

Report to Cabinet

18 May 2022

Subject:	Adult Social Care Contributions Policy
Cabinet Member:	Finance and Resources - Cllr Crompton Adults, Social Care and Health - Cllr Hartwell
Director:	Director of Finance – Simone Hines Director of Adult Social Care - Rashpal Bishop
Key Decision:	Yes/No
Contact Officer:	Service Manager (Business Management) - Kay Murphy, Kay_Murphy@sandwell.gov.uk

1 Recommendations

- 1.1 That the Director of Adult Social Care and the Director of Finance be authorised to enter consultation with users of services on the policy changes set out below and three proposed contribution models summarised (as detailed in Appendix A), and submit a further report to Cabinet following consultation on final policy change proposals:

Joint financial assessment of couples: we are proposing to end the practice of offering a joint assessment of couples, as the Care Act no longer permits this. This has been implemented for new cases. For existing cases, we are proposing that future reassessments will be on the basis the client's share of any capital or income only. As this change – although required by the Care Act – will be detrimental to most people who have been jointly assessed, we are including it in this consultation.

Short-term (respite) care charges: to comply with Care Act requirements, it is proposed that the council move to basing contributions to the cost of respite care on the actual costs of the service, and to charge people a financially-assessed contribution based on residential regulations, whilst suspending their non-residential contributions (if any) for that period.



The three alternative contributions models proposed, as set out in Appendix A, which details how they change the method by which a person's financial contribution is calculated for non-residential services. All three modify or remove the existing "Sandwell Allowance" which allows people to keep 53% of their disposable income when assessing their contributions.

- 1.2 That approval be given to the following general principles of change to the Adult Social Care Contributions Policy and as summarised in Appendix A:

Disability Related Expenditure: amending the method of allowing people's DRE costs (a statutory requirement for non-residential services) to allow the full sum of any such costs against income, up to the total of their disability benefits; also reflecting recent rulings by the Local Government Ombudsman on the type of expenses that should be considered.

Transitional protection: introducing a process that will limit changes in a person's contributions solely attributable to changes in policy (such as those outlined in this paper) to a maximum sum for a period up to three years, if that person faces a significantly adverse impact.

Other changes in policy principles and wording to remove out-of-date references and clarify what the council's policy is for both Residential and Non-residential contributions. This includes taking account of recent case law and decisions by the Local Government Ombudsman, as well as correcting any conflict between the original policy and actual practice.

- 1.3 That approval be given to the following clarifications regarding the existing Adult Social Care Contributions Policy, as set out in Appendix A, for approval with immediate effect:

Reviews and appeals: to implement a revised process for the review of financial assessments and contributions as set out in Appendix A.

Contributions start dates and backdating: to ratify existing practice to limit the backdating of Non – Residential contributions as described in Appendix A.

Services excluded from assessed contributions; our policy should list all services where we have chosen to apply a fee which everyone must pay (rather than an assessed contribution), because the Care Act states that



such fees cannot be more than the actual cost of providing the service. Consequently, they must be reviewed annually and their level set by the Director of Finance under delegated authority.

The policy should also list services which we have chosen to provide free of charge. Some Direct Payment “specialist” support services (account management, payroll, liability insurance, employment advice and recruitment support) are provided free of charge to clients assessed as requiring them, and need to be added to the list of services that the council has decided not to charge for.

Arranging care for self-funders: to offer an ad-hoc service on request, with no charge to be levied for this service under the policy. This situation would be reviewed if the volume of requests becomes significant.

Short-term (respite) care charges: in line with revised Adult Social Care Policy, to amend the contributions policy to reduce the number of days respite charged at flat rate from 56 to 28 within a 12-month period.

Contract issues: it was noted that there are some services where practice in the council may be inconsistent in terms of what contracts require of providers or what is included in people’s care and support plan. These are equity issues that it is recommended are resolved now, and will be implemented immediately if Cabinet approve this paper;

- to include Core Support charges for Extra Care as an additional housing related cost we fund within the policy and guidance, in line with practice;
- to ensure that where travel is required to meet an assessed need and is to be met by commissioned transport (either private or in-house), then the actual cost must be included in the person’s Care and Support plan and included when determining their assessed financial contribution;
- that the cost of any meals included within non-residential settings are met by individuals directly. Further details contained in Appendix A.

Debts and client liability: to develop and implement a range of measures aimed to reduce debt and implement in accordance with the details set out in Appendix A.

Residential services policies: The council has only limited discretion in the way in which financial contributions for residential care are assessed, but there are some areas already in operation which need to be re-stated in the revised policy.



- Property disregard: there are certain circumstances where the value of a property must be disregarded: however, where a person occupying the property is not a partner and does not meet the criteria, we have discretion and our policy is as follows;
 - If they are aged 18 to 59 and match the Care Act definition of a relative, we will offer the option of a Deferred Payment Agreement should the person going into care qualify;
 - we will disregard the property whilst any person (not necessarily a relative) who can demonstrate that the house is their sole residence lives in it, providing they can show that they gave up their own home to care for the person who is now in a care home, and they did so significantly before this time, when neither party had any reason to think residential care may be required in the future.
- Twelve-week-disregard: we must disregard the value of a person's main / only home for 12 weeks in some situations to allow them and / or their family and representatives time to consider their options at a time of crisis where;
 - someone is entering permanent residential care for the first time;
 - a long-term disregard of a property ends unexpectedly due to the death of the qualifying relative living in it.
- We have discretion as to whether to apply a twelve-week disregard in some other situations, and our policy is to consider applying it;
 - where there is a sudden and unexpected change in a person's financial circumstances forcing them to approach us for assistance, e.g. the shares which they have used to fund their care suddenly lose half of their value;
 - where a person who is a "self-funder" in a care home approaches us for assistance or a deferred payment agreement (DPA) because their savings or liquid assets are falling below the qualifying capital limit. This allows the person time to make the necessary decisions and arrangements.
- Personal Expenses Allowance – we will exercise our discretion where a person is part of an unmarried couple and is paying half their occupational/personal pension or retirement annuity to their partner (who is not living in the same care home) to disregard this sum (we must in law do this for married couples and civil partnerships).



2 Reasons for Recommendations

- 2.1 The Director of Adult Social Care and the Director of Finance have commissioned work to check the compliance of the Council's current policy against the Care Act 2014.
- 2.2 This paper proposes changes in our contributions policy to identify a model which is more financially viable for the council, whilst also reflecting recent case law and Local Government Ombudsman findings to be fairer and comply with equalities expectations.
- 2.3 Despite increasing pressures within Adult Social Care funding, Sandwell Council has continued to provide allowances that exceed those required by the relevant regulations and which are out of line with most other local authorities both locally and nationally.
- 2.4 Sandwell allows people to retain 53% of their disposable income (if any), and bases contributions only on the remaining **47%**. In contrast, our research into other councils identified that out of 27 other councils, one bases contributions on **75%** of disposable income, one on **90%**, and the remaining 25 on **100%** (although a few have other allowances like a care cost cap or a disregard for benefits that might compensate to a degree).
- 2.5 On this basis, our proposed models will still be generous compared with most councils researched, and it is anticipated that by amending policy, additional income will be generated which will assist the authority to ensure that it can continue to provide services to the most vulnerable within cash limited resources. It should be noted that a significant minority of people currently pay no contributions because they have no disposable income, and these people's status is not affected by the three models, whichever is selected.
- 2.6 Whilst the Care Act did not introduce major change, (as the biggest reform - the care cap - was postponed and is only now under consideration and national consultation), the current Sandwell policy dates from 2012, and hence contains references and statements that require updating to reflect new state benefits, laws and regulation.



- 2.7 In addition, legal advice has highlighted some conflicts between that policy document and actual financial assessment practice, and these are addressed in the proposed amendments within this paper and in the practice guidance being prepared for staff use.
- 2.8 There are also some aspects of the policy that are no longer consistent with recent case law and rulings by the Local Government Ombudsman, and these aspects are reflected in the proposed changes for which public consultation will be required.

3 How does this deliver objectives of the Corporate Plan?

	People live well and age well - clarifying some elements of current policy makes it easier for users of service and residents to understand how we make decisions regarding their contributions and ensures equity amongst customers
	Strong resilient communities - ensuring residents understand our policy and principles will contribute towards creating stronger and more resilient communities
	A strong and inclusive economy – ensuring people have sufficient funds to meet all reasonable needs is essential for an equitable economy

4 Context and Key Issues

- 4.1 The Care Act repealed all previous national charging policies and guidance such as Fairer Charging Guidance and Charging for Residential Accommodation Guidance (CRAG). These documents were replaced by new statutory guidance on charging for care and support in the Care and Support Statutory (CASS) Guidance published in October 2014.
- 4.2 Councils have discretion as to whether they charge people who can afford it a contribution to the cost of their adult social care services, and like most councils, Sandwell has implemented such charges. If a council chooses to charge, it must operate within the Care and Support (Charging and Assessment of Resources) Regulations, and must create a policy which describes how it applies its discretion.
- 4.3 The original decision to charge in Sandwell was made in the Non-Residential Charging Policy which was approved in 1996, amended in 2010, and revised in 2012.



- 4.4 This paper proposes changes to the Council's Contributions (Charging) Policy for both Residential and Non-residential care and support to reflect those areas of the law where the council has discretion.
- 4.5 Some of these changes – particularly those that propose a change in the methodology for calculating people's non-residential contributions - have a significant impact on some current users of our services. Others are more technical changes to the policy to clarify and update elements of it.
- 4.6 If approved by Cabinet, revised models will form the basis of a public consultation. It is intended to bring the results of that consultation back to Cabinet later in the year (provisionally October 2022) for implementation in January 2023 if approved.
- 4.7 Further work and public consultation may also be required later in 2022 or in 2023 on a further paper which will reflect the government's recent announcement of proposals for Adult Social Care Act funding reform.
- 4.8 The Government is currently consulting on the introduction from October 2023 of a new £86,000 cap on the amount anyone in England will need to spend on their personal care (but not daily living costs) over their lifetime, as well as increased limits on the amount of capital a person can retain. Until these proposals are finalised in Parliament after public consultation, no work is yet possible on them, although their general direction will guide the work in phase two.
- 4.9 The changes proposed are summarised below, with full details attached as **Appendix A**. Also attached is information on the financial and equalities impact of the models proposed based on the sample of users of services used in the model, plus two case studies – see **Appendix B**.

5 Summary of main changes

- 5.1 **For consultation:** this first section sets out the areas and models proposed as changes to the contributions policy that members are asked to approve for public consultation.
- 5.2 **Joint financial assessment of couples:** we are proposing to end the practice of offering a joint assessment of couples, as the Care Act no longer permits this. This has been implemented for new cases. For



existing cases, we are proposing that future reassessments will be on the basis the client's share of any capital or income only. As this change – although required by the Care Act – will be detrimental to most people who have been jointly assessed, we are including it in this consultation.

- 5.3 Short-term (respite) care charges: to comply with Care Act requirements, it is proposed that the council move to basing contributions to the cost of respite care on the actual costs of the service, and to charge people a financially-assessed contribution based on residential regulations, whilst suspending their non-residential contributions (if any) for that period.
- 5.4 The three alternative contributions models proposed, as set out in Appendix A, which details how they change the method by which a person's financial contribution is calculated for non-residential services. All three modify or remove the existing "Sandwell Allowance" which allows people to keep 53% of their disposable income when assessing their contributions, and all have varying degrees of impact on individuals and on equalities data which are explained in detail in Appendix B.
- 5.5 **General principles of change**: paragraphs 5.6 – 5.8 below set out the general principles of change to the contributions policy that members are asked to approve. *All three proposed models for consultation* incorporate these principles without variation, and so they will be adopted after the consultation if approved.
- 5.6 Disability Related Expenditure: amending the method of allowing people's DRE costs (a statutory requirement for non-residential services) to allow the full sum of any such costs against income, up to the total of their disability benefits; also reflecting recent rulings by the Local Government Ombudsman on the type of expenses that should be considered.
- 5.7 Transitional protection: introducing a process that will limit changes in a person's contributions solely attributable to changes in policy (such as those outlined in this paper) to a maximum sum for a period up to three years, if that person faces a significantly adverse impact.
- 5.8 Other changes in policy principles and wording to remove out-of-date references and clarify what the council's policy is for both Residential and Non-residential contributions. This includes taking account of recent case law and decisions by the Local Government Ombudsman, as well as correcting any conflict between the original policy and actual practice.



- 5.9 **Clarifications of existing policy and practice**: paragraphs 5.10 – 5.18 set out the clarifications to the existing contributions policy and associated practice guidance that members are asked to approve. They will be implemented *immediately*, and included in policy documentation on completion of the consultation.
- 5.10 **Reviews and appeals**: to implement a revised process for the review of financial assessments and contributions as set out in Appendix A.
- 5.11 **Contributions start dates and backdating**: to ratify existing practice to limit the backdating of Non – Residential contributions as described in Appendix A.
- 5.12 **Services excluded from assessed contributions**; our policy should list all services where we have chosen to apply a fee which everyone must pay (rather than an assessed contribution), because the Care Act states that such fees cannot be more than the actual cost of providing the service. Consequently, they must be reviewed annually and their level set by the Director of Finance under delegated authority.
- 5.13 The policy should also list services which we have chosen to provide free of charge. Some Direct Payment “specialist” support services (account management, payroll, liability insurance, employment advice and recruitment support) are provided free of charge to clients assessed as requiring them, and need to be added to the list of services that the council has decided not to charge for.
- 5.14 **Arranging care for self-funders**: to offer an ad-hoc service on request, with no charge to be levied for this service under the policy. This situation would be reviewed if the volume of requests becomes significant.
- 5.15 **Short-term (respite) care charges**: in line with revised Adult Social Care Policy, to amend the contributions policy to reduce the number of days respite charged at flat rate from 56 to 28 within a 12-month period.
- 5.16 **Contract issues**: it was noted that there are some services where practice in the council may be inconsistent in terms of what contracts require of providers or what is included in people’s care and support plan. These are equity issues that it is recommended are resolved now, and will be implemented immediately if Cabinet approve this paper;



- to include Core Support charges for Extra Care as an additional housing related cost we fund within the policy and guidance, in line with practice;
- to ensure that where travel is required to meet an assessed need and is to be met by commissioned transport (either private or in-house), then the actual cost must be included in the person's Care and Support plan and included when determining their assessed financial contribution;
- that the cost of any meals included within non-residential settings are met by individuals directly. Further details contained in Appendix A.

5.17 Debts and client liability: to develop and implement a range of measures aimed to reduce debt and implement in accordance with the details set out in Appendix A.

5.18 Residential services policies: The council has only limited discretion in the way in which financial contributions for residential care are assessed, but there are some areas already in operation which need to be re-stated in the revised policy.

- Property disregard: there are certain circumstances where the value of a property must be disregarded: however, where a person occupying the property is not a partner and does not meet the criteria, we have discretion and our policy is as follows;
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 - we will disregard the property whilst any person (not necessarily a relative) who can demonstrate that the house is their sole residence lives in it, providing they can show that they gave up their own home to care for the person who is now in a care home, and they did so significantly before this time, when neither party had any reason to think residential care may be required in the future.
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- e.g. the shares which they have used to fund their care suddenly lose half of their value;
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- Personal Expenses Allowance – we will exercise our discretion where a person is part of an unmarried couple and is paying half their occupational/personal pension or retirement annuity to their partner (who is not living in the same care home) to disregard this sum (we must in law do this for married couples and civil partnerships).

6 Alternative Options

- 6.1 The Council must have a Contributions Policy as it has discretion over aspects of both Residential and Non-Residential Contributions.
- 6.2 It would be possible to defer these updates until national decisions on recent case law and on the care cap proposals are reached, but some of these changes are essential and should be made without delay. The financial viability of the current policy is also important.
- 6.3 Furthermore, recent legal advice obtained by the Council draws attention to the risks of operating with a policy that is technically outdated or does not align to practice, and it is considered prudent, therefore, to make the identified changes without further delay to avoid any misunderstandings caused by outdated wording, which also ensures that people better understand our current policy.

7. Implications

Resources:	Under the current charging policy, the council is projected to generate non-residential contributions of £2.3 million pa. The proposed changes would increase this by between £1.2 million and £1.4 million pa. There are no specific staffing implications arising from this report
Legal and Governance:	The discretionary elements of the Care Act 2014 and subsequent regulation provides the basis for this policy
Risk:	There are risks associated with this report arising from the impact on the contributions people make to their cost of non-residential care, either from the main



	<p>models, or from some of the associated changes such as ending the practice of offering couples' assessments.</p> <p>This may lead to outcomes such as increases in appeals or challenge, increases in non-payment of contribution or refusal to accept the care and support service the person has been assessed to require.</p> <p>The risks have been assessed, and sufficient actions have been identified in a separate risk assessment, to ensure that the risks are mitigated to an acceptable level. None of the risks are “red” in terms of being high impact or highly likely.</p> <p>Other changes are technical, (updating references and names) or confirmation of existing policy (e.g. those around residential contributions) and are not considered to carry significant risk.</p>
<p>Equality:</p>	<p>Overall, the proposal to increase the level of contributions has a negative impact on all types of equality characteristics – these impacts are shown in more detail in Appendix B.</p> <p>A significant number of people, particularly those with greater disposable income and those who have traditionally had a joint assessment as a part of a couple, will pay more.</p> <p>Within this overall situation, some will benefit from;</p> <ul style="list-style-type: none"> • The action to amend current practice around DRE allowances – this has a positive effect for some, as it reduces the charges for people who incur disability related expenditure. The case studies in Appendix B demonstrate this. • Offering transitional protection to those who are significantly impacted by the contributions policy, which limits the negative effect of increasing contributions arising from the new models and from the ending of joint assessments.



	<p>Appendix B, plus the EIA completed for this report, contain more analysis and detail. The range of models tested for a new contributions policy were designed to try and minimise impacts on any specific group. The three models finally chosen do not appear to have any differential impact on any equalities characteristic. Ultimately, the overall negative impact of the changes proposed in this paper have been examined and reviewed, but are unavoidable given the need to balance the council's budget. The overall picture is that state benefits, pensions and other national allowances do <i>appear</i> to contain inherent discrimination, and this is not something the council can resolve.</p> <p>Once consultation is completed, the council will need to decide if there is still potential for, or evidence of, indirect or direct discrimination. If there is, it could be that it is determined that it can be justified as a 'proportionate means of achieving a legitimate aim'. The Equality Act 2010 sets out that an act of discrimination may be justified if it is found to be a proportionate means of achieving a legitimate aim.</p>
Health and Wellbeing:	There are no specific health and wellbeing implications arising from this report
Social Value	There are no specific social value implications arising from this report

8. Appendices

Appendix A – details of the proposed changes to the council's Contributions Policy

Appendix B – summary of the estimated financial and equalities impacts

9. Background Papers

- Assessment of other councils' contributions policies
- Report to Cabinet Member for Adult Social Care 15th June 2012; Adult Social Care Non-Residential Charging Policy (Cabinet Forward Plan Ref. no. ASC009)
- The Care Act 2014
- The Care and Support (Charging and Assessment of Resources) Regulations 2014 (amended 2021)



- The Care and Support Statutory (CASS) Guidance October 2014
- The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014
- The Mental Health Act 1983 (mental health aftercare services commissioned under section 117 of this Act must be free from contribution).

