Report to Cabinet

Appendix A: Consultation arrangements and outcomes for ASC Contributions Policy

1 **Introduction**This appendix sets out the outcomes of the public consultation held on the proposed changes to the council's Contributions Policy. The consultation ran for three months ending 4th September 2022.

1.2 The aim of the changes was to consider alternative models for both non-residential and short-term care (respite) contributions regime which is financially viable for the Council whilst being fairer and complying with equalities expectations.

2 Items for consultation

2.1 This first section details the changes on which consultation was conducted.

2.2 Joint financial assessment of couples; ending the current practice of offering a joint assessment of resources for couples, which was removed as an option under para 8.8 of the Care Act Statutory Guidance.

2.3 The option has already been removed for any new cases that arise – they are assessed solely on their own income and capital in accordance with the Care Act. Because we were aware that the change will disadvantage existing clients, we have included it in the consultation in order to allow *transitional funding* (as below) to be applied in phasing in this change.

2.4 Short-term (respite) care charges: replacing the current charges for people having short-term (respite) residential care which are a flat rate charge varying by the age of the person (linked to DWP benefits). People are charged this flat rate irrespective of any financial assessment they may have had for other care services.

2.5 The Local Government Ombudsman found a council at fault for using such charges, as there was no test to ensure a person could afford them, and no justification provided for departing from Care Act guidance. Short-term care is an assessed need, and we have not identified the original reason for charging for on a flat rate basis, which people with no disposable income are being expected to pay.

2.6 Consequently, we have consulted on moving to charging based on the actual costs of the service and applying financially assessed contributions based on residential regulations. This was included in consultation because of the significant impact it will have on some users of the service.

2.7 <u>The three models for calculating people's financial contributions</u>; three options were offered in the consultation for the method by which a person's financial contribution to non-residential services are calculated.

2.8 All aimed to change the order of calculation of Disability Related Expenditure and to generate additional income for the Council by reducing the current "Sandwell Allowance" which allows people to keep 53% of their disposable income when assessing their contributions. This allowance is generous compared with nearly all local authorities researched, and benefits mostly those with higher incomes.

2.9 There are inherent differentials in national charging regulations and state pensions and benefits which means that those for people over pension age are generally higher than those of working age. Although a national issue, the models did make some limited attempt to ameliorate this.

2.10 Relatively simple changes to the current 53% "Sandwell Allowance" formed the basis of two of the models put forward for consultation, whilst the third attempts to address some of the equity issues by replacing the "Sandwell Allowance" with alternative methods.

2.11 All three models incorporate two key changes;

- changing the method by which <u>Disability Related Expenditure</u> is allowed for by allowing the full sum of a person's agreed DRE (if any) against their income before we calculate any disposable income allowance (currently we provide an allowance of 53%). At present DRE is only paid if it exceeds the 53% allowance, and legal advice is that this practice may be open to challenge;

- the introduction of <u>transitional protection</u> to limit adverse year-on-year changes in a person's contributions solely attributable to Council policy changes. If a person faces an increase of more than £30 a week between two years (allowing for inflation but no other changes), it can be phased in for a maximum of three years. Thus in year 1 (actually 15 months January 2023 to March 2024), no client receiving care as at December 2022 would face an increase of more than £30 from their inflated contribution as at December 2022. In year 2 (April 2024 to March 2025), the maximum increase would be no more than £30 from their inflated 2023/24 contribution, and for the final year 3 (April 2025 to March 2026), it would be no more than £30 from their inflated 2024/25 contribution

2.12 <u>Model 1</u> – this amended the "Sandwell Allowance" from 53% to 25% of disposable income. This would have increased council income by £974,000 compared with the estimate of what current income should be.

2.13 <u>Model 2</u> – this model attempts to reduce some inequity by introducing a "flat rate" banded sum for DRE costs to set against the person's income, which everyone getting a disability benefit and paying a contribution would receive. This is a methodology adopted by many councils for giving out non-targeted funds, and has the added advantage (for clients and the Council) that people do not have to submit claims and associated paperwork for a DRE cost if it is less than the automatic allowance.

2.14 To deliver the same level of savings as Model 1, Model 2 amends the "Sandwell Allowance" to 20% of disposable income. The introduction of the banded DRE allowance means the scale of change faced by anyone is less severe. This would increase council income by £830,000 a year compared with the estimate of what current income should be.

2.15 Model 3 – this model attempted to address some of the perceived inequity and inequality in the current model. It too introduced a "flat rate" banded allowance for DRE costs, but also replacing the "Sandwell Allowance" completely by instead enhancing the government "minimum income guarantee" (the MIG, which everyone should be left with in non-residential cases) by 5%. This model took more disposable income from those who have it and is a more radical redistribution than the other two models. Less people face an increase than in the other two models, but many more people face a *significant* increase and require transitional funding. It would have raised £1.1m a year

3 Process of consultation

3.1 The Contributions consultation was launched on 6th June 2022, initially to run for three months. It commenced with the launch of documents on our website, a mailshot to our current non-residential service clients (approximately 2,500) drawing their attention to the consultation, and emails to community groups and partner organisations asking to share survey with their networks.

3.2 It was also sent to ASC staff, and there were a variety of messages through the council website, social media and the Sandwell Herald. The website included a calculator where people could calculate the effect of the proposals on their financial contribution.

3.3 During the consultation period, two drop-in events were held where people could come and ask questions about the proposals and also be provided with forecasts of the likely impact on their own financial contribution. Such sessions were also offered to the voluntary and community organisations.

3.4 By early August, a low response rate led to discussion at Scrutiny which in turn generated additional effort to improve participation. The consultation was extended by a week (to 4 September) to allow more time, and an article and link to the consultation was added to the council's e-bulletin which went to about 40,000 households. Further messages were issued to voluntary and community sector organisations, to advise them of this extended date and encourage them to respond and/or get their members to respond.

3.5 The outcome has been a modest increase in responses but still not to a statistically significant level. A number of respondents commented on the difficulty in understanding the issues, although that is why we offered the drop-in sessions and offered meetings for specific groups if they requested it. Such a response is disappointing but not entirely unexpected; Financial Contributions is a fairly complex area to explain and get people interested in.

3.6 The limited evidence from the drop-in sessions was that people simply wanted to know what they would be paying under the options offered, rather than the reasons why. At a time of increasing cost-of-living issues we did expect more responses even if they were negative. The message was disseminated widely, but it appears that it was not one that people chose to engage with.

4 Outcomes of consultation

4.1 Overall, the response to the consultation was poor, despite the effort made in terms of communication and engagement. The level of responses is not statistically significant, and some respondents clearly stated that they were unable to understand the proposals or the rationale behind them. Given this, the recommendations made are based on what is considered to be the "best fit", and do not line up with the limited consultation responses.

4.2 A table summarising the consultation responses is included at the end of this section. It should be noted that more people responded with comments than actually answered the survey questions.

4.3 There are **two key changes** which were proposed to be implemented whichever of the three models is selected. These are;

a. Changing how we allow for Disability Related Expenditure (DRE). The proposal benefits those who currently receive a DRE allowance against their income as they will receive the full agreed sum, rather than only allowing such costs that exceed the 53% "Sandwell Allowance". This change uses approximately £280,000 to implement (a cost covered by the net increase in income). Comments that were specific on this change (Q1 of the survey) were marginally in favour.

b. Introducing transitional protection to protects people from large contribution increases caused by policy changes, limiting increases to £30 per week each year for up to three years. This proposal would cost an estimated £245,000 for Model 2 (largely in year 1). Comments that were specific on this change (Q1 of the survey) were marginally against it. Because the new Contributions model will be implemented from 1st January 2023 if approved by Cabinet, the first "year" of transition would be for 15 months from January 2023 to March 2024. It will operate on a simple cash basis comparing a person's new year's contribution with an inflated version of their old year's.

4.4 **Three alternative models** for calculating non-residential contributions were proposed which are more financially viable for the council. All involve reducing or replacing the current "Sandwell Allowance" which allows people to retain 53% of their disposable income; many councils take 100% of disposable income, so our options are all still more generous than that.

4.5 Consultation responses (Q2 of the survey) have favoured model 3, (52%) then model 1 (31%) then model 2 (17%) but as the total number of responses to this are 29, this is not really statistically significant. Model 3 benefits proportionally more working age people, but – based on equalities data provided – probably half of all responses were from people of pension age.

4.6 Based on the consultation responses, there are some key considerations;

a. The level of increased income; since the original models were devised, the scale of the national economic challenge has become clearer, and this did generate comments on the scale of the change in contributions. Should Council wish, all three models could be adapted to reduce the overall impact - but also the income raised - with varying degrees of difficulty given that parameters were published in the consultation.

b. The scale of change on people; the current methodology favours those with the greatest disposable income (statistically more likely to be an older person). The three models progressively reduce this advantage, particularly model 3 which attempts to address the apparent inequity in state pensions/benefits and allowances where average values are far higher for older people. However, the scale of change in this model is such that it has a major long-term impact on many people, and requires significant investment of transitional protection (see figures in 3b above). This inequality may not be an issue that the council wishes to address.

c. The DRE flat-rate allowance; different types were included in Models 2 and 3 of an allowance that would be given automatically to any non-residential contributor getting a standard or higher rate of DWP disability benefit (although if they have higher expenses, they can still claim for those). Although notionally for DRE, it is in fact a useful redistributive tool that is used by many councils and means that people do not have to send a claim and associated receipts etc. for a DRE cost if they want to claim less than the automatic allowance.
One method is based on 10% of disability benefits (at standard and higher rates), whilst the other is simple cash lump sums. Of the responses in the consultation to this issue (Q3), 70% preferred the allowance linked to disability benefits, although again, this is not really a statistically significant response.

4.7 Finally, two other changes were included in the consultation;

c. Ending the practice of joint financial assessment of couples. This is a requirement based on legal advice which has been implemented for new cases, but has been included so that transitional protection can be offered to existing clients. The specific responses to this (Q4 of the survey) were marginally in favour of this proposal.
d. Moving to assessed charges for short-term care (respite) placements based on actual - not notional - care costs. The current flat rate charge is much less than the cost of the service and takes no account of the

person’s ability to pay. Moving to a charge based on residential care assessment rules means that people who currently pay little or nothing for their on-going care will no longer pay for respite, whilst those who already pay larger contributions to their ongoing care will now have to pay a larger sum for respite based on their ability to pay.

Of the people who responded to this question (Q5) 61% were against this change. One issue highlighted is the significant variation in the cost (and availability) of respite, particularly for people with disabilities. In order to make allowance for this, it is proposed that, if this change is agreed by Cabinet, the maximum weekly charge is *capped to the nursing rate for older people,* at least until the Fair Cost of Care exercise gives us more equitable rates.

2022 Contributions consultation				
Survey votes				
Q2	Which contributions model is your preferred?	Model 1	9	31%
		Model 2	5	17%
		Model 3	15	52%
Q3	Which DRE allowance is your preferred?	10% disability benefits	21	70%
		Lump sum	9	30%
Q5	Do you support moving to assessment-based charges for respite care?	Yes	15	39%
		No	23	61%

Comments			
Q1	**Proposals for Disability Related Expenditure and Transitional Protection**		
	Not enough support now/ would not be able to live if pay more/ should freeze or reduce current costs/ care should be free for all	4	
	Should reinstate carer's allowance so it is available after pension age	1	
	Do not agree with either proposal	1	
	Agree DRE should allow for full sum	3	

	Have not heard of DRE or transitional protection before	1	
	DRE should be actual costs not lump sum	1	
	Transitional protection useful in allowing gradual increase	1	
	Transitional protection does not help long term	1	
	Do not understand proposals so cannot make meaningful comment	1	
	Should not bring in a costing that covers all disabilities - they are not all the same	1	
	Council wants to make money/shouldn't be holding surpluses	2	
	You shouldn't hand out any large sums	1	
	Not enough money supporting people with disabilities	1	
	Not fair to penalise people who have savings	1	
	Not enough social workers supporting people	1	
	More flexibility	1	
	Have always paid more for care than receive in attendance allowance	1	
	It is fair to take into account people's income	1	
	There has to be some link to ability to pay and the long term/permanent availability of support	1	
Q2	**Contributions models**		
	Need more money from Government	2	
	Do not understand so cannot make meaningful comment/ question is worded so that people cannot understand	3	
	Stop wasting money on other things	1	
	Must ensure people can afford to live/ need more money to cover costs/ ensure outgoings do not exceed income	3	
	Is best model but do not prefer it or agree it	1	
	Model 3 is more equal for everyone	1	
	Minor disability equipment should be recovered not wasted - should charge deposit or a small weekly/monthly charge	1	
	All models are unfair, as each one benefits some not others	1	

	Wrong that at a time of struggle you intend to hit those that need care and support the most	2	
	People are used to keeping more of their allowance, so better to change a bit at a time	1	
Q3	**Proposals for banded DRE allowances**		
	Do not understand/too complicated/need examples	4	
	Should not bring in a costing that covers all disabilities - they are not all the same	1	
	Give more money	1	
	Should be based on actual expenditure	1	
	Look at your own mismanagement of budgets, not disadvantage/penalise those that need care and support	2	
Q4	**Ending couples' joint assessments**		
	It's always really annoyed me that my earnings contribute to my husband's care	1	
	People should be treated as individuals/ Agree it is fair/ it should be on an individual basis/ stay with Care Act/ only the person needing the care should be financially assessed	8	
	Should reinstate carer's allowance so it is available after pension age	1	
	There shouldn't be a penalty for being a couple/ couples should be assessed together/ joint allowance need to be kept/ not fair/ use their joint income on both	5	
	This is fair unless a joint assessment would leave people better off.	1	
Q5	**Short-term care (respite) charges**		
	I can't afford to pay for care on my income	1	
	Support as long as based on income of person requiring respite and not their partners	1	
	Your final page assumes every disability can fit into a box - it cannot *[n.b. think this related to equalities question, not survey itself]*	1	
	Access to these are crucial so hope this method increases access to respite	1	

	As long as the assessment is fair	1	
	A flat rate is fairer/ everyone should pay the same for the same service	2	
	All respite care should be paid for; if you are in respite you do not need your benefit for that week so that could pay for the respite	1	
	Respite not a luxury item. Cutting maximum to 28 days could cause breakdown in carer/ cared for relationship	1	
	It is so difficult for some people with disability to access respite	1	
	No faith in council fairly treating those needing this service - carers are struggling, support actually offered is poor	1	