



DERBY CITY COUNCIL

COUNCIL CABINET 23 November 2010

Report of the Strategic Director of Adults, Health & Housing

Fairer Contributions Policy

SUMMARY

- 1.1 All councils have discretionary powers to charge for community based care services. Derby City Council took the decision to re introduce charges from January 2009.
- 1.2 The introduction of personal budgets in adult social care requires Councils to amend their charging policies to fit into the new system of delivering care services.
- 1.3 In addition, the austerity measures the Council is facing requires that it maximises its income from discretionary charging.
- 1.4 This report outlines the current charging policy for care services and proposes a range of changes to incorporate personal budgets, generate additional income and tackle the inequalities in the current policy between different services and service user groups.
- 1.5 The impact of the changes on existing service users is concentrated on a minority of service users, where the increased charges would be considerable but would be assessed as now on the ability to pay. There is potential to raise an additional £1.5m in income in a full year of operation, although less than this – around £1m – is anticipated at this stage.
- 1.6 In light of the above impact, officers are proposing short term transitional protection for people currently in the system whose charges may rise more steeply.
- 1.7 A full public consultation is required and it is proposed that this is run jointly with the consultation on changes to the *Fair Access to Care Services* eligibility criteria.
- 1.8 Following consultation, an analysis of responses shall be provided to Cabinet at point of decision together with service user impact and an equalities impact assessment.

RECOMMENDATION

- 2.1 Council Cabinet approves a full public consultation on changes to the Fairer Charging policy as detailed in the supporting information.

- 2.2 Council Cabinet note that a further report shall be brought to March 2011 Cabinet detailing the results of the consultation, recommendations and impact assessments.

REASON FOR RECOMMENDATION

- 3.1 The Fairer Charging policy in its current form does not comply with the new system of delivering social care services through the medium of personal budgets.
- 3.2 The current charging policy is inequitable across different services and service user groups.
- 3.3 Additional income is required from discretionary charges due to the financial constraints the Council is facing due to the economic climate.
- 3.4 There is a legal requirement to consult with the public on any substantial change to the fairer charging policy for adult social care services.

SUPPORTING INFORMATION

Background

- 4.1 Councils have a discretionary power to charge for non-residential services. "Fairer Charging" is the title given by the Government to the guidance it issued in 2003 to assist local authorities in exercising these discretionary powers. These must conform to Department of Health guidance and be fair and reasonable. "Fairer" contributions" is further guidance issued last year (2009) in relation to personal budgets.
- 4.2 This paper deals with the need to consult with the public prior to giving consideration to making changes to the policies under "Fairer Charging". The proposed changes arise from (i) the introduction of personal budgets, (ii) the inequality of the existing policy and (iii) the austerity measures the Council is facing in its budgets for 2011/12 and beyond. This necessitates the collection of additional income. This paper outlines the options for how the policy may be amended to incorporate personal budgets, make it more equitable and raise additional income.
- 4.3 In the current economic climate and alongside a commitment from the new Government that there will be no council tax rises next year with the certainty that councils will be asked to further reduce their spending, it appears that the options open to the Council are quite limited.
- 4.4 In September of 2008 Council Cabinet approved the introduction of non residential charging for care and support services from January 2009.
- 4.5 The Fairer Charging guidelines for local authorities have the following main attributes:

- The financial assessment of a service user's ability to pay charges has regard to the effect of the charge on the service user's disposable income
- Charges should not reduce service users' income below basic levels of Income Support, plus a margin of 25%
- A specific assessment of each service user's disability related expenditure is made if it is proposed that disability benefits are taken into account as income
- Councils should provide benefits advice at the time of an assessment of ability to pay charges
- Earnings should be disregarded in assessing ability to pay a charge, as a means of removing a barrier to work for disabled people
- Where a person is receiving a number of services to which 'Fairer Charging' is being applied, charges for all these services must be brought together for the purpose of a financial assessment
- With the exception of ordinary daily living costs (e.g. meals), charging for services on a flat rate basis is disallowed.

4.6 The fairer charging system gives local authorities a framework that, whilst not being totally prescriptive, provides a structure that offers reasonable consistency of treatment for non residential service users across the country. More importantly the system creates a range of measures that protects people from not having an income level that is insufficient to support their essential everyday living needs.

4.7 The main attributes of the current charging system for community based services in Derby are as follows;

- The charge for homecare services and direct payments is £8.00 per hour.
- The charge for day care services is £6.00 per day.
- Transport to day care is charged at £3.00 per day.
- Meals are charged at £3.00 each. This is a flat rate charge for everybody purchasing a meal i.e. it is not means tested.
- There is a maximum weekly charge of £80 per week.
- People with savings above £23,250 are required to pay beyond the £80 maximum if their volume of service merits this.
- People who choose not to disclose their financial information are treated as having savings in excess of £23,250.
- People who are in receipt of a disability related benefit are provided with a disability related expenditure allowance of £24 per week but can request a full disability related expenditure assessment, if they feel the standard amount is insufficient to cover their weekly disability expenditure.
- The reablement homecare service is free of charge for the first 4 weeks.

4.8 The charging profile of existing adult social care service users is illustrated below;

Service Users Category	Number	Proportion
Paying above £80 per week.	71	3%
Paying assessed charge below £80 per week.	1147	49%
Paying no Charges	1128	48%
Total	2346	100%

A New System - Personal Budgets

- 4.9 As described above Councils have typically set a service user's charge for community based services on the number of units of different types of community care services they have received e.g. home care hours. In the future, people will have the option to take a personal budget in a variety of forms. With those personal budgets that are taken as direct payments as opposed to commissioned services, the individual may purchase different types of community care services, and these services may not correspond with the typical service classifications used by the Council.
- 4.10 What this necessitates is a move away from a charging system based upon units of service. Recent guidance published by the Department of Health on this subject advises Councils to move to a charging system based upon a proportion of the personal budget allocated to the individual. This would mean that the Council could set a proportion of the personal budget to charge against depending on whether the Council wished to subsidise community based social care services or not. This system would then be underpinned by the fairer charging guidance on assessing someone's ability to pay the contribution, in the way it operates currently.
- 4.11 e.g. Mrs Smith is a new service user. Following the finalisation of her support plan her final personal budget is agreed at £200 per week. For charging purposes the Council has decided on a subsidy element of 20%. The actual chargeable maximum amount for this individual is;
- | | |
|------------------------------|------|
| Final Agreed Personal Budget | £200 |
| Subsidy Element 20% | £ 40 |
| Chargeable amount 80% | £160 |
- 4.12 £160 becomes the theoretical maximum weekly charge for Mrs Smith. Having established this position the usual approach to the charging policy now applies i.e. Mrs Smith undergoes a financial assessment to see how much she can afford to contribute towards the maximum charge of £160.
- 4.13 It is important to remember that the affordability test outlined in the fairer charging guidance shall still apply to all personal budget holders. Only those people who can afford to pay under the rules shall pay towards the cost of their care.
- 4.14 It is proposed that in any revised charging policy the Council moves to charging against a proportion of an individuals Personal Budget.

Subsidising Cost of Services.

- 4.15 The Council's current policy is to subsidise community based services for all who are eligible for such social care services. This applies to all people whether or not they have considerable savings or high weekly income because the charges levied are well below the cost of the service provision.
- 4.16 The existing charging system provides differing levels of subsidy for day care and home care service users relative to the cost of those services. As an example the subsidy in the home care service for an older person is approximately 30% whereas for a day service user it is approximately 70%. In addition, the subsidy levels across different service user groups for the same service are different. E.g.

older people day care and learning disabled day care where subsidy levels are approximately 70% and 90% respectively. This situation is inequitable and untenable in the future.

- 4.17 There are other mechanisms in the charging policy such as the maximum charge and the application of the fairer charging guidance that effectively “subsidise” services for people and protect those on low incomes and those with high support needs.
- 4.18 It is proposed that in any new charging policy for community based services the subsidy element is removed to make charging equitable for all service users. The charge shall then be entirely based on ability to pay. No subsidy would be offered.
- 4.19 The regional subsidy picture is still emerging and the information available to date is detailed below. These are current policies before consideration of the impact of funding reductions.

Local Authority	Subsidy Element
Derby City	£8 an hour charge for homecare Proposal to consult on implementing a 0% subsidy
Derbyshire County	No charge for homecare Consulting on implementing a minimum 50% subsidy
Leicester City	0%
Leicestershire County	17%
Lincolnshire County	£10.50 an hour charge for homecare Consulting on implementing a 10% subsidy
Nottingham City	£9.20 an hour charge for homecare
Nottinghamshire County	0%
Northamptonshire	Use a complex banded charging framework where people are charged a flat rate depending on the type of benefits they receive. For instance, people on means-tested benefits contribute a maximum of £30.50 per week.
Stoke-on-Trent	20%

Reviewing the Council’s subsidy element will bring us in line with other authorities.

- 4.20 Linked to the general subsidy issue is the policy of allowing those people with more than £23,250 in savings in receipt of community based services to receive a subsidised service. This again is inequitable in relation to those people who need residential or nursing care in a home. The charging guidelines for residential services require individuals to fund 100% of their care privately if they have savings above the capital limit above. It is proposed that a similar approach is taken in the Council’s charging policy for community based services. The vast majority of Councils already adopt this approach. This promotes equity of treatment for individuals across different service types.
- 4.21 There is a requirement on the Council to maximise its revenue from discretionary charging. Local Authority Circular LAC (94) (1) states: -

“Any Authority which recovers less revenue than its discretionary powers allow, is placing an extra burden on its population or is foregoing resources which could be used to the benefit of the service”.

- 4.22 The current economic climate, which shall require councils to take significant austerity measures, necessitates that councils should maximise their discretionary income. This will prevent eligibility criteria changes leading to the majority of citizens with all but critical levels of social care needs being designed out of the system.

Scope of Charges

- 4.23 Historically the Council has only charged for a very limited range of community based services. Understandably charging has been linked predominantly to services where units of service have been readily identifiable. Again this is inequitable and cannot be sustained in the future in a personal budget system because:

- Services purchased shall become more diverse.
- Individuals will have more flexibility to chop and change services to meet their needs on a daily or weekly basis.
- In such a system the cost of managing a charging policy on the basis of services purchased would be prohibitive for the Council and bureaucratic for service users to the point of being unmanageable.
- The central issue about equity remains that charging for some services and not for others is patently unfair on groups of service users.

- 4.24 As personal budgets are rolled out to more and more individuals then everyone will be charged accordingly based upon their ability to pay, irrespective of the service chosen to meet those needs. For clarity this means that services that are currently not charged for shall be included in the scope of the charging policy i.e.

- All mental health social care services, except those that are provided under Section 117 of the Mental Health Act.
- Social care services that offer training and preparation for employment opportunities.
- Supported living services for younger disabled people.
- Support services for people with physical and sensory disabilities.

- 4.25 Many of the services users in receipt of the above services who are currently in the system would face being charged for the first time dependant on the approach to implementation of any revised charging policy. It is not possible to quantify the number of people who may be affected as little is presently known about these individuals' financial circumstances. However, it must be noted that anyone in receipt of minimal state benefits is unlikely to have to contribute significantly towards the cost of their care.

Exemptions from Making a Contribution

- 4.26 Some services and service user groups are exempt from making a contribution due to government guidance and regulations. These are as follows:

- Community equipment and minor adaptations provided in line with the Community Care (Delayed Discharge) Act 2003
- Intermediate Care for a period of up to six weeks
- The cost for the assessment of need.

- The cost of administering the charging regime.
- People with mental health problems receiving social care services specifically as part of Mental Health Act Section 117 aftercare plan.
- People receiving non-residential social services who are suffering from any form of Creutzfeldt Jacob Disease (CJD)

4.27 The Council has also excluded from charging services provided directly to support carers in their caring role, in recognition of their vital and unpaid contribution. Officers are not proposing to make any change to this policy.

4.28 It is also proposed to retain the reablement service as a free of charge service for all eligible service users up to a maximum of 4-6 weeks. This shall give individuals an opportunity to minimise their ongoing support needs with intensive short term support from the Council. This aspect of the policy shall promote our approach to providing tertiary level prevention services.

Reviewing the Upper Limit on Charging

4.29 In the current system there is an upper limit on the charge for community based services for people whose savings are below the prescribed capital threshold. This charge was set by the Council at £80 per week. The reason for this is that the Council will not then disproportionately financially burden those individuals receiving the highest levels of service because they have complex needs. i.e. a tax on disability. The maximum charge was originally set at 10 hours of care per week at the subsidised hourly rate charged.

4.30 A range of maximum charges are detailed below from neighbouring authorities. Clearly these charges are for 2010/11 and are subject to review by many in the face of austerity measures that face all councils generally.

Local Authority	Max Charge £ p/w 2010/11
Nottingham City	£81
Nottinghamshire County	£125
Leicester City	£203
Leicestershire County	£184
Lincolnshire	£126 (consulting on raising this to £250)
Stoke-on-Trent	£132
Staffordshire	£144

4.31 It is proposed that the maximum charge is raised to £125 on the basis that would still be a regionally average figure for a maximum charge amount and still approximately equate to ten hours of care at a non subsidised rate.

Initial Impact Assessment.

4.32 The range of proposals outlined above will have the following effect on service users currently in the system:

Number of service users	Range of Increase £'s per week	% of Service Users	Potential additional income
1688	No Increase	72.0	Nil
39	£0 to £5	1.7	£5k
73	£5 to £10	3.1	£30k
114	£10 to £20	4.9	£90k
194	£20 to £40	8.3	£285k
78	£40 to £60	3.3	£200k
160	Over £60	6.8	£950k
2346	Total	100%	£1560k

- 4.33 As can be seen from the above table, the majority of service users will pay no more than they do now. At the other end of the spectrum, there are 432 users (18.4%) who would face an increase in excess of £20 a week in their contributions. Within this group, there are 160 users who would potentially face increases of over £60 a week in line with their current financial assessments, where the majority of the increased contribution would result. Such increases are likely to affect service users significantly to the degree that they may wish to reassess their current provision. There is clearly a need to consider these cases further as part of this consultation. It is expected that the additional income actually raised may well be less than the full amount as a result. It would appear at this stage that income may increase by around £1m a year.
- 4.34 Some service users are assessed under our means test to pay no contribution – where their income is less than income support plus 25% as set out in fairer charging guidance they will make no contribution unless they have significant capital assets. Whatever we charge will make no difference to them as their financial situation will not improve. Indeed one concern about welfare reform is that in the longer term there will be impacts on our ability to collect contributions – we are assuming for now that the assessments system is reasonable and affordable. In future it may become less so. For now we have assumed no loss of income from that issue.

Transitional Protection

- 4.35 The change in policy will mean that some people will have to pay more than they currently pay for their existing service due to the removal of the subsidy element.
- 4.36 The national guidance requests Councils consider how to protect those people from hardship where they would experience an increase in their contributions. There is no guidance as to how this might be done, or the parameters for applying a transitional arrangement.
- 4.37 It is proposed that where charges for individuals currently in the system increase by more than £20 per week they are offered transitional protection for a period of 3 months except those with savings in excess of £23,250.

- 4.38 Those having assets over £23,250 are expected to pay full 'cost' without any cap on their contribution. At the moment though the cost is assessed as around 60% of the actual cost for home care (£8/hr out of average £14) and 30% of the cost of day care (£12 out of £36). It is this subsidy that is being withdrawn so that service users that have more than IS plus 25% (not an extremely generous amount) contribute to their costs.
- 4.39 The estimated cost of the protection for such individuals for 3 months is £220k.
- 4.40 The scale and complexity of this consultation must not be underestimated. It is also highly likely to elicit negative views about the Council's proposals.

Public Consultation.

- 4.41 Prior to any of the policy changes above being introduced there is a requirement to consult with various stakeholder groups to ascertain their views on the proposals.
- 4.42 The consultation exercise shall be complex and shall be delivered through a variety of mediums. There are many interest groups with views about the proposed changes to the charging policy. In addition, to consult effectively with vulnerable service user groups who will have communication and comprehension challenges, on what is a complex subject, will require significant resource input. It is proposed a joint consultation is carried out with the proposal to raise the *Fair Access to Care Services* eligibility criteria to Substantial and Critical from Moderate.
- 4.43 A full analysis of the consultation findings shall be reported to Council Cabinet with a set of recommendations and impact assessments following the closure of the consultation process. We estimate that the earliest possible Cabinet meeting to which views can be reported is the March 2011 meeting.

OTHER OPTIONS CONSIDERED

- 5.1 The option of continuing with subsidised services and a unit based charge at point of delivery have been considered but due to equity issues, administration problems, sustainability and affordability this has been discounted.

This report has been approved by the following officers:

Legal Officer	Robin Constable
Financial Officer	David Enticott
Human Resources Officer	Liz Moore
Service Director(s)	Perveez Sadiq
Other(s)	Colyn Kemp

For more information contact:	Perveez Sadiq, Service Director PPF (Adults, Health & Housing) tel: 255501, Perveez.Sadiq@derby.gov.uk
Background papers:	None
List of Appendices	Appendix 1 Implications

IMPLICATIONS

Financial

- 1.1 The estimated additional full year income from this recommendation is approximately £1.0m. It is not possible to be more precise than this as actual individual income of service users is unknown until financial assessments are carried out. The three month transitional protection element of the proposals would reduce income by £220k.

Legal

- 2.1 Local authorities have the discretionary legislative power to charge for community services under the Health and Social Services and Social Security Adjudications Act 1983. There is guidance on how they should do so, and how they should go about consulting on proposals, in “Fairer Charging Policies for Home Care and other non-residential Social Services”, issued by the Department of Health in 2003. In addition, Fairer Contributions guidance in relation to personal budgets was published by the Department of Health in 2009.
- 2.2 The Fairer Charging and Fairer Contributions guidance provides advice about how to apply charges fairly.
- 2.3 The requirement to consult arises from the Fairer Charging guidance.
- 2.4 Legal cases have established that the consultation must:
- Be at a time when the proposals are still at a formative stage
 - Give sufficient reasons to enable intelligent consideration and response
 - Provide adequate time for consideration and response
 - Have its outcome “conscientiously taken into account” when the proposals are finalised

Personnel

- 3.1 If Cabinet approve the consultation process, and the consultation process recommendations in March 2011 support changes in the eligibility criteria, then this may have an impact on the numbers of employees required to carry out initial assessments and provide relevant services following assessment

Equalities impact

- 4.1 A broad range of people and groups shall be invited to participate in the consultation to ensure a fair and balanced set of views is presented to Cabinet.
- 4.2 An equalities impact assessment of any proposed changes arising out of the consultation shall be undertaken.

Health and Safety

- 5.1 No implications arising directly from this report.

Carbon commitment

- 6.1 No implications arising directly from this report.

Value for money

- 7.1 The current charging policy subsidises all clients. This is no longer affordable and the proposed increase in charges will raise additional income, leading to a reduction in the net cost of providing services.

Corporate objectives and priorities for change

- 8.1 The report supports the Healthy City objectives and promotes active citizenship through engaging with consultation.