Sandwell
Metropolitan Borough Council

Report to Cabinet

16 November 2022

Subject:	Adult Social Care Contributions Policy – outcomes of consultation
Cabinet Member:	Finance and Resources - Cllr Piper Adults, Social Care and Health - Cllr Hartwell
Director:	Director of Finance – Simone Hines Director of Adult Social Care - Rashpal Bishop
Key Decision:	Yes
Contact Officer:	Service Manager (Business Management) - Kay Murphy, Kay_Murphy@sandwell.gov.uk

1 Recommendations

1.1 That the Sandwell Contributions Policy be amended (as shown in Appendix C) with effect from 1st January 2023 to reflect the following changes which are recommended by the Director of Adult Social Care and the Director of Finance after public consultation (as detailed in Appendix A):

1.2 <u>Joint financial assessment of couples</u>: end the practice of offering a joint assessment of couples, as the Care Act no longer permits this, by reassessing all existing cases for January 2023 and applying transitional protection to minimise the impact as appropriate.

1.3 <u>Short-term (respite) care charges</u>: move to basing contributions to the cost of respite care on a financially assessed contribution based on residential regulations with effect from 1st January 2023. In order to mitigate the impact of this change for people with disabilities where respite costs can be very high, the contribution will be based on the actual cost of care *up to a maximum of the Council's guideline rate for nursing care for older people* (currently £687.36 per week).

1.4 New contributions model: adopt Model 2 as the method for calculating non-residential contributions, (as detailed in Appendix A), which reduces the existing "Sandwell Allowance" which people are allowed to retain from 53% of their disposable income to 20%, and increases council income by an estimated **£830,000** compared with what current income is expected to be, and by an estimated **£1,609,000** compared with the expected income budget for 2023/24 which, based on current income trends, is set at a more prudent level. *There are, however, some risks associated with these figures, as detailed in section 6 below* and it is not recommended that the full potential income figure is incorporated into financial plans, at least initially.

1.5 Disability Related Expenditure (DRE): amending the method of allowing people's DRE costs to allow the full sum of any such costs against income, up to the total of their disability benefits (currently we only make allowance for DRE costs that exceed the 53% Sandwell Allowance). In addition, to introduce a lump sum banded DRE allowance to be offset against assessed income for any non-residential client who receives a standard or higher rate of DWP disability benefit (although if they have higher expenses, they can still claim for those). The allowance for higher rate of DWP disability benefit has been increased to £10 (it was £9 in the consultation) to reflect the increases in costs people are already facing.

1.6 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 of £30 a week for a period of up to three years, if that person faces a significantly adverse impact. The calculation will take account of inflationary changes to people's income and allowances, but not other changes.

1.7 To note that the Chair of the Health and Adult Social Care Scrutiny Board has agreed to make an exception to scrutiny call in of this matter so that implementation can commence immediately after Cabinet.

2 Reasons for Recommendations

2.1 The Director of Adult Social Care and the Director of Finance were authorised by Cabinet on 18th May 2022 to implement a range of changes in policy and practice, and to enter consultation with users of services on further key policy changes and three proposed contribution models.

2.2 The key policy changes and three models aim to generate additional income which will assist the Council to ensure that it can continue to provide services to the most vulnerable within cash limited resources. The policy changes also reflect recent case law and Local Government Ombudsman findings to be fairer and comply with equalities expectations.

2.3 Consultation has taken place over three months and closed on 4th September 2022. Details of the consultation arrangements and the outcomes are shown in **Appendix A**.

2.4 Cabinet are asked to note that some of the key recommendations made above are not in line with the responses to the consultation survey, but have been made on the basis that:

(a) the significant impact of Model 3 (the most popular choice in responses) makes it a challenging option given the cost-of-living issues now facing people. Although less people faced an increase under this model, the size of increase individuals faced was significantly larger and potentially unsustainable for them, at least in the current cost of living situation. It also would cost the Council significant sums in the short-term in terms of funding transitional protection. Model 2, which is now recommended is the most balanced in terms of the number of people facing significant increases; it has only 56% of people facing increases (compared to 59% in Model 1), and 13% receive a reduction (compared to 9% in Model 1).

(b) The use of a DRE banded sum linked to disability benefit rates (the most popular choice in responses) ties the Council to national rates which, historically, have been slow to respond to inflationary pressures. Using a lump sum instead (now the recommended option) gives the Council more flexibility to react to price pressures, and indeed is the reason why it is recommended that the higher rate sum be increased to £10 from the £9 proposed in the consultation.

(c) the responses to consultation were not high enough to be statistically significant.

2.5 Also attached is information on the financial and equalities impact of the final recommended model, based on modelling of all users of non-residential services as at August 2022, as well as data on those who responded to the survey– see **Appendix B**.

2.6 If approved, it is intended to apply these changes immediately so as to revise people's contributions to non-residential care from January 2023, essential if the savings targets are to be achieved.

2.7 Because of changes in Cabinet meeting dates, the above timescale leaves only a short time to recalculate all financial assessments between the Cabinet meeting on 16th November 2022 and the date by which we need to notify people (ideally 1st December 2022). Consequently, an urgency exception to call-in by Scrutiny is requested; the Chairs of the Scrutiny Boards have been consulted and have raised no objections. This would enable us to commence the work and contact customers immediately following Cabinet decision.

2.8 **Appendix C** is the Contributions Policy that will apply from that date if these recommendations are approved.

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 Cabinet approved at its meeting on 18th May 2022 a revised Contributions Policy, and agreed to public consultation taking place on the key options for calculating contributions within that policy. This ensures that, as Sandwell MBC has chosen to raise contributions, it has a policy which describes how it applies its discretion, in accordance with statutory guidance on charging for care and support in the Care and Support Statutory (CASS) Guidance published in October 2014.

4.2 The key changes proposed a change in the methodology for calculating people’s non-residential contributions which would have a significant impact on some current users of our services and would potentially generate additional income in the order of £1.609m a year in the longer term (but there are risks associated with these estimates, and the cost of transition would reduce this in the first year). The model we are recommending changes the existing Non-Residential Policy where the Council currently disregards 53% of disposable income to only disregard 20%. This remains more generous than most authorities surveyed, many of whom levy charges against 100% of disposable income.

4.3 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.

4.4 The Government has consulted 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 increasing the limits on the amount of capital a person can retain. In addition, work is ongoing to identify for each council a “Fair Cost of Care” as the basis for funding future payments to care providers.

4.5 Until final details of these changes are confirmed, they cannot be included in this document, but the changes do not directly impact on the methodology proposed in our consultation, only on the capital limits applied in calculating a contribution.

5 Alternative Options

5.1 The Council must have a Contributions Policy as it has discretion over aspects of both Residential and Non-Residential Contributions.

5.2 The Contributions Policy will be reviewed on a regular basis to ensure that the intended outcomes are achieved and to ensure that there are no significantly adverse consequences

5.3 It would be possible to defer the changes outlined in this paper until national decisions on the Fair Cost of Care and Care Cap proposals are finalised, but some of these changes are essential to ensure the financial viability of the current policy.

6 Implications

Resources:	The expectation is that the changes proposed will deliver additional income of £1.0m per annum for the Council. Based on the modelling, we would estimate an increase in income of the order of £830,000 per annum, and potentially £1.609m million per annum in the longer term, *subject to the risks set out below*. In year one, this would be temporarily reduced by approximately £245,000 for transitional protection. However, the budget assumption for 2023/24 and beyond will remain prudent and will take into account the risks and uncertainties set out below. There will be increased demands on staff arising from the need to ensure compliance with the new policy, particularly where discretion is permitted; this is covered in risks below. There are no other 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 some **client** 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 models, or from some of the associated changes such as ending the practice of offering couples' assessments. This may lead to outcomes such as increases in appeals or challenges, increases in non-payment of contribution, or refusal to accept the care and support service the person has been assessed to require. The risk relating to **staff** (both social care and financial assessment) relates to workloads. Many of the changes proposed in this Policy are essential to resolve existing issues, and so notwithstanding their impact they must be implemented. In turn, this requires new streamlined processes and better prioritisation to be implemented to ensure there is no overall increase in workload.

	Practice guidance is being revised to introduce efficiencies and to ensure responsibilities are clear for all staff, and both ASC and Finance will need to ensure that this guidance is implemented with full training and with ongoing practice audit to ensure compliance, particularly where discretion is permitted. The main **financial** risk alluded to above is the uncertainty as to the extent to which income can be increased by the £1.609m shown, which is based on the forecast effect of the new model against the likely 2023/24 budget which is significantly lower, which will be partly due to the current collection rate and provision for bad debts. The forecast income figure does not take into account the future non-payment of contributions by clients (bad debts), and how successful we are in recovering them. Although new systems have recently been introduced to ensure all contributions are now collected through the corporate Revenues system, which will make debts and arrears transparent, older debts and the risk associated with them are not fully quantified. In addition, the change to making full allowance for Disability Related Expenditure – although identified as a legal requirement – could lead to an increase in overall costs beyond that included in the forecasts. To mitigate this risk, new guidelines have been introduced for staff to effectively consider and manage requests. 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, including new debt management processes and a robust process for determining valid Disability Related Expenditure. On this basis, none of the risks are “red” in terms.
Equality:	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**.

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.

Within this overall situation, some will benefit from;

- 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, although they may still face an overall increase in contributions arising from other changes.
- 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 for couples.

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, and the three models finally chosen did not appear to have any differential impact on any equalities characteristic.

Ultimately, the overall negative impact of the changes recommended 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 *appear* to contain inherent discrimination, and this is not something the council can resolve.

Whilst there are differential impacts on different groups, there is no potential for, or evidence of, indirect or direct discrimination – indeed, there is no obvious explanation for these variations. Ultimately, the recommendations are made on the basis that the changes can be justified as a 'proportionate means of

	achieving a legitimate aim', as defined by the Equality Act 2010.
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
Climate Change:	There are no specific climate change implications arising from this report

7. Appendices

Appendix A – details of the consultation arrangements and the outcomes
Appendix B – summary of the estimated financial and equalities impacts
Appendix C – revised Contributions Policy applicable from 1st January 2023.

8. Background Papers

- 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).