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To: Cabinet – 19 September 2011

Subject: **CHARGING POLICY FOR HOME CARE AND OTHER NON-RESIDENTIAL SERVICES (DOMICILIARY CHARGING POLICY)**

Classification: Unrestricted

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Summary: A decision to change the Council's Charging Policy for non-residential services was confirmed on 17 February 2011, when the County Council approved the budget for 2011-2012. Kent County Council's Non-residential Charging Policy has historically been more generous when compared to other local authorities. The changes agreed by the County Council will bring Kent into line with similar authorities and will continue to be compliant with the Government's Fairer Charging Guidance.

The Council is required to undertake a consultation with users on the impact of this decision and have regard to the findings of that consultation before coming to a final view. Consultation on the details of the policy was undertaken between 9 May 2011 and 31 July 2011 to assess the impact of the policy changes on service users prior to the implementation of the policy.

This report presents the results of that consultation, considers its implications for service users and any impact on inequalities.

FOR DECISION Cabinet is asked to agree that the Cabinet Member for Adult Social Care and Public Health should take the final decision to implement the revised charging policy, after taking into account the views expressed in this report and any further views put forward by Members of the Cabinet at its meeting on 19 September 2011 and the Adult Social Care and Public Health Policy Overview and Scrutiny Committee at its meeting on 20 September 2011.

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## Introduction

1. (1) A decision to change the Council's Charging Policy for non-residential services was confirmed on 17 February 2011, when the County Council approved the budget for 2011-2012. This included a provision to raise additional income of £2.954m through making changes to the Non-residential Charging Policy. The Council is required to undertake a consultation with users on the impact of this decision before coming to a final view. The purpose of this report is to provide Cabinet with the analysis of the response to the consultation on the impact of the changes to KCC's Charging Policy for Home Care and other non-residential services (Domiciliary Charging Policy). The consultation took

place between 9 May 2011 and 31 July 2011. The decision in relation to this policy was included in the Forward Plan on 18 March 2011, covering the period 1 April 2011 to 30 September 2011.

(2) The consultation exercise was carried out to do two things. First to inform people about the details of the proposed policy changes and, secondly, to invite the views of service users and carers so that the Council could better understand the direct impact of those changes on them, and take into account those views when reaching its final decision. The consultation programme included writing to existing and prospective service users, Kent County Council Members, Kent Members of Parliament, Voluntary Sector organisations, District/Borough Councils, NHS partners and Families and Social Care staff. It also included presentations to Members at a briefing meeting on 18 May 2011 and to the then Adult Social Services and Public Health Overview and Scrutiny Committee, on 7 July 2011. In addition a total of 16 public consultation meetings were held as part of the listening exercise.

(3) The revised Non-Residential Charging Policy is based on good practice and is in line with the Government's Fairer Charging Guidance. This policy is also in-step with that of many other local authorities in respect of their charging policy on non-residential services.

(4) Kent is one of the few local authorities nationally that has eligibility criteria set at the moderate level for determining who can have adult social care support.

## **Policy Context**

2. (1) The Health and Social Services and Social Security Adjudications Act 1983, specifically section 17, grants councils a discretionary power to charge people in receipt of non-residential services. This provides the policy framework within which councils may recover some charges in respect of home care and other non-residential services. Kent, along with almost all Councils with Adult Social Services Responsibilities in England, has used this power to charge for services that fall within this policy framework.

(2) The relevant Department of Health (DH) guidance documents covering this policy are the 'Fairer Charging Policies for Home Care and other non-residential Social Services (2003)' and the 'Fairer Contributions Guidance (2010)' both of which were issued under section 7 of the Local Authority Social Services Act 1970. This means that councils are required to apply them unless they can demonstrate compelling reasons for departing from the guidance. The 2010 'Fairer Contributions Guidance' does not supersede the earlier 'Fairer Charging Guidance'. It simply supplements the earlier guidance by explaining how it should apply to the new concept of Personal Budgets, in particular how to work out the chargeable component of the Personal Budget.

(3) The 'Fairer Charging – Guidance for Councils with Adult Social Services Responsibilities (2003)', requires that charging policies should not reduce the net income of service recipients below the protected basic levels of Income Support or the Guarantee Pension Credit, plus a buffer of 25%. In Kent we call this the Protected Income Level.

(4) In addition to the Protected Income Level, the guidance also states that when disability-related benefits (such as Attendance Allowance and Disability Living Allowance) are taken into account in the charging assessment, councils must consider what Disability Related Expenditure (DRE) a person has. This must then be added to the

Protected Income Level. KCC provides a standard disability-related expenditure allowance for all service users, and not just for those receiving disability related benefits as required by the Government guidance. In addition, people have the right to have a detailed individual disability-related assessment. On top of the DRE the guidance states that housing costs (net of any benefit) are also deducted from a service user's income.

(5) After the above deductions have been made, councils have discretion to decide the percentage of available income which may be taken into account, when working out a person's contribution towards the services they receive. The current maximum percentage of available income for charging purposes set by Kent is 85%. It is noted that neighbouring authorities including Medway, East Sussex, West Sussex, Bexley, Croydon, Bromley, Brighton & Hove and Buckingham take 100% of the available income into account. Surrey, Essex and Hampshire have set theirs at 80%, 90% and 95% respectively.

### **Overview of the current Charging Policy**

3. (1) Firstly, individuals are assessed to see how much capital (savings and other assets) they have (excluding the value of the home they currently live in). If they have more than £23,250 they will be expected to pay the full cost of their domiciliary care and will not be entitled to a Direct Payment from KCC.

(2) Individuals who have less than £23,250 will be assessed on their income. After certain amounts (the Protected Income Level, the DRE, housing costs and certain other deductions in individual cases) have been deducted from this income they will be left with an amount that is "available" for charging (also known as "disposable income").

(3) The actual charge is worked out by comparing 85% of the disposable income to the cost of their care/Personal Budget. The charge is whichever is the lower figure. If the service user is one of a couple then a couple's assessment is offered to see if this results in a lower charge.

(4) Information on the contribution profile of existing service users, as at 31 July 2011, indicates that 40% (approximately 4 in 10) of people who receive domiciliary support services are assessed as not required to pay any charge. This is because, after all the deductions referred to above, they have no income available for charging. A further 50% (approximately 5 in 10), are assessed as being able to make some contribution towards their services. Finally, 10% (approximately 1 in 10) are assessed as being able to pay the full cost of their services as a result of having savings above the threshold of £23,250 or the cost of the service is less than their assessed charge. The value of the home is not taken into account when calculating the charge.

(5) Advice on benefits and benefit maximisation is an important part of the service which the county council staff such as the Finance and Benefit Officers provide. These specialist officers play a key role in ensuring that people claim all the benefits they are entitled to.

(6) The current policy is known as the Domiciliary Charging Policy with the corresponding public information booklet known as Charging for Care Provided at Home. The DH guidance mentioned earlier, is titled 'Fairer Charging Policies for Home Care and other non-residential Social Services'. Charges can be recovered for services that are provided both in and outside of the home. For the avoidance of confusion, it is proposed

that the Domiciliary Charging Policy should be renamed Non-residential Charging Policy, and that, the Charging for Care Provided at Home public information booklet, should also be amended to reflect this change.

## Consultation and Communication

4. (1) The duty to inform, consult and involve, introduced by the Local Government and Public Involvement in Health Act 2002, came into force as a statutory duty placed on all councils in April 2009. The Fairer Charging Guidance (2003) also requires councils to consult with service users and carers about charging policies including any increases or changes in charges. The guidance further states that 'where changes in charging policy would result in significant increases in charge for some users, this should be specifically explained and considered as part of the consultation'.

(2) The consultation undertaken by KCC, followed the 'Cabinet Office Code of Practice on Consultation' and the Fairer Charging Guidance. The consultation was undertaken over a 12 week period from 9 May 2011 to 31 July 2011. The full 'Consultation Analysis Report', which contains details of the outcome of the consultation, is attached to this report (Appendix A). In line with good practice and the commitment given during the consultation exercise, the response to the consultation will be published on the KCC website at [www.kent.gov.uk/fsccharging](http://www.kent.gov.uk/fsccharging). The report will also be made available to any interested persons or a representative group that requests it. There is also facility to provide the report in different formats on request.

(3) People have expressed mixed views to the consultation, which was principally about understanding the impact of the policy decision on service users. The summary of the response from the consultation to each of the eight questions is set out below.

### **Feedback on each of the proposals**

#### **Proposal 1 – Charge people who use mental health services in the same way as all other people in receipt of services**

Agree	Disagree	Neither agree or disagree	Don't know	Missing data
2496 37%	2593 38%	709 11%	769 11%	199 3%

#### **Proposal 2 – Include day care and transport as part of the services that can be charged**

Agree	Disagree	Neither agree or disagree	Don't know	Missing data
2277 34%	3042 45%	677 10%	593 9%	177 2%

#### **Proposal 3 – Increase the amount of available income that is taken into account when working out a person's charge from 85% to 100%**

Agree	Disagree	Neither agree or disagree	Don't know	Missing data
1397 21%	4011 59%	591 9%	577 8%	190 3%

**Proposal 4 – Reduce the standard amount allowed for the Disability Related Expenditure Assessment from £21 per week to £17 per week for everyone**

Agree	Disagree	Neither agree or disagree	Don't know	Missing data
1365 20%	3957 59%	653 10%	620 9%	171 2%

**Understanding how the proposed changes may affect people**

**Respondents who contribute at present**

Pay nothing	Pay a charge	Pay full cost	Does not apply	Don't know	Missing data
2206	1801	481	1230	595	453

**How respondents say the proposals will affect them**

Doesn't affect them	Affects them a little	Affects them a lot	Don't know	Missing data
1597	1284	1437	2043	405

**What impact people considered the changes will have on the number of people who receive care**

More people can be helped	The same number will be helped	Fewer people will be helped	Not sure	Missing data
767	653	2749	2268	329

**Financial Implications**

5. (1) As mentioned earlier in paragraph 1.1 above, the County Council budget for 2011-12 assumed that additional income of £1.477m would be raised through charges to the Non-residential Charging Policy for Adult Social Services. This amount increases to £2.954m in a full year. The achievement of £1.477m in 2011/12 assumed implementation in October 2011.

(2) The breakdown of how this was anticipated to be achieved is as follows:

<b>2011/12</b>	<b>Full</b>	<b>Year</b>
	<b>2012/13</b>	

a) Charge for certain mental health services	£0.080m	£0.160m
b) Charge for day care and transport	<u>£0.350m</u>	<u>£0.700m</u>
c) Increasing the % of available income taken into account from 85% to 100%.	<u>£0.675m</u>	<u>£1.350m</u>
d) Reducing the standard disability – related expenditure allowance from £21 per week to £17 per week.	<u>£0.372m</u>	<u>£0.744m</u>
Total	<u>£1.477m</u>	<u>£2.954m</u>

(3)

(i) Should Cabinet approve the recommendation it is proposed to implement the changes with regard to increasing the % of available income and reducing the DREA with effect from 12 December 2011. This means that the actual income anticipated will be as follows:

a) Increase in % of available income taken into account	£415k
b) Reduction in standard DREA to £17 a week	£229k

This equates to a shortfall of £403k income against the £1,047k anticipated.

(ii) It was also decided prior to the consultation commencing that additional time would be required to fully assess those users affected by the introduction of charging for certain mental health services, day care and transport. Therefore the implementation of these changes will be delayed until April 2012 resulting in none of the anticipated savings of £430k being made in 2011-12.

(iii) If the implementation dates shown above are agreed, the total resulting overspend in the current year will be £833k. This is already reflected in the figures in the quarterly budget monitoring report elsewhere on this agenda.

## Legal Implications

6. (1) The public sector equality duty created by section 1 of the Equality Act 2000 came into force on 5 April 2011. The section provides that:

"An authority to which this section applies [which includes county councils] must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage"

(2) Section 149 of the Act provides that:

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

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(3) Cabinet's attention is drawn to the equality duties. The county council may have formed a provisional view, but it is essential that the possibility that the consultation process may affect that view is acknowledged. The decision, when it is taken, should pay due regard to the equality impact assessment, and must relate whatever decision is made to that assessment and, if it is not following it, or if it is choosing not to accept the views of those consulted, it must record the reasons for doing so. A proper assessment of alternative proposals or of actions that could be taken to mitigate the effect of the policy must be considered.

## Equality Impact Assessments

7. (1) In line with the public sector equality duty and KCC's Equality Impact Assessment Policy, an assessment was carried out during the policy formulation stage. The impact assessment was later revised when the consultation closed and following the analysis of the consultation response to address issues that arose during the formal consultation process.

(2) There is a clear requirement on all public bodies to comply with the 'due regard' duties. Cabinet is advised of the need to take account of the impact of the decision to implement the policy and consider practical measures that might lessen the impact on existing service users who pay a charge and those who will come into the charging scheme for the first time. The disability equality duty is at its most important when decisions are taken which directly affect disabled people. The consideration of equality issues must inform the decisions reached by Cabinet. Furthermore, it will not be adequate that the decision-maker has considered an impact assessment by itself. The decision-maker must address their mind to the statutory duty. The impact assessment can assist in ensuring that the decision-maker comes to a decision with reference to 'due regard' and is able to do so in a considered and informed manner (Appendix B).

(3) The decision to make changes to the non-residential charging policy may have a cumulative effect on particular service users. This would affect some service users who currently make a contribution. It would also affect people who use services that would come into the charging scheme for the first time. It is estimated that changes to the percentage of available income taken into account and the reduction to the standard disability-related expenditure allowance will broadly affect about 3400 service users. Approximately 250 people who currently do not contribute towards their support package will pay up to £4 per week as a result. The introduction of charges for some mental health service users may affect about 560 service users. Bringing day care and transport into the charging scheme is estimated to affect about 1100 people.

(4) People in receipt of disability-related benefits have a right to receive an individual disability-related expenditure assessment, which may result in higher disability-related allowance provision than the standard amount. This would then reduce their charge and may counteract the effect of the proposed changes.

(5) It is considered that other specific groups with protected characteristics (based on gender, ethnicity, religion or belief and sexual orientation) will not be disadvantaged by the changes.

(6) A number of practical measures will be put in place to help address difficulties faced by people as a result of the policy changes. These include:

- Promote and make available individual disability related expenditure assessments;
- Drive up benefit maximisation and ensure that people claim the benefits they are entitled to through Finance and Benefits Officers;
- Continue to offer enablement services in the face of emerging evidence that people require less support at the end of the enablement period;
- Retain managers' discretion to apply exceptional disregards in individual circumstances.

(7) The operation of the policy will be carefully monitored for the first year. In particular teams will monitor the following:

- the number of people refusing or cutting down on services as a result of charging and take steps to work with them;
- the level of service user debt on domiciliary care from the point that the policy comes into effect;
- the level of service user complaints due to the implementation of the charging policy;
- the charging profile of service users (those who pay nothing, pay some contribution and pay the full cost).

## **Sustainability Implications**

8. (1) The policy changes have been assessed against the five principles of sustainability and the evaluation has not identified any negative sustainability implications.

## **Alternatives and Options**

9. (1) If these policy changes are not approved then there will be a requirement to find savings of approximately £3 million from some other source.



## **Risk and Business Continuity Management**

10. (1) Reputational risks, if any, relate to the potential challenge that could be mounted against the decision. Detailed planning work puts the Council in a good position to manage all operational issues associated with the implementation of the policy, if a decision to that effect is taken. The Policy and the Public Information Booklet will be revised and will be put in place should approval to adopt the policy be given.

## **Conclusion**

11. (1) This report, has presented the result of the consultation on changes to Kent's Domiciliary Charging Policy. The consultation followed the 'Cabinet Office Code of Practice on Consultation' and, the Fairer Charging Guidance over a 12 week period. The consultation responses have been analysed in a paper attached to this report.

(2) The outcome of the consultation has shown that there has been a mixed response from service users and carers. In addition, to the summary of the consultation response described above, analyses of the written comments and the views expressed at the public meetings have been grouped under key themes. The top three themes centre on general concern about paying for services, particular issues for some mental health service users and a recognition that charges may increase if current levels of services are to continue.

(3) Changes to the Non-residential Charging Policy are within the law and the Government's Fairer Charging Guidance. In many respects, it brings the Council's Non-residential Charging Policy more in line with that of neighbouring local authorities.

(4) The revenue budget for 2011 – 2012 factored in changes to the non-residential charging policy, to raise additional income of £2.954m (in a full year). Kent's eligibility criterion for adult social care has been kept at the 'moderate' level which means that as many people as possible can be supported.

(5) The obligation to comply with the 'due regard' duties placed on councils has been set out in section 6 of this report. Cabinet's attention is drawn to the need to take account of the impact of the decision to implement the policy. A number of practical measures are proposed to help address difficulties faced by people as a result of the policy changes.

(6) The current policy is known as the Domiciliary Charging Policy with the corresponding public information booklet known as Charging for Care Provided at Home. The DH guidance mentioned earlier, is titled 'Fairer Charging Policies for Home Care and other non-residential Social Services'. Charges can be recovered for services that are provided both in and outside of the home. For the avoidance of confusion, it is proposed that the Domiciliary Charging Policy should be renamed Non-residential Charging Policy, and that, the Charging for Care Provided at Home public information booklet, should also be amended to reflect this change.

(7) Cabinet is asked to consider the contents of this report prior to coming to a final decision on the implementation of the policy as set out in the main recommendation below.

## Recommendations

12. (1) Cabinet is asked to:
- a) **AGREE** that the Cabinet Member for Adult Social Care and Public Health take the final decision to implement the revised charging policy after taking into account the views expressed in this report and any further views put forward by Members of the Cabinet at its meeting on 19 September 2011 and the Adult Social Care and Public Health Policy Overview and Scrutiny Committee at its meeting on 20 September 2011.
  - b) **AGREE** that the Cabinet Member for Adult Social Care and Public Health will take the decision to approve the proposed change of name of the policy.

### *Appendices:*

Appendix A: Consultation Analysis Report

Appendix B: Equality Impact Assessment

### *Background Documents:*

Consultation on Non – residential Charging Policy Presentation, Adult Social Services and Public Health Policy Overview and Scrutiny Committee, 7 July 2011.

Non – Residential Charging Policy Changes Report, Adult Social Services and Public Health Policy Overview and Scrutiny Committee, 7 April 2011.

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