

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

To: Clair Bell, Cabinet Member for Adult Social Care and Public Health

Subject: **Adult Social Care Charging Policy Update**

Key decision: **22/00049**

Classification: Unrestricted

Previous Pathway: Adult Social Care Cabinet Committee – 18 May 2022

Future Pathway: Cabinet Member Decision

Electoral Division: All

Summary: It has been identified, in response to a complaint, that the Department of Health and Social Care (DHSC) may have issued statutory guidance that conflicts with primary legislation in relation to this issue, albeit this appears to have been subsequently clarified by DHSC. The Authority has been applying the statutory guidance and not the relevant legislation. Kent County Council's Adult Social Care Charging Policy for homecare and other non-residential services must comply with the primary legislation and it is therefore necessary to fully review and update the Adult Social Care Charging Policy to bring it in line with the primary legislation.

This paper sets out the proposed approach to addressing this issue, and the associated costs and risks.

Recommendation(s): The Cabinet Member for Adult Social Care and Public Health is asked to:

- a) **APPROVE** the amended Adult Social Care Charging Policy;
- b) **APPROVE** the funding arrangements required to implement the updated policy; and
- c) **DELEGATE** authority to the Corporate Director Adult Social Care and Health to take relevant actions, including keeping the policy updated as necessary and to implement it in line the statutory duties.

1. Introduction

1.1. Following a challenge in relation to the Adult Social Care Charging Policy, it was identified that the Department of Health and Social Care (DHSC) Statutory Guidance upon which the KCC Policy for homecare and other non-residential services had been based, did not fully correlate and match all requirements stipulated in the underlying legislation.

1.2. This disparity, having been clarified via Counsel opinion and liaison with the DHSC, means that compliance with the Statutory Guidance is not sufficient and

that changes are required to bring the Policy in line with the core legislation. As part of applying any required revisions to the Policy, it is also necessary to consider and address how the disparity between policy and legislation may have impacted those in subject to KCC's Savings Credit Disregard approach.

1.3. There are three cohorts of people affected and therefore three elements to this proposal:

- 1) People who were assessed under the Statutory Guidance based Policy as not eligible for savings credit disregard but who would have been eligible under the core legislation – approximately 1,100 people overcharged
- 2) People who were assessed under the Statutory Guidance based Policy as eligible for savings credit disregard and an allowance was made that was more than would have been stipulated under the core legislation – approximate 950 people affected.
- 3) People the Council support where further information is needed to be able to determine whether the Council have been correctly charging as per the above detail - approximately 800 people affected

1.4. The savings credit benefit is only available to those people who were of pension age prior to April 2016. This benefit is no longer available to those who have turned pension age since that date. However new service users will continue to be affected as they may have been of pension age in 2016.

1.5. KCC has requested that its case management system (Mosaic) is updated in line with the legislation and at the time of writing, the update is still awaited. It should be noted that any other Authorities which use Mosaic as their case management system will also be in the same situation.

2. Recommended Plan

2.1. The plan to address this issue will have different approaches for the different groups affected by the proposed changes:

2.2. To comply with legislation, minimise negative impact and disruption on those affected and to resolve the policy in the short term, an Officer Decision was taken to amend the Adult Social Care Charging Policy for homecare and other non-residential services to bring it into line with the legislation ensuring that any new clients to our services will have the correct savings credit disregard applied.

- 2.2 This Cabinet Member Decision seeks to formally amend the Adult Social Care Charging Policy to address overcharging for new and current clients, approve the finances required to implement the decision and note and build upon the Officer Decision taken to achieve initial legal compliance. This decision will involve delegating relevant authority to the Corporate Director, Adult Social Care and Health, to take relevant actions, including keeping the policy updated as necessary and to implement it in line with statutory duties. The implementation activity will include ensuring an appropriate mechanism to manage current client matters such as reviewing previous charging.
- 2.3. The initial activity and focus of the earlier Officer Decision and this Key Decision was on addressing the immediate requirements to update the policy to bring it in line with the legislation and ensure a fair approach for new and existing clients that does not negatively impact on them in an a potentially unlawful manner.
- 2.4. This decision also considers the need to review the charging approach already delivered to current clients and assess the need for changes to their charges and the potential need to address historic over-charging subject to the relevant evidence being provided.
- 2.5. It is necessary, however, to also recognise that further work will be required at a later date to explore options for further updating the charging approach for all people who may be affected. This will have to include making arrangements to consider charging policy implications where clients may be required to pay more for care. Such arrangements would require that appropriate consultation and engagement with relevant stakeholders is undertaken, followed by the necessary governance processes should any proposals be progressed to formal decision.
- 2.6. Any proposals and associated consultations regarding potential increases in charging would involve work to fully understand the implications of increased charging on affected people with feedback from individuals contributing to the finalisation of any proposals presented for decision. These arrangements would be managed via a separate Executive Decision-making process and are not the focus of this paper but are highlighted for information at this stage.

3. Timetable

- 3.1. Following this proposed decision in June detailed proposals for future policy updates where additional charging may be required will be developed for consultation in advance of relevant formal governance activity in Autumn 2022.

4. Financial Implications

- 4.1 The annual cost to the Authority is estimated to be £280k, resulting from lost income from those people who have not had the disregard correctly applied. The cost of £280k in 2022-23 would be reported in budget monitoring and would not necessitate a substantive amendment to the budget.

- 4.2 As part of the necessary financial arrangements required to implement this policy, as noted in the decision, the Authority will recommend making an appropriate financial provision for any prior year costs that may arise from the policy change. This will be presented along with other provision requirements to Cabinet in June 2022 as part of the Revenue Outturn report.
- 4.3 Subject to further formal governance processes, including appropriate consultation and relevant Executive Decision making, there is scope for the policy application to be amended to address undercharging and bring all charges in line with the legislation and correct policy approach. This would involve an increase in the charging for some people and therefore could result in an estimated £290k per annum income from year 2023/24 – this sum excludes any effects of increasing debt which may arise should the relevant policy changes be given effect in future. These arrangements would all be subject to future activity and do not impact on the current decision but are highlighted for context and to indicate future financial considerations for longer term management of this issue.

5. Legal implications

- 5.1 Counsel confirmed that the Authority should be operating its policy for homecare and other non-residential services in line with the Care and Support (Charging Assessment Resource) Regulations 2014 and not the statutory guidance.
- 5.2 The Authority needs to address any error in how savings credit disregard has been applied to our service users and correct its charging policy accordingly.
- 5.3 Any changes to charge people more will require further governance processes, including consultation activity to understand the impact of this change on our service users. On that basis, this decision does not seek to determine the application of the policy to those who may be charged more as a result. Any such arrangements may be addressed as part of a separate Key Decision which could be taken following the relevant consultation and engagement activity later in the year subject to ongoing review of the policy and the Council's financial position.

6. Further clarifications from the Department of Health and Social Care (DHSC)

- 6.1 The DHSC has since provided clarity in their annual circular, regarding the ambiguous area. Some other authorities are now seeking further clarification from the DHSC, as they were applying their policies in the same way as Kent, following the statutory guidance, rather than the primary legislation.
- 6.2 It is proposed that the Council, along with other organisations such as the Association of Directors of Adult Social Service (ADASS), Local Government Association (LGA) and National Association of Financial Assessment Officers (NAFAO), should lobby the DHSC both politically and at officer level in terms of

the New Burden created by the potentially conflicting position of the legislation and statutory guidance that has now been clarified by the DHSC. This would potentially enable the Council to submit a claim for a New Burden to central government once the legal position has been clarified.

7. Equalities implications

- 7.1 A screening document has been completed and a full Equality Impact Assessment will be completed in line with the KCC requirements. This will remain under continuous review throughout any consultation and decision process.

8. Data Protection Implications

- 8.1 A Data Protection Impact Assessment (DPIA) has been completed and it will be subject to the usual information governance review. No data protection implications are expected to be noted or highlighted. Further updates will be completed, in line with process, prior to the proposed consultation.

9. Conclusions

- 9.1 The Authority has used the Care and Support Statutory Guidance issued by the Department of Health and Social Care (DHSC) and not the relevant legislation (Care and Support (Charging Assessment Resource) Regulations 2014) to inform their charging policy for homecare and other non-residential services around Savings Credit Disregard.
- 9.2 The charging policy for homecare and other non-residential services needs to be updated to keep the policy in line with the Care and Support (Charging Assessment Resource) Regulations 2014 to avoid further people being impacted by incorrect application of the legislation.
- 9.3 The policy change will only affect those service users for whom the Authority have not been applying the regulations correctly by overcharging them. Those service users who may have to pay more in charges, under the legislation, will be engaged through a consultation to help them and KCC understand and consider the impact of this change, which will inform any potential key decisions on this issue later in the year.
- 9.4 The Corporate Director of Adult Social Care and Corporate Director of Finance have agreed to lead a review of the current charging policies and their compliance with legislation and statutory guidance.

10. Recommendations

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

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- b) **APPROVE** the funding arrangements required to implement the updated policy; and
- c) **DELEGATE** authority to the Corporate Director Adult Social Care and Health to take relevant actions, including keeping the policy updated as necessary and to implement it in line the statutory duties.

11. Background Documents

None

12. Report Author

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