving this information will have an adverse impact on the ability to re-assess care charges and notify service users by 11 April 2022 when the changes outlined in this report come into effect.
44. Regular budget control meetings give assurance on the robustness of budget control and monitoring, highlight key risks and identify any mitigation to reduce the impact of pressures on the council's overall position.

45. Failure to consult in a genuine and meaningful way on proposed policy changes could result in the council being subject to judicial review.

<b>Risk / opportunity</b>	<b>Mitigation</b>
Financial: DHSC publish MIG rates at a different level than expected.	Timely budget monitoring and control and appropriate action.
Reputational: There may be adverse responses from those facing increases in charges resulting in negative publicity	Make sure individuals are informed of their right to request a review and appeal charges. Where charges are increasing significantly invite them to have a full review of their financial assessment.
Legal: Failure to consult in a genuine and meaningful way could result in a judicial review.	Engagement has been conducted using a variety of methods to ensure people are fully informed of the proposals and given the opportunity to ask questions and give their views
Legal: Risk of judicial review under equality legislation.	An equality impact assessment to identify any negative impacts and mitigation has been undertaken.

46. Working on the assumption that the recommendation(s) will be approved, the reputational and financial risks will be managed at a service and directorate level, the legal risks will be managed at a corporate level.

## Consultees

47. Initial engagement was undertaken over a two week period by seeking views on the current approach to charging with a selection of service users of mixed ages and disabilities, along with family members, carers, and key workers from local organisations who support service users day-to-day over a 2 week period. A summary of key comments and themes can be found at Appendix 6.
48. All current service users received letters inviting them to take part in a consultation on the proposed charges that ran from 15 December to 10 February 2022. The letters included contact details for a help-line and email account that people could use to ask questions, request a meeting with their community group, or request the consultation questionnaire in a different format.
49. Over 61 responded to the questionnaire (69% on-line, 31% by paper) and 66 people made contact by phone or email (21 service users, 45 family members or representatives). A summary of responses and key themes can be found at Appendix 5.
50. A Political Party Consultation has been drafted and commenced on 21 February 2022.
51. Feedback will be given to consultees through the consultation page on the council website and a link to this information will be sent out with letters notifying service users of their charges for 2022/23.



## Appendices

- Appendix 1 Regional benchmarking
- Appendix 2 Consultation report
- Appendix 3 Recommendations
- Appendix 4 Equality Impact Assessment
- Appendix 5 Consultation summary
- Appendix 6 Engagement responses
- Appendix 7 Minimum Income Guarantee rates 2022/23
- Appendix 8 Impact on weekly charges

## Background papers

None

## Report Reviewers Used for appraising this report:

Please note this section must be completed before the report can be published		
Governance	Joanna Morley	Date 21/02/2022
Finance	Kim Wratten	Date 24/02/2022
Legal	Sam Evans	Date 24/02/2022
Communications	Luenne Featherstone	Date 21/02/2022
Equality Duty	Carol Trachonitis	Date 21/02/2022
Procurement	Lee Robertson	Date 21/02/2022
Risk	Paul Harris	Date 23/02/2022
Approved by	Paul Smith	Date 24/02/2022