

From: Clair Bell, Cabinet Member for Adult Social Care and Public Health
Penny Southern, Corporate Director of Adult Social Care and Health

To: Adult Social Care Cabinet Committee – 4 March 2020

Decision No: 20/00014

Subject: **ADULT SOCIAL CARE AND HEALTH NON-RESIDENTIAL CHARGING POLICY**

Classification: Unrestricted

Past Pathway of Paper: Adult Social Care and Health Directorate Management Team Meeting – 19 January 2020

Future Pathway of Paper: Cabinet Member Decision

Electoral Division: All

Summary: The Adult Social Care and Health Non-Residential Charging Policy has been under review and several areas where Kent County Council is out of alignment with other local authority's charging policies and Department of Health guidance, have been identified.

Following this review a decision was taken to proceed to formal consultation on amending one specific area of the charging policy – the Minimum Income Guarantee – to bring into alignment with the Department of Health's Statutory guidance. This report sets out the findings of this consultation.

Recommendation(s): The Adult Social Care Cabinet Committee is asked to **CONSIDER** and **ENDORSE** or make a **RECOMMENDATION** to the Cabinet Member for Adult Social Care and Public Health on the proposed decision (attached as Appendix A) to:

- a) **AMEND** the Adult Social Care and Health Non-Residential Charging Policy to align with the Department of Health's Minimum Income Guarantee Guidance; and
- b) **DELEGATE** authority to the Corporate Director of Adult Social Care and Health, or other nominated officer, to implement the decision.

1. Introduction

- 1.1 Kent County Council (KCC) has the ability to charge for some services, permitted through the Care Act 2014 and Care and Support Statutory Guidance.

- 1.2 Over a number of years, the council has provided subsidies, which are over and above the Department of Health's guidance on charging for certain aspects, including Non-Residential Charging of social care. A number of local authorities have reduced their subsidies to align with the national guidance.
- 1.3 A decision was taken to review the subsidies provided to ensure consistency, fairness and the best use of resources to support all our social care clients.
- 1.4 Adult Social Care and Health (ASCH) has made, and continues to make, substantial improvements and efficiencies to the way social care is delivered in Kent and this has already achieved savings alongside trying to limit the impact on clients. Whilst we continue to strive to provide the best service we can for our clients, we continue to have growing pressures:
- The rising numbers of vulnerable adults with increasingly complex needs.
 - The increasing cost of providing care to support people to live in their own home.
 - Uncertainty over the longer-term funding of social care
 - Introduction of a new adult social care case management system – Mosaic.

2. Strategic Statement and Policy Framework

- 2.1 The proposal to amend the Non-Residential Charging Policy will bring the policy in line with the Care Act 2014 and the Care and Support Statutory Guidance and the Department of Health National Guidance.

3. Background

- 3.1 The review of the Adult Social Care and Health Non-Residential Charging Policy began in February 2019 and identified several areas where Kent is not aligned with national guidance.
- 3.2 The three main areas identified were:
- 1) Higher Minimum Income Guarantee (MIG) - the Minimum Income Guarantee (MIG) is an amount of money stated by the Department of Health to be left with clients in order to meet daily living costs.
 - 2) Disregarding certain elements of higher-level disability benefits from income.
 - 3) Providing a Disability Related Expenditure (DRE) to those who do not receive disability benefits.
- 3.3 Options 2 and 3 were considered but not agreed by Cabinet Members for the following reasons
- Option 2 - Disregarding certain elements of higher-level disability benefits from income. Whilst this option does reduce the subsidies the council provides, the impact on the clients affected (approximately 3,800 clients) would have been too great. This may need to be reviewed in the future.

Option 3 - Providing a Disability Related Expenditure (DRE) to those who do not receive disability benefits - there are costs that arise from a disability or long-term health condition. It was decided that this could be reviewed in the future as it is presumed that each client who is receiving care and support through ASCH would require this disregard and further investigation was recommended. This effects approximately 100 people.

3.4 After engaging Invicta Law for guidance, the Higher MIG (Option 1) was deemed to be something that ASCH could review and consult on to gain the views of those impacted by the proposed change. The reasons for this were:

- It would have a smaller impact than options 2 and 3
- It would be short term, as 350 of the 373 clients would revert to the MIG they currently receive if the proposed changes were agreed
- It aligns ASCH's new case management system – Mosaic - to the national guidance and other councils charging policies.

3.5 The MIG element of the Non-Residential Charging Policy was compared to that offered by other local authorities and this comparison highlighted that 80% of the councils who responded to the question, confirmed their charging policies aligned with Department of Health Guidance and they had implemented the national MIG level.

3.6 The analysis of aligning the MIG to the Department of Health's Guidance found that:

- Clients who are of Pension credit age will not be affected
- Clients who are aged 25 to Pension Credit Age and have higher/enhanced rates of disability benefits will not be affected by these changes.

3.7 From our analysis 94% of the clients would be impacted by less than £20 per week. A suggested mitigating factor to the proposed change was to spread the increase over two financial years with a maximum increase of £10 per week in year 1 and then up to £20 per week in year 2. A question was added in the consultation to see if this would help with any potential transition.

3.8 Replacement of the adult social care case management system also provided an opportunity to review the current charging policy.

4. The Consultation

4.1 Formal consultation on proposals to amend the Adult Social Care and Health Non-Residential Charging Policy was launched on 25 October 2019 and closed on 8 December 2019. A link to the consultation is included in the background documents to this report.

4.2 The table below breaks down the percentage of clients by service area that have are identified as being impacted by the proposed change:

Service	%
Learning Disability Younger people	57%
Sensory and Autism	18%
Learning Disability 25+	15%
Older Persons and Physical Disability	9%
Mental Heath	1%
Total	100%

4.3 The consultation was aimed at reaching all the potentially impacted social care clients or their financial agents and other interested parties to inform them of the proposed change to the policy. As a result of the engagement we hoped to raise awareness of the consultation and encourage people to respond with their views.

4.4 All clients who were potentially impacted by the proposed change (approximately 550) or were likely to be impacted due to increases in benefits (approximately 170) were sent consultation packs to seek their views on the proposed changes.

4.5 An email briefing was also sent to 150 identified groups that would support the relevant clients or have an interest in the proposal.

4.6 Staff in the Disabled Children and Young People Team were briefed before the consultation went live to ensure they all understood the proposal. They were asked to support their clients and families to respond to the consultation. They were sent a further communication during the consultation to continue to do this.

4.7 Anyone who called the consultation project team asking for documentation to be printed was sent the printed version straight away.

4.8 Anyone who called the consultation project team asking for further help or understanding was assisted, bringing together the experts needed

4.9 Over the last two and a half weeks of the consultation a targeted approach was taken to boost the response rate. Direct phone calls were made to many of the people who had received consultation packs in the post. This targeted approach helped to increase the number of responses received from 29 to 94.

4.10 Over 220 calls were made at the end of the consultation. Responses from the calls varied from:

- Do not remember receiving the consultation pack
- Meant to respond but forgotten
- Had thrown away the pack
- Felt that it was a 'done deal' so no point responding
- Didn't want to respond
- Was grateful for the help and didn't need to respond

4.11 Some people who were called said they didn't receive or had misplaced their consultation pack. As a follow-up to this, we confirmed with the mailing company that all 721 consultations packs were sent out. Those people who needed more documents were either emailed them, given the weblink or had the pack hand delivered to them depending on the most appropriate way to get the consultation pack to them.

5. Key points from the consultation

5.1 The analysis of the data has been separated into two sections, a quantitative and qualitative approach. The quantitative analysis is analysing the numbers and the qualitative analysis is analysing the themes of the open-ended free text box responses. The two are also compared to see if there's any correlation and to update the Equalities Impact Assessment.

5.2 94 responses were received in total, which is a return rate of 13%. 87 of these responses were received via the online form and 7 handwritten.

5.3 Two responses were received from organisations, one anonymised through the questionnaire and one through a formal response from KCC's Aspire group. The Aspire response isn't included in the 94 as it was an open response, but the comments have been included in the analysis.

5.4 All KCC districts were represented in the responses.

5.5 60 of the 94 respondents tended to disagree or strongly disagreed with the proposal that KCC should align their Minimum Income Guarantee to the same as the Department of Health's.

5.6 42 of the 94 respondents felt it would not help those affected by the proposal to limit any increase to charges to a maximum of £10 per week per year for the first two years.

5.7 The table below shows some of the alternative suggestions received to the proposals as detailed in the consultation documentation and our response to these alternatives.

Proposal as set out in consultation documentation	Suggested Alternative	KCC response
Suggested maximum increase of £10	There should be a more gradual increase in charges	Other options were considered, however the Discretionary Disregard process is available to any client left in hardship by this proposal.
KCC look at what a person can contribute to their care.	Don't charge for social care	Clients receive benefits to enable them to get the care and support they need. This means that Kent along with all other authorities complete a means tested financial assessment to see what contributions clients can make.
The proposal of aligning KCC with the Department of Health's MIG rate.	Don't do the proposal	Anyone that is significantly impacted and left in hardship will be able to go through the Discretionary Disregard process to seek support with the increases.
The proposal of aligning KCC with the Department of Health's MIG rate.	KCC should cut management costs to save money	ACSH are looking at a number of ways to become as efficient as possible and has and will continue to restructure to reduce overheads
The proposal of aligning KCC with the Department of Health's MIG rate.	Find savings somewhere else	ASCH continue to look at ways to save or generate additional income.
The proposal of aligning KCC with the Department of Health's MIG rate.	Invest more in social care so that clients can then be enabled to contribute to society by working	Investments have been made to a number of supported employment opportunities
The proposal of aligning KCC with the	Give more money/support to people with disabilities	This is outside of KCC's control, the amounts are

Department of Health's MIG rate.		set by the Department of Work and Pensions. These benefits are given to people to enable them to buy support with their disability.
This will not impact those who are of pension credit age or from 25 to pension age and on ESA or relevant disability benefits.	Spread the cost more evenly through age groups	This is outside of KCC's control, these are set by the Department of Health's statutory Guidance.
People contributing to the cost of their care.	Don't penalise people who have savings	This is outside of KCC's control, these are set by the Department of Health's statutory Guidance.
The statutory guidance from the Department of Health that states the Minimum income guarantee levels.	Make sure MIG rate is sufficient to live off	This is outside of KCC's control, these are set by the Department of Health's statutory Guidance.

Table 2: Alternative Options

6. Financial Implications

- 6.1 Every client has an individual means tested financial assessment based on their specific situation to identify how much they can contribute to their care package costs.
- 6.2 If the policy is changed to align the MIG to the Department of Health Guidance, the potential financial impacts on the clients are set out below:
- 1) Reduce the standard MIG rate from £91.40 to £72.40 per week for those aged 18 to 24, a decrease of £19.
 - 2) Only apply a Disability Premium MIG of £40.35 per week to the standard MIG for those on Lower, standard, middle, enhanced and higher rates of disability benefits; Employment and Support Allowance (ESA) Support Group or Universal Credit Limited capability for work and work related activity.
 - 3) Only apply an Enhanced Disability premium MIG of £19.70 per week to the standard MIG for those on enhanced and higher rates of disability benefits.; Employment Support Allowance Support Group or Universal Credit Limited capability for work and work related activity.

- 6.3 The amounts for the two disability premiums, detailed above, will not change.
- 6.4 If the policy is changed to align the MIG to the Department of Health Guidance this will mean an estimated additional income of £500k.

7. Legal Implications

- 7.1 KCC engaged Invicta Law in May 2019 to seek advice on the process required if the policy was to be amended with any of the three main areas of consideration.
- 7.2 Invicta Law confirmed that all three were lawful and that any change to the policy would need to be applied to everyone and it could not be applied to just new clients.

8. Equality Implications

- 8.1 An Equalities Impact Assessment (EqIA) was created at the start of the project and updated throughout the consultation process. The EqIA identified a potential negative impact on the following protected characteristics:

- Age (high impact)
- Disability (high impact)
- Gender identify (medium impact)
- Carer's responsibilities (medium impact)

Throughout the consultation, groups that support these protected characteristics were engaged and the feedback has been included in the EqIA. The latest EqIA is attached as Appendix 1.

- 8.2 The response from Invicta law was that any change would need to be applied to all the clients equally at the same time to ensure equalities as per line 7.2.

9. Data Protection Impact Assessment Implications

- 9.1 A Data Protection Impact Assessment (DPIA) was initially screened at the start of the project and it was found that a full DPIA was required as a number of questions were answered yes. The document was passed through the process to the Data Protection Officer, however no data protection implications were noted or highlighted.

10. Conclusions

- 10.1 The analysis before the consultation identified the areas in which Kent was not aligned with the Department of Health Guidance and paused the areas of highest impact.
- 10.2 Consultation on the proposal to amend the Adult Social Care and Health Non-Residential Charging Policy, to bring it in line with Department of Health Minimum Income Guarantee Guidance, took place between 25 October and 8 December 2019. All clients who were potentially impacted by the proposed change were sent a consultation pack.
- 10.3 Clients who are of Pension Credit Age will not be affected.
- 10.4 Clients who are aged 25 to Pension Credit Age and have higher/enhanced rates of disability benefits will not be affected by these changes.
- 10.5 Whilst any change to a charging policy is not well received, the council has been providing higher subsidies to some of its client groups compared to others. The proposal equalises the charging over all these client groups, aligning the charging to the Department of Health's Guidance.
- 10.6 Of the 721 consultation packs sent out only 4% of clients responded before the further engagement which resulted in a total of 13% of the clients impacted by the proposal responding to the consultation.
- 10.7 The mitigating factors which assist with this recommendation are:
- 1) Every client has an individual means tested financial assessment based on their specific situation to identify how much they can contribute to their care package costs.
 - 2) It was proposed to limit the increase to a maximum of £10 per week in the first year and a further £10 in the second year. This could help reduce the financial impact on KCC clients.
 - 3) If after a financial assessment it is felt that the clients are not able to support themselves with the amount they are left with, Adult Social Care and Health have a Discretionary Disregard process to ensure that someone is not left in hardship. This process can allow Adult Social Care and Health to waive some or all of the charges.
 - 4) The 6% of clients who are identified to be impacted by more than £20 per week will be engaged through financial year 2020/21 to ensure that their benefits are correct their income is maximised to help reduce the increased costs.
 - 5) In order to mitigate any adverse impact on the remaining 87% of clients who didn't respond, their cases can be reviewed as part of the annual review of their care and support plan. Points 1,2 and 3 as set out above will also come into play for these clients.
- 10.8 After full consideration of the findings of the consultation the recommendation is to proceed with the amending the Adult Social Care Non-Residential Charging

Policy to align with Department of Health's Minimum Income Guarantee Guidance for all new and existing clients.

11. Recommendation(s)

11.1 Recommendation(s): The Adult Social Care Cabinet Committee is asked to **CONSIDER** and **ENDORSE** or make a **RECOMMENDATION** to the Cabinet Member for Adult Social Care and Public Health on the proposed decision (attached as Appendix A) to:

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12. Background Documents

Consultation on Charging for adult social care in a person's own home or in the community

<https://www.kent.gov.uk/adultsocialcarecharging>

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