

From: Richard Smith, Corporate Director Adult Social Care and Health

To: Dan Watkins, Cabinet Member for Adult Social Care and Public Health

Subject: Adult Social Care Charging Policy – Higher Level Disability Benefits

Decision no: 24/00049

Key Decision: It affects more than 2 Electoral Divisions

Classification: Unrestricted

Past Pathway of report: Adult Social Care Cabinet Committee – 15 May 2024

Future Pathway of report: Cabinet Member Decision

Electoral Division: All

Is the decision eligible for call-in? Yes

Summary: The report provides information about the outcome of the consultation regarding proposed changes to the charging policy. Specifically, to stop disregarding the higher or enhanced rates of Attendance Allowance (AA), Personal Independent Payment (PIP) and Disability Living Allowance (DLA) when calculating a person's contribution towards the cost of their care and support. The budget assumed that this proposal could raise an additional £2.6m in income in 2024-2025 (£3.4m in a full year). The latest forecasts are that this proposal could raise an additional £2.8m income in 2024/2025 (£3.7 million in full year).

Recommendations: The Cabinet Member for Adult Social Care and Public Health is asked to:

- a) **APPROVE** the changes to the Adult Social Care Charging Policy; and
 - b) **DELEGATE** authority to the Corporate Director Adult Social Care and Health to revise the Adult Social Care Charging Policy and to take relevant actions, including keeping the policy updated as necessary, to implement the decision.
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1. Introduction

- 1.1 The council's budget which was approved in February 2024 included a proposed provision, subject to the necessary consultation and equality impact assessment, to change the charging policy for people who receive care and support in their own home or in the community. As a result, it is necessary to consider the amount of income generated through the contribution people may have to make towards the cost of their care and support.

- 1.2 This report is about Kent County Council's (KCC) proposed change to the charging policy. Specifically, to stop disregarding the higher or enhanced rates of Attendance Allowance (AA), Personal Independent Payment (PIP) and Disability Living Allowance (DLA) when calculating a person's contribution towards the cost of their care and support.
- 1.3 This policy and proposed change does not impact on people who live in and receive care and support in a residential care home.
- 1.4 A public consultation on the proposal was held from the 6 February to 7 April 2024. The full consultation outcome report is attached to this report as Appendix A.
- 1.5 The Adult Social Care Cabinet Committee considered a report on this subject at its meeting on 15 May 2024.

2. Background

- 2.1 KCC provides adult social care services to approximately 16,394 residents aged over 18 years old as at April 2024. Approximately 15,806 of these people receive chargeable social care services, this includes providing services like residential care and support and care in a person's own home or in the community.
- 2.2 When people living in Kent need adult social care, as well as assessing their care needs, we also assess their income to decide how much they have to pay towards their care and support. This is known as means testing. Following financial assessment, some people do not have to pay anything, and the council picks up all of the cost, some people pay some contribution, and some other people pay for all of their care.
- 2.3 KCC sets out what and how people need to pay in the Adult Social Care Charging Policy further details of our current charging policy (including examples) can be found at: www.kent.gov.uk/social-care-and-health/care-and-support/paying-for-care/charges-for-care-and-support.
- 2.4 KCC's Budget Recovery Strategy, [Securing Kent's Future](#), was agreed at a Cabinet meeting on 5 October 2023 which was required to address the in-year and future years' financial pressures faced by the council arising from overspends and future spending growth largely in adults and children's services. The strategy sets out the background to the financial pressures which have not been reflected in recent finance settlements and the Best Value duty to resolve competing statutory duties to set a balanced budget whilst also delivering statutory services and securing value for money. The strategy prioritises "new models of care and support" in response to recent and unsustainable increases in spending on social care and home to school transport services. Key areas addressed throughout the strategy included the specific drivers causing the financial pressure and the specific and broader action that needed to be taken through Securing Kent's Future to return the

council to financial sustainability. The report also identified opportunity areas for further savings, accelerated transformation of the council alongside possible policy choices, all of which provided the scope to deliver significant savings over the next Medium Term Financial Plan (MTFP) period.

2.5 KCC has already made substantial improvements and efficiencies to the way social care is delivered in Kent, alongside trying to limit the impact on the people that draw on care and support and help make the service sustainable. We need to look at the amount of income we can generate by people contributing towards the cost of their own care. This is why we are proposing a change to the charging policy.

2.6 Whilst KCC continues to strive to provide the best services we can, we continue to have the following growing pressures:

- The overall resourcing for local authority services has gone through three distinct phases including period of austerity between 2011/2012 to 2015/2016 when overall funding was reducing due to combination of reductions and changes to grant distribution from central government and council tax freezes, a period of flat cash between 2016/2017 to 2019/2020 when council tax increases offset grant reductions (including a shift to more social care grants), and period since 2020 which has seen increases in government grants and council tax although not sufficient to keep pace with rapid spending expansion in this period.
- These changes have resulted in an expectation that a greater share of the cost of council services are funded from council tax and other income sources such as client charges¹.
- Increasing demand (an additional 1,152 people from March 2022-March 2023) for adult social care services, including people having complex care and support needs.
- Significant annual increases in the National Minimum Wage (NMW) since 1999, which have impacted on the fees charged by care and other providers.

¹ A separate Adult Social Care council tax levy was introduced in 2016/2017 which now raises £135.3m in 2024/2025. KCC has levied the maximum amount permissible through the adult social care council tax levy in each year since this power was introduced and raising further council tax to offset the proposed change in client charges would only be possible if supported in a referendum. Conducting a referendum would in itself incur additional expenditure and would still have to set out an alternative budget should council tax increases not be supported. The amount raised through general council tax has increased by £228.3m since 2016/2017. The Revenue Support Grant (which includes adult social care as well as other council services) has reduced from £246.7m in 2013/2014 (the first year of current funding arrangements) to £11.8m in 2024-25. There have been a number of separate social care grants which have been provided progressively since 2016/2017 (not exclusively adult social care) which amount to £205.7m in 2024/2025 but these grants have been provided in recognition of the pressures in social care and to fund improvements rather than replace the Revenue Support Grant reductions.

- Continuing impact of inflation, which means we face growing pressures in the care market, including workforce challenges and rising costs for delivering care packages.
- Other market factors such as recruitment challenges, complexity of people that draw on care and support and placement decisions all of which have driven up the average unit cost of care placements.

- 2.7 The revenue budget for 2024/2025 was approved by full Council on 19 February 2024. Overall, the net budget requirement increased by £113.9m (+8.7%) over the approved budget for 2023/2024. This matched the additional funding received through general un-ringfenced government grant settlement and local taxation. Planned spending for the year is forecast to increase by £209.6m and the budget was balanced by planned savings and income of £88.9m and net £6.8m change in reserves. The budgets for adult social care, children in care and home to school transport increased by more than the overall increase in the net budget. Collectively the budgets for all other services saw no overall increase.
- 2.8 The budget includes a combination of unavoidable spending changes, funding from central government and local policy decisions covering spending, savings and income, and local taxation. The financial pressures facing KCC were set out in the [budget report](#). KCC managed to set a balanced budget, and avoided issuing a section 114 report, but this required a challenging set of spending cuts and the need to maximise income where possible. The budget also includes spending and income from external sources. There was a public consultation on the budget processes that fed into budget considerations. Scrutiny of budget proposals was carried out in November and January, and final County Council approval considered alternative budget proposals and amendments as part of that political process. The budget included provisional sums to increase income as a result of these amendments to the Adult Social Care Charging Policy. No final decision was taken at the budget stage to make these amendments, as they needed to be consulted on, and an Equality Impact Assessment considered. However, at no stage in the budget setting process was an alternative to the additional income generated by these proposals identified.
- 2.9 The budget strategy sought to ensure the council continues to plan for revenue and capital budgets which are affordable, reflects the council's strategic priorities, allows the council to fulfil its statutory responsibilities and continues to maintain and improve the council's financial resilience. The budget recognises that these aims are not always an easy combination and involves some difficult decisions about service levels and provision.
- 2.10 The budget report to County Council included the following recommendations regarding the council's reserves.
- To note that the planned use of reserves still ensures sufficient reserves are available in the short term with no immediate concerns triggering a S114 notice provided the use of these reserves is replaced with sustainable savings over the medium term.
 - To note the rate of recent drawdown from reserves and increase in risk is cause for serious concern and reserves need to be strengthened,

particularly general reserve and the draft budget includes a strategy to restore the general reserve to 5% by 2025/2026. Further unplanned drawdowns would weaken resilience and should only be considered as a last resort with an agreed strategy to replenish reserves at earliest opportunity.

- Whilst it is permissible for councils to use reserves to balance revenue budget this is only a short-term measure and is not a substitute for making sustainable savings and generating ongoing income to balance any gaps between recurring spending and funding available from government, local taxation and other income sources. There is no set defined levels for reserves and each council makes its own judgement taking into account local circumstances and risks.

2.11 The budget for adult social care services (including 18-25) increased by £61.8m (+9.9%) in 2024/2025. This means that even after the savings required to balance the adult social care budget this represented a disproportionate increase compared to the overall position. Without the proposed additional income from the proposed changes to the Adult Social Care Charging Policy, this would have been an even larger disproportionate increase in spending on adult social care. The increase in adult social care was £8.7m more than the additional funding from the adult social care council tax levy and additional adult social care grants in the final local government finance settlement.

2.12 A separate [section 25 assurance statement](#) was presented to Council prior to the budget consideration. This statement sets out the opinion of the statutory Section 151 officer on the robustness of budget estimates and adequacy of reserves. The statement recognised that setting the budget for 2024-25 was incredibly challenging due to ongoing and escalating cost pressures alongside insufficient funding in the local government finance settlement. This combination required the Council to deliver significant policy, efficiency and transformation savings, generate additional income as well as one-off solutions from reserves and use of capital receipts. Any deviation from that plan increases the risk of service failure through inadequate resources. The external auditors had also emphasised in their latest annual report on the need for all members to agree proposals that represented a balanced budget for 2024/2025. The 2024/2025 reported noted the combination of drawdowns from and transfers between reserves as part of finalising the 2022/2023 accounts which has reduced the adequacy of reserves compared to previous assurance statements and that the levels of reserves are now considered to pose a more significant risk to the Council's medium to long term sustainability than levels of debt. This is a significant change from previous assurance statements. The statement identified that the drawdown in 2022/2023 was disproportionate compared to other authorities and the risk remains of further drawdowns should the management action necessary to balance 2023/2024 and savings/income planned for 2024/2025 not be delivered in full. Using reserves to mitigate the proposed change to the Adult Social Care Charging Policy would fall within this risk further weakening financial sustainability.

2.13 Further details about the council and adult social care's financial position are set out under the financial implications section of the report. If this proposal is not implemented, then alternative savings/income would need to be achieved in

other areas in KCC services. The council already has an agreed policy on fees and charges for discretionary services. This policy is based on a default position of full cost recovery unless discounts, subsidies, concessions are in place. Nominal charges or no charges are specifically agreed by the Cabinet. Whilst Adult Social Care Charging does not fall under this policy, the policy confirms that the council is already maximising income from other services.

2.14 Analysis of the data received from other councils via the National Association for Financial Assessment Officers (NAFAO), October 2023, (table below) with regards to whether they include the higher or enhanced rate of AA, DLA or PIP within their financial assessment, shows that Kent's current policy is more generous than the majority of other councils and the proposed changes are in line with current charging policies for many other councils.

Council	Include higher rate of AA and DLA	Do not include higher rate of AA and DLA	Include AA and DLA only if providing night care	Include enhanced rate of PIP	Do not include enhanced rate of PIP
York	x			x	
Herefordshire	x			x	
Isle of Wight	x			x	
Leeds	x			x	
Reading	x			x	
Brighton	x			x	
Norfolk		x			x
Buckinghamshire		x			x
Bradford		x			x
Warrington		x			x
Derbyshire		x			x
Telford and Wrekin		x		x	
Leicestershire		x		x	
West Berkshire			x	x	
Cornwall			x		x
Nottingham			x	x	
Torbay and South Devon NHS Trust			x	x	
Rutland			x		x
Cheshire West and Chester			x	x	
Redcare and Cleveland			x		x
Grimsby			x	x	
Wokingham			x	x	
Dorset			x		x

Council	Include higher rate of AA and DLA	Do not include higher rate of AA and DLA	Include AA and DLA only if providing night care	Include enhanced rate of PIP	Do not include enhanced rate of PIP
Stoke-on-Trent			x	x	
Worcestershire			x	x	
Kingston			x	x	
Birmingham			x	x	
Kent's proposal			x	x	

2.15 An analysis of the data from Adult Social Care and Health (adults 18+) and Children, Young People and Education (young people 18-25 transitioning from children's social care to adults' social care) directorates has been undertaken to identify the individuals who will be directly affected by the proposal. The data used for financial modelling in September 2023 shows there are potentially 3,153 adults and 631 young people directly affected by the proposal. However, 2,879 will have a financial impact. 905 are not financially impacted as they will see no change to their charge. This could be due to the cost of their care package being lower than their chargeable income or because they currently pay no charge for their care and the proposed change will not impact this.

	18-25 adults	25+ adults	Total
Financially impacted	395	2,484	2,879
Not financially impacted	236	669	905
Total	631	3,153	3,784
% financially impacted	63%	79%	76%

2.16 A refresh of the data from March 2024, used within the Equality Impact Assessment (EqIA) Appendix B, shows the number of people, broken down by care need, and how much the proposed change to charging would impact their weekly charge. This tables does not take into account the effect of applying higher rate disability related expenditure based on individual circumstances.

	Learning Disability	Mental Health	Older People	Physical Disability	Sensory	Unknown	Total
Zero impact	392	74	63	348	39	11	927
Up to £5	65	19	2	24	3	0	113
Between £5 and £15	13	9	9	43	3	0	77
Between £15 and £25	42	6	10	50	2	1	111
Between £25 and £30	6	4	5	19	0	0	34
Between £30 and £33.65	27	4	3	23	3	0	60
Full £33.85	1,597	120	195	582	33	15	2,542
	2,142	236	287	1,089	83	27	3,864

2.17 If the decision is taken to proceed with new charging arrangements, we would expect to implement this from July 2024.

3. Options Considered

3.1 Before identifying the proposal presented in the consultation, a number of options were considered:

Alternative option considered	Why the option has not been taken forward to consultation
<p>Only apply the proposed change to people new to receiving care and support from KCC's adult social care service from the date the new policy is implemented. This would mean that existing people receiving adult social care services would not have the higher or enhanced rates of disability benefits considered when KCC calculates a person's income</p>	<p>Whilst this would reduce the number of people impacted by the proposed change it would not be fair and equitable for all people who draw on care and support and would not deliver the planned savings/income requirement.</p>
<p>Introduce the policy in stages, no more than a £12 increase to anyone's charge per year, for existing people who draw on care and support to give them time to adjust</p>	<p>Whilst this would reduce the impact of the proposed change it does not deliver the planned savings/income requirement as quickly. This would also be quite challenging to administrate both manually and on the case management system.</p>
<p>An increase to the £17 standard Disability Related Expenditure (DRE) that is already applied to all people in receipt of non-residential services.</p> <p>This is in addition to any individual DRE applications.</p>	<p>This does not take into account the individual's needs and is treating everyone the same regardless of need. This would reduce the income available for adult social care and cause a budget gap and would be applied to all rather than just those who receive the higher and enhanced benefits.</p>
<p>Increase Minimum Income Guarantee (MIG) for basic living expenses such as utility bills and food</p>	<p>This would reduce the income available for adult social care and cause an even larger budget gap. This would also be applied to all and not address those who have a greater need or increased charge.</p> <p>More information regarding the MIG can be found in appendix D.</p>
<p>In line with policy, we offer individual DRE assessment when requested. This option is to undertake individual DRE assessments for all individuals directly impacted regardless of request.</p>	<p>This would reduce the funding available for adult social care and have a significant impact on operational resources and the possibility for people to go through an unnecessary process. Currently there are 114 number of individual DRE's above the standard £17.</p>

Do nothing	Does not deliver the aim of achieving the desired level of income to balance the budget (due to the Council's prioritisation of moving to new models of care under the budget recovery strategy "Securing Kent's Future").
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3.2 The proposal we consulted on was to stop disregarding the higher or enhanced rates of disability benefits when calculating a person's contribution towards the cost of their care and support as this would reduce the funding gap for adult social care services in Kent in year.

3.3 Following consultation, and the evaluation of the latest data about different cohorts of people impacted by the proposal, there is an indication that severely disabled people who are unable to work relative to disabled people who are able to work, will be more impacted as they will contribute a greater proportion of their income towards their care and support arranged by KCC.

3.4 The following alternatives to adopting the proposal have been identified.

Mitigation	Overall impact
Increasing the Minimum Income Guarantee (MIG)	<p>Officers do not advise taking this option. This option would not deliver the desired level of income and (if applied only to those directly affected by the policy change) would result in increased administration and increased costs.</p> <p>If applied to all people in receipt of care and support from adult social care, this mitigation would not take into account individual circumstances as would be applied to all.</p> <p>KCC has set a balanced budget, which required a challenging set of spending cuts and income generation. In setting the budget, KCC has made local policy decisions covering spending, savings and income, and local taxation. If the maximum level of income is not generated by this policy, KCC will have no option but to make cuts to services in adult social care (or other areas). It is for elected members to decide on KCC's spending priorities, taking into account the impact on people who draw on care and support and all of KCC's population.</p>

<p>An increase to the £17 standard Disability Related Expenditure (DRE) that is already applied to all people in receipt of non-residential services for individuals receiving higher rate benefits.</p> <p>This is in addition to any individual DRE applications.</p>	<p>Officers do not advise taking this option. It would not deliver the financial aim of achieving the desired level of income and (if applied only to those directly affected by the policy change) would result in increased administration and increased costs.</p> <p>See above for consideration of alternatives if this option were taken.</p> <p>This mitigation does not take into account individual circumstances as would be applied to all who receive higher rate benefits.</p> <p>All people that draw on care and support are entitled to apply for an individualised DRE assessment. Officers financial estimates assume approximately 300 people will request an individualised DRE assessment. If the number of people requesting an individualised DREA is above 300, this would have an impact on the level of income generation.</p>
<p>Phase the changes to the charging policy over three years</p>	<p>Officers do not advise taking this option. It would not achieve the desired level of income, would result in significant increased administration and administration costs. Although this would initially reduce impact for people their charges would still increase over a three-year period.</p>
<p>Carry out an individual DRE assessment for anyone who requests one</p>	<p>This option is recommended as a possible mitigation to reduce the impact of this proposal.</p>
<p>Not to implement proposed policy change</p>	<p>Officers do not advise this option. It would not achieve the aim of achieving the desired level of income.</p> <p>KCC has set a balanced budget, which required a challenging set of spending cuts and income generation. In setting the budget, KCC has made local policy decisions covering spending, savings and income, and local taxation. If the maximum level of income is not generated by this policy, KCC will have no option but to make cuts to services in ASC (or other areas). It is for elected members to decide on KCC's spending priorities, taking into account the impact on people who draw on care and support and all of KCC's population.</p>

- 3.5 Considering the relevant factors and financial modelling set out in the table above and the impact detailed in appendix B, no mitigation has been identified that will deliver the aim of setting a balanced budget, closing the budget gap and maximising income, and at the same time reduce the negative impact on people impacted by the proposal.
- 3.6 However, we will continue to encourage and support people to request a Disability Related Expenditure Assessment (DREA). The DREA considers disability related expenses that are above the spending a person without the disability and complex health conditions would expect to pay. They are unique to the individual.
- 3.7 To encourage people to apply for individualised assessment/inform them of right to request it, the following actions are underway:
- Improving information and guidance on individual DRE on website
 - Developing a digital solution for people to request an individualised DRE
 - Ensuring consistency in the approach of assessment for individualised DRE through dedicated staff
 - Ensuring consistency on approval for individualised DRE through peer approval panels
 - Communication with people affected by the proposed policy change include guidance on individualised DRE.

4. Financial Implications

- 4.1 The latest budget monitoring presented to Cabinet on 21 March 2024 shows £30m budget gap for 2023/2024, of which £31.3m relates to the Adult Social Care and Health Directorate before management action and one-off use of reserves are considered. Members have agreed the immediate actions needed to reduce spending in the short term and have set the course for getting the council back to financial sustainability, securing the services that residents in Kent need the most.
- 4.2 Forecast spending growth in the 2024/2025 budget approved by full Council is £209.6m (excluding externally funded). The net change to the budget is £113.9m (matched by funding increases through government grants, council tax, etc), leaving £95.7m savings and reserves to balance the budget.
- 4.3 Of the above, the spending growth in Adult Social Care (including the services for 18–25-year-olds) 2024-25 is £115.9m as stated in the 2024-25 budget. The net change to the budget is £61.8m (matched by funding increases through government grants, council tax, etc), leaving £54.1m in savings/additional income which needs to be found, of which this proposal is included within.
- 4.4 The calculations informing the MTFP estimated that the proposed policy change could raise a net figure of approximately £3.4m in a full year. The £3.4m is after allowing £1m to cover the risk of increased debt and an increase in individual DRE assessments above the authorities' standard allowance.

- 4.5 The increase in income is assumed as part of the overall savings/income requirement to balance the 2024/2025 budget for the whole council/adult social care. If this proposal is not implemented, then alternative savings/income would need to be achieved in other areas in KCC services. The council already has an agreed policy on fees and charges for discretionary services. This policy is based on a default position of full cost recovery unless discounts, subsidies, concessions. Nominal charges or no charges are specifically agreed by the Cabinet. Whilst Adult Social Care Charging does not fall under this policy it is evidenced that the council is already maximising income for other services and the policy does recognise that charges for statutory services are set in line with legal requirements and nationally set government charging policies.
- 4.6 An example of an alternative saving to the proposed adult social care charging is the support the council provides for circa 80 local bus routes that are considered socially necessary but otherwise uneconomic. The local authority has a defined role under the 1985 Transport Act to support such routes where the authority deems it appropriate i.e. there is scope for local policy choice. Spend on supporting these services is £5.8m. In considering budget options members looked at the users of these supported routes and made the political choice to continue support due to the number of journeys by children getting to school and use by vulnerable residents. The political consideration also included the objectives sought through local Bus Services Improvement Plan agreed with government.
- 4.7 The latest estimates suggest that the proposed changes could now raise approximately £3.7m in a full year if the policy was implemented, which is £0.3m higher than the original estimate as shown in the table below.

Summary of Charging Change Estimates compared to MTFP	Full Year in 25-26	9 months 24-25
	(£000)	(£000)
Latest Estimated Increased Additional Income	3,703.9	2,777.9
MTFP Assumptions	3,400.0	2,600.0
Impact on MTFP	303.9	227.9

5. Legal implications

- 5.1 The Care Act 2014 details the council's duty when assessing an individuals' care and support needs as well as the process for conducting financial assessments to work out how much the council will pay towards an individuals' care. The council has a power to charge individuals for meeting their needs under the Care Act. The amount of any charge is determined by the Care and Support (Charging and Assessment of Resources) Regulations 2014 ("the Regulations"). The Regulations detail the income that the council must, and must not, take into account. The Regulations provide for a "Minimum Income Guarantee" ("the MIG") – any charge must not leave the individual with less

than this amount. The MIG is set by central Government and is updated annually.

- 5.2 The Regulations also set out the income that must be disregarded. The council must disregard (a) the mobility component of any DLA/PIP; (b) any housing-related costs (such as mortgage repayments, rent or ground rent, council tax etc); and (c) any disability related expenditure (DRE). A local authority must also disregard any earned income (under reg. 14). The council may take other income into account, including welfare benefits and pension. The council has a discretion, under regulation 15(2), to disregard any other sums the adult may receive as the authority considers appropriate.
- 5.3 The council must act under the general guidance of the Secretary of State (currently set out in the Care and Support statutory guidance (“the Guidance”).
- 5.4 The Guidance states that local authorities should have a policy on how they wish to exercise the discretion to charge. Paragraph 8.46 of the Guidance states that local authorities should consult people with care and support needs when deciding how to exercise this discretion. In doing so, local authorities should consider how to protect a person’s income. The guidance sets out the Government’s position that it is inconsistent with independent living to assume, without further consideration, that all of a person’s income above the MIG is available to be taken in charges. Paragraph 8.47 states that local authorities should consider whether it is appropriate to set a maximum percentage of disposal income (over and above the guarantee minimum income) which may be taken into account in charges.
- 5.5 Annex C to the guidance states that local authorities may take most of the benefits people receive into account (save where they must be disregarded). But a local authority must ensure that in addition to the MIG, people retain enough of their benefits to pay for things to meet those needs not being met by the local authority. In particular, where disability-related benefits are taken into account, the local authority should 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'.
- 5.6 The council must comply with the public sector equality duty in section 149 of the Equality Act 2010, and must have due regard to the three equality needs set out in section 149(1) – i.e. the need to eliminate discrimination, the need to promote equality of opportunity and the need to foster good relations between different protected groups. The council is also under a duty to avoid discriminating against an individual in the exercise of its public functions (section 29(6) of the Equality Act 2010). The council is also under a duty to act compatibly with Convention rights, which includes Article 14 of the Convention.
- 5.7 The council’s current charging policy provides for a disregard at paragraph 17.3: which details that certain benefits namely Attendance Allowance (AA), Personal Independent Payment (PIP) and Disability Living Allowance (DLA) should be taken into account only up to the lower rate of AA and standard rate of PIP/DLA

(Care Component) disregarding whether individuals actually receive the higher rate of these benefits.

- 5.8 The proposal to change the charging policy will mean that the disregard will no longer apply and if higher rates of AA and PIP/DLA are received by individuals they would be taken into account in a financial assessment and would no longer be disregarded. This would mean that people in receipt of care who receive higher rate of these benefits would pay more for their care than they currently do, and a higher proportion of their income may be paid by way of charges than someone who is not as severely disabled.
- 5.9 The council is able to change its charging policy to take into account the higher rates of AA / DLA / PIP but before making this decision must undertake appropriate consultation and an Equality Impact Assessment (EqIA). It must comply with the duties set out above.
- 5.10 The results of the consultation that has been undertaken are in appendix B and must be taken into account when making this decision.
- 5.11 The EqIA identifies how the proposed change to the charging policy will affect different groups of people and must also be taken into account. A detailed analysis of the impact on different protected groups can be found in the EqIA (appendix C), which must be considered before a decision is taken.
- 5.12 The outcome of these consultation and EqIA exercises is contained in the report and enables the council to consider how the proposed change to the charging policy will affect different groups of individuals; consider alternative proposals to minimise any negative impact and introduce any additional measures to mitigate against any negative impact.
- 5.13 This is important because otherwise the council may find itself in a position of challenge such as occurred in the case of R (SH) v Norfolk County Council and another [2020] EWHC 3436 (Admin), where changes to Norfolk's charging policy, similar to what is being proposed here, gave rise to an unintended and unforeseen discrimination.
- 5.14 In the Norfolk case, the council had "exercised its discretion to charge SH the maximum permissible (disregarding only those elements it is required to disregard by law), in particular by taking into account her PIP (daily living component), which it did not do before. That, alongside proposing to apply only the statutory MIG meant that proportionately more of SH's income was taken into account when calculating her contribution as a severely disabled person, when compared to other disabled users who could earn money from work because earnings from employment or self-employment continued to be disregarded.
- 5.15 The judge found that SH was at a distinct disadvantage being severely disabled and unable to work as against her peers being charged for care services and who are also disabled but able to work. Not having earned income that could be disregarded SH found herself in the position of having proportionately more of

her income taken into account than a working disabled person allowed to keep their earnings. The judge considered that this was discriminatory as it could not be justified by Norfolk on the facts of that case, particularly as the Judge considered that Norfolk had alternative means of raising the same amount of revenue.

- 5.16 The judge crucially found that there was no evidence that the council had considered this differential impact or the alternative approach of setting a “maximum percentage of disposable income” over and above the minimum income guarantee (as the Care Act 2014 Guidance required the council to consider). The outcome for SH was overlooked and not considered or consciously justified at all. None of the proposed mitigations structurally addressed the discriminatory impact.
- 5.17 In the case of R (YVR) v Birmingham City Council [2024] EWHC 701 (Admin) YVR argued that Birmingham did not properly consider its discretion to take less in charges than the statutory maximum, that Birmingham’s charging policy was discriminatory on the same basis as Norfolk’s was and there was no justification other than maximising revenue, which was not a good reason capable of justifying discrimination. In this case, the Judge recognised that there was no evidence showing that Birmingham’s policy discriminates between those who are unable to work by reason of severe disability and those who are disabled are not unable to work but who have no earned income on the other. It was not the ability or inability to work, but the receipt of earned income, which caused the disparity of treatment. Yet that was the inevitable impact of the Regulations. Instead, the Judge identified a different adverse impact that required justification, namely the local authority’s failure to treat differently (a) people who are unable to work by reason of severe disability, and (b) people who are severely disabled, in receipt of care, are able to work, but have no earned income. In other words, it was a failure to address a systemic issue with the statutory scheme that could be discriminatory.
- 5.18 However, the Judge concluded that Birmingham had justified any discriminatory impact. Birmingham had carefully and demonstrably, considered its discretionary options and treating differently people who earn from people who do not was part of the fundamental structure of the statutory scheme. Birmingham’s pressing budgetary predicament took its financial situation far beyond the considerations of simply saving money and it had to weigh the interests of its taxpayers overwhelmingly in the balance at the present time. In Birmingham’s case all the authority’s other heads of revenue and expenditure were fully accounted for, and Birmingham had no other choice but to raise the maximum income in order to balance its budget.
- 5.19 The council must consider the negative impact of the proposal carefully. The EqIA confirms that there is no statistical evidence of disproportionate impact on the severely disabled who are unable to work, as the proportion of income that this cohort pays varies depending on a number of factors (as does the proportion of income paid by those who are able to work). Any differential impact is a direct result of regulation 7 of the Regulations, which requires the Council to disregard any earned income. However, the second type of impact

identified in the Birmingham case is likely to exist. In any event, where there is the possibility of indirect discrimination careful consideration needs to be given to whether the change can be justified and is proportionate.

- 5.20 The aim seeking to be achieved by the council by implementing this policy is to ensure that the council can balance its budget, given the forecasted position set out above. Given the financial pressures the council is facing, it is imperative that it makes extensive spending cuts and maximises income where possible. This is a legitimate aim.
- 5.21 The council has to consider therefore if the change is a proportionate means of achieving the aim set out above.
- 5.22 This involves considering if a less intrusive measure could achieve the same aim. The alternatives that have been considered are set out above and in Appendix D. The council must also consider whether there are possible ways of reducing that impact, which are also considered above.
- 5.23 To be able to defend this decision the council needs to have consulted properly and undertaken a thorough EqIA which has identified the impact. Recognising this impact the council's position has to balance any possible mitigation against the financial challenge to reduce the forecasted overspend in 24/25.
- 5.24 The legitimate aim being pursued is to set a charging policy which is sustainable for the council in the long term, and the need to reduce expenditure/ maximise income in order to balance its budget. In light of the financial pressures which the council is facing, it must take measures to fill the budget gap, and it is imperative that it maximises income and manages spending within the resources available from government settlement and local taxation. As against this, the impact on people we support has been outlined in the EqIA and is illustrated by way of worked examples in Appendix D. All people we support will keep the MIG (which reflects income replacements benefits and a buffer), and all people we support will retain disability related expenditure and other items which must be disregarded under the statutory regime. The income to be taken into account is examined in the illustrative examples, and is, in general, limited to benefits paid to people we support to meet additional costs arising out of their disability. Paying for care and support provided by the council to meet assessed needs is part of those additional costs.
- 5.25 A number of alternative options have been considered, which would not generate the same level of income for the council. The council's reserves are already at a minimum level, and cannot be safely reduced further. The council is already maximising income by charges for other services. If this policy is not adopted, the council would be forced to make further cuts to the adult social care budget (which would inevitably impact on vulnerable people we support) or other services provided to council taxpayers more generally. It is for the decision maker to determine whether, balancing the severity of the proposed policy's effects on the persons to whom it applies, against the importance of the objective, the latter outweighs the former, i.e. whether the policy is proportionate.

6. Equalities implications

- 6.1 An initial Equality Impact Assessment (EqIA) was published alongside the consultation document on Let's talk Kent. This has since been updated to reflect the views of consultees and other stakeholders from the consultation (Appendix B. This is a live document and will continue to be reviewed and updated.
- 6.2 Age, disability, sex, race and carer's responsibilities have been identified as having potential for negative impact if we were to implement the proposed change.
- 6.3 We have taken the following information from two sets of data, these are:
- Young people drawing on care and support aged from 18 to 25, who are moving from children's social care into adults' social care.
 - Adults aged 18 and over drawing on care and support from adult social care.
- 6.4 In the data for young people, there are 612 active individuals who receive care at home, in the community or have a direct payment that may be affected.
- 6.5 In the data for adults, there are potentially 9,011 individuals who receive care at home and in the community that may be affected now or in the future of which 3,765 are directly impacted by this proposal and could see an increase to their charge.
- 6.6 If the proposal is implemented, there is a risk of a person not being able to meet all their financial commitments and getting into debt either to KCC and/or other companies. There is also a risk to a person's limited income meaning that they have no surplus monies for socialising or leisure activities to support their quality of life and wellbeing. However, as outlined above, all those receiving local authority-arranged care and support other than in a care home are entitled to retain a certain level of income to meet their living costs – i.e. through the MIG and other disregards outlined above. In particular, where disability-related benefits are taken into account, the local authority must 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'.
- 6.7 The proposal will have the most negative impact on disabled people and the below is a list summarising the impacts this proposal could have:
- Increased self-neglect and safeguarding as some people may reduce or refuse care and support based on the increased costs.
 - Impact on wellbeing due to the increased costs limiting their choices for social or leisure activities.
 - Direct payments and the potential for this to no longer be a suitable option due to the increase in their financial assessment limiting the flexibility a direct payment allows.
 - Impact on the cost of living due to the increase cost of care alongside the growing inflation on everyday basics such as food and heating.

- Mental health and the impact the proposal and increased costs could have on people's quality of life.

6.8 The following two quotes were provided during the public consultation by people we support or someone on their behalf.

“Disabled People who solely rely on benefits can't get money from additional sources, e.g. paid work for taking on additional jobs that able bodied people can if they wish to. In an inflationary climate this is adding to financial anxiety, pressure and isolation. It's been an extremely worrying and struggling time for disabled people especially throughout the Covid pandemic, followed by the cost-of-living crisis”.

“Taking more money out of the higher rate of benefit will potentially affect other areas of daily life and cost of living for someone who is already at a disadvantage. The higher rate is given because the person is severely disabled and needs help night & day in some cases especially severely disabled people who have very limited lifestyles. They cannot work or go out alone and need support to do anything. More money taken from them will just reduce their already very limited social life leaving them isolated and alone. This will adversely impact their financial, mental and physical wellbeing making it difficult for them and their Carers to live good lives”.

6.9 A mitigation has been identified to reduce the negative impact on people impacted by the proposal is to in line with policy increase the promotion and awareness of DREA. Encouraging and supporting people to request a Disability Related Expenditure Assessment (DREA). The DREA considers disability related expenses that are above the spending a person without the disability would expect to pay. They are unique to the individual.

6.10 The council also has the ability to provide exceptional disregards if people demonstrate basic living expenses cannot be met.

6.11 KCC has to have “due regard” to the three equality needs identified in section 149(1) – the need to eliminate discrimination, the need to promote equality of opportunity and the need to foster good relations between different protected groups. These three equality needs have been considered as part of the EqIA.

- The need to eliminate discrimination – data identifies that the severely disabled will be the most affected due to a greater proportion of their income being taken into account. However, for the reasons set out above, any disproportionate impact will be justified.
- Promote equality of opportunity – the proposal may impact on equality of opportunity if individuals are less able to access the community and participate in social/leisure activities due to having fewer resources available. However, by understanding the impact of charge the council will apply the individual assessments as a way of accounting for cost associated with persons disability and through that mechanism support equality of opportunity for those impacted.

- Foster good relations between different protected group – this change in itself does not impact on relations between different groups. The broad range of services and provision of functions offered by the local authority are geared to promoting good relations within the community. Through the way we recruit, commission and develop services and strategies we take into account the person's voice to help us foster good relations between protected groups.

6.12 The full EqIA is in Appendix B and must be taken into account when making this decision.

7. Consultation

7.1 KCC undertook a public consultation from 6 February to 7 April 2024. The consultation was hosted on KCC's [Let's talk Kent](#) website, with hard copies and support available for those who could not participate online.

7.2 Letters were sent to those potentially impacted by the proposals with an easy read version of the letter sent to those identified as having a learning disability. The letters contained a telephone number and email address to contact with any queries relating to the consultation or if the person was unable to access the information online and needed any support to take part. Contact details were also available on the website and all consultation material.

7.3 Easy read and large print versions of the consultation document and questionnaire were available at the outset, alongside a British Sign Language translation of the webpage. Posters to promote the consultation (displayed in libraries and gateways) gave information on how to request paper copies and support if people could not go online. Social care providers and staff were briefed and asked to support people in taking part in the consultation. People phoning for support were also given the option for staff to complete the questionnaire over the phone for them if required. A Word version of the questionnaire was also available from the consultation webpage for those who did not want to complete the online version.

7.4 223 voluntary and community organisations were offered engagement sessions to provide feedback on the proposal and the EqIA, as well as being asked to support people to participate in the consultation.

7.5 In advance of the consultation, meetings were held with the People's Panel, whose members include people from the Older Peoples' Forums, Mental Health User Voice and the Kent Physical Disability Forum as well as Healthwatch Kent volunteers, to discuss the proposals and review the consultation material.

7.6 During the consultation, constant monitoring took place to try to ensure that responses were being received across all response types including ethnic and faith groups. Where needed targeted communications were sent to encourage more responses. This targeting included reaching out to community groups and paid social media activities. There were regular targeted communications sent to 565 contacts including organisations/charities covering Older People,

Physical Disability, Carers and Learning Disability. To support people that may have found it difficult to engage with the Consultation, there was a request sent to organisations and charities to be invited to forums to discuss the Consultation and impact. There was a session with the PAN Disability Forum which is facilitated by EK360 and consists of representatives from different disability groups in Kent, the driver for the PAN Disability Forum is to recognise and engage the underserved voices and communities across Kent & Medway.

- 7.7 There were 330 responses to the consultation. The below breakdown shows the extent to which respondents agree or disagree with the proposal. 328 respondents answered this question.

How much do you agree or disagree with the proposal to include the higher rate benefits payment of AA, DLA and PIP in the financial assessment for existing and new people who receive care in their own home and in the community?	No. of responses	% of responses
Strongly agree	19	6%
Tend to agree	24	7%
Neither agree nor disagree	16	5%
Tend to disagree	23	7%
Strongly disagree	242	74%
Don't know	4	1%
Total number of responses	328	

- 7.8 Following analysis of the feedback the main themes from the open questions were the negative financial and wellbeing impact on the affected people, the perceived unfairness and discrimination of the proposal, and suggestions to find alternative sources of funding or savings.

7.9 Ten themes were identified within the feedback. The below breakdown shows the number of responses for each theme. Some responses mentioned more than one theme so the number of responses to each theme is higher than the total number of questionnaires completed.

If you have any comments on our proposal, please share these with us below:	No. of responses	% of responses
Theme		
Negative financial impact on people receiving the higher rate benefits payment of AA, DLA and PIP	283	42%
Negative impact on wellbeing for people receiving the higher rate benefits payment	136	20%
The proposal discriminates negatively against people receiving the higher rate benefits payment	109	16%
Strong negative emotions about the proposal such as being annoyed, stressed or worried	38	6%
Discrimination and negative financial, physical and mental impact on families and carers of people receiving the higher rate benefits payments	37	5%
Potential additional cost to KCC due to increased care needs	29	4%
Confusion about the proposal or felt there was a lack of information	19	3%
Difficult to complete the questionnaire online	11	2%
Comments on the legality of the proposal	10	1%
Concern that the decision has already been made	7	1%
Total number of responses	679	

7.10 The consultation report (Appendix A) includes example quotes from consultee's responses.

7.11 The Adult Social Care Cabinet Committee considered a report on 15 May 2024, about the outcome of the consultation exercised carried out in respect of the proposed changes to the charging policy. Members of the committee sought to understand how the view of the 74% of the 330 responses to the constitution, who expressed an opinion that they were "strongly against" the proposed decision would be taken into consideration. Members were informed that Officers have explored mitigations, and an allowance had been included within the estimated increased income for some costs of additional requests for individual disability related expenditure assessments for those disabled adults who can evidence higher costs due to their disability.

8. Data Protection Implications

- 8.1 A full Data Protection Impact Assessment was carried out and signed off by the Information Governance Lead and the Corporate Director Adult Social Care and Health

9. Other corporate implications

- 9.1 Feedback from the consultation was shared with the KCC Strategic Reset Programme Board on 18 April 2024.

10. Conclusions

- 10.1 KCC has undertaken a public consultation to gain feedback on proposed changes to the policy for chargeable care and support services provided or arranged at home and in the community to allow KCC to stop disregarding the higher or enhanced rates of AA, PIP and DLA when we calculate a person's contribution towards the cost of their care and support.
- 10.2 330 consultees responded to the consultation of which 81% (265) disagreed with the proposal (74% (242) strongly disagreed), stating the negative impact on financial and emotional wellbeing as the main reasons due to the increased costs of care reducing the available money they have for general living costs and social and leisure activities.
- 10.3 The proposal will have the most negative impact on disabled people. Feedback provided during the consultation from people who are severely disabled, told us that they rely solely on their benefits to enable them to 'have a life and not just exist' due to being unable to work and generate another source of income.
- 10.4 Considering the relevant factors and financial modelling no mitigation has been identified that will deliver the aim of achieving the desired level of income and reduce the negative impact on people impacted by the proposal. However, we will continue to encourage and support people to request a Disability Related Expenditure Assessment (DREA). The DREA considers disability related expenses that are above the spending a person without the disability would expect to pay. They are unique to the individual.
- 10.5 The proposed changes are estimated to raise an additional £3.7 million in income which, if this proposal is not implemented, then alternative savings/income would need to be achieved in other areas in KCC services. The legitimate aim being pursued is to set a charging policy which is sustainable for the council in the long term, and the need to reduce expenditure/ increase income in order to balance its budget. In light of the financial pressures which the council is facing, it must take measures to fill the budget gap, and it is imperative that it maximises income and manages spending within the resources available from government settlement and local taxation.

11. Recommendations

11.1 Recommendations The Cabinet Member for Adult Social Care and Public Health is asked to:

- a) **APPROVE** the changes to the Adult Social Care Charging Policy; and
- b) **DELEGATE** authority to the Corporate Director Adult Social Care and Health to revise the Adult Social Care Charging Policy and to take relevant actions including keeping the policy updated as necessary, to implement the decision.

12. Background Documents

None

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