



Committee report

Committee	CABINET
Date	9 NOVEMBER 2017
Title	TO APPROVE CHANGES TO THE NON-RESIDENTIAL CARE CHARGING POLICY
Report to	CABINET MEMBER FOR ADULT SOCIAL CARE AND PUBLIC HEALTH

EXECUTIVE SUMMARY

1. The purpose of this report is to reflect upon the outcome of a consultation that proposed a change to the council's non-residential care charging policy by including disability related benefits at the higher or enhanced rate as part of a person's means tested financial assessment.
2. The recommendation to Cabinet is to defer a decision until the Cabinet meeting on 15 February 2018 when Cabinet will have considered all savings proposals across the council and is able to evaluate them against corporate priorities.
3. Specifically, the council is considering taking account of disability related benefit income received by people as follows:
 - Attendance Allowance (AA) – the consideration is the council includes AA income at the higher rate (currently only the lower rate is included in a financial assessment).
 - Disability Living Allowance (DLA) – the consideration is the council includes DLA benefit income at the higher rate (currently only the lower rate or middle rate is included in a financial assessment).
 - Personal Independence Payments (PIP) – the consideration is the council includes PIP income at the enhanced rate (currently only the standard rate is included in a financial assessment).
4. It is important to note the higher or enhanced rate of these benefits is paid to people to meet their care and support needs. The regulations concerning these benefits state:
 - *Attendance Allowance [AA]; the higher rate of £83.10 per week is paid to people over 65 who need help and supervision throughout both day and night, or who are terminally ill.*

- *Disability Living Allowance [DLA] (being phased out and replaced with Personal Independence Payments – PIP); the higher rate of £83.10 per week was historically paid to people under the age of 65 and is paid to people who need help or supervision throughout both day and night, or who are terminally ill.*
- *Personal Independence Payments [PIP]; the enhanced rate of £83.10 per week has replaced DLA for people under 65 and is determined by an assessment from a healthcare professional.*

It is important to note that the mobility component part of DLA and mobility part of PIP is not included in a person's financial assessment and is available to the individual to meet any transport costs they may incur through their disability or condition.

A link to the gov.uk guidance on these benefits is given in the background papers to this report.

5. The changes have been considered for two reasons. Firstly it will ensure equity in how all disabled related benefit income is treated in that people who receive these benefits at the higher or enhanced rate have the difference between the lower and higher rates effectively ignored for purposes of means testing for adult social care. By way of contrast, those people who receive the lower, middle or standard rates of these benefits have all this income taken into consideration in the means test. Secondly, it will assist Adult Social Care to contribute to the councils overall savings targets which are £7.5m in 2018/19 and £19 million in total over the next three years (2018/19 to 2020/21).
6. On 15 June 2017, Cabinet made the decision to seek a two month consultation period to consider people's views on the proposed changes. The consultation was aimed at determining the opinion of those people who received non-residential care services including those individuals who would be directly affected by the proposals. The council worked with People Matter IW to ensure that the consultation was inclusive by ensuring as many people as possible had the opportunity to respond and by making sure that all the responses were recorded accurately. The outcome of the consultation is shown in paragraphs 16 to 19 and Appendix 2.
7. The outcome of the consultation was that it was positive in that there was a high level of response from which a majority of responders felt that the council should not change its charging policy in this way. It is important that Cabinet considers the consultation responses and recognises the implications when determining whether to change the way the council takes account of disability related income as part of determining how much a person will have to pay towards their non-residential care service.
8. Cabinet is also asked to consider this report alongside a separate consultation that the council has recently undertaken to determine people's views on proposals to reduce financial help to working age claimants (18 to 64) on low incomes through the Council Tax Reduction Scheme. Details of this consultation and how any possible change will affect people impacted by the proposal to change the council's non-residential care charging policy are given in paragraph 13.

9. It is important to note that these proposals will not affect the level of care provided by the council but will change the amount that a person is required to pay.
10. If the recommendation is agreed and Cabinet then subsequently agree to change the council's non-residential care charging policy in this way following its budget review process and impact assessment it is anticipated that new charges will be applied from 1 April 2018.

BACKGROUND

11. On 15 June 2017, Cabinet noted the background to the proposed changes which is summarised below:
 - a) The proposal is considered necessary in light of the financial challenges facing the council, the growing demand for adult social care services and the need to treat people with equity by ensuring that everyone who receives a disability related benefit has the full amount of the amount of their benefit taken into account in their charging assessment.
 - b) Income from charging is an important contribution to adult social care's budget. The council is facing a significant reduction of core central government funding in 2018/19 and 2019/20, alongside an increasing demographic demand for services that is reflected by more elderly people and increasing longevity of disabled people.
 - c) It is important for members to note that, where disability related benefits are taken into account as part of a person's income when assessing how much they are required to pay, the council takes account of any additional disability related expenditure to allow the person to keep enough benefit to meet any needs which are not being met by the council.
 - d) As at 23 October 2017, 1400 people receive chargeable non-residential care services and 770 of these are estimated to receive disability related benefits at the higher or enhanced rate. The overall number of people receiving care services at home is increasing. The difference between higher or enhanced and middle, lower or standard rate of payment of these benefits is £27.45 per week and it can be seen that any change the council makes to the way it assesses these benefits as income will have a significant effect to both an individual person and the council. It must be emphasised that, if the proposal is agreed, not everyone would be required to pay £27.45 per week more as the exact amount of any increase would depend on their financial circumstance. Of the 770 people who are paid disability benefits at the higher or enhanced rate, 95 people would not be affected as their chargeable income is too low and 75 people would pay an amount that is based on their individual financial circumstance that is less than £27.45 per week. Appendix 1 shows the numbers of people who would be impacted by these proposals together with examples of how these proposals would affect people's charges.
 - e) A desktop review of how 52 other local authorities assess charges for people who receive higher or enhanced rate disability benefits has shown that 22 currently include these benefits at the higher or enhanced rate while 17 assess the amount a

person is required to pay for their care at the lower, middle or standard rate only. Thirteen local authorities did not respond to the council's request for information.

12. As already highlighted, Cabinet previously agreed that a consultation exercise be undertaken regarding these proposals. The specific proposals included in the consultation are summarised as follows:
- a) The proposed changes are being considered to ensure everybody who receives disability benefit income is treated equally so that everyone has the full amount of their benefit included as part of their income calculation in their financial assessment. The higher rates are paid to help or support people throughout both night and day and guidance from gov.uk that gives an explanation of each of these benefits is given in the background papers to this report. This is a change in the current arrangements where the income from these benefits is assumed to be at the lower rates only – regardless of whether or not the person receives the higher rates.
 - b) It was emphasised that people who receive these benefits at the higher or enhanced rate have the difference between the lower and higher rates effectively ignored for purposes of means testing for adult social care. By way of contrast, those people who receive the lower, middle or standard rates of these benefits have all this income taken into consideration in the means test.
 - c) The council emphasised that:
 - the proposal is in line with the provisions of the Care Act 2014;
 - current council policy has chosen not to include these benefit payments at the higher rate;
 - the mobility component part of DLA and mobility part of PIP will not be included in a person's financial assessment;
 - the council will continue to make sure that all eligible disability costs that a person may have (for example extra help for shopping, laundry, cleaning, prescriptions and higher fuel costs) are taken into account as part of how their charge is calculated - this is called Disability Related Expenditure and examples of how a person's financial assessment would potentially be impacted by this proposal on are given in Appendix 1;
 - the council will also make sure that everyone has an allowance made in their financial assessment to meet the costs of their everyday living -the weekly allowance is set by the Dept of Health and covers food, heating and standard living costs;
 - services provided directly to carers will continue to be non-chargeable. It would only be the charge made for services to the cared for person which would be affected by these proposals;

- the proposal will also assist Adult Social Care to contribute to the councils overall savings targets which are £7.5m in 2018/19 and £19m in total over the next three years (2018/19 to 2020/21).
13. As previously indicated, Cabinet is asked to note that this report is considered alongside a separate consultation that the council has undertaken to consider people's views on proposals to reduce financial help to working age claimants (18 to 64) on low incomes through the Council Tax Reduction Scheme. The Local Government Finance Act 2012 stipulates that the Local Council Tax Support consultation is done by 31 January in the financial year preceding that which any changes are to be implemented. This consultation ended on 3 October 2017 and a report from the lead member for resources will be presented to Cabinet on 15 February 2018. It is estimated that approximately 196 people who receive non-residential care services are aged between 18 and 64. Dependent upon their individual financial circumstances they may also be affected by any potential changes to the Council Tax Reduction Scheme from 1 April 2018 and changes to the scheme in future years. However, it must be emphasised that the council makes an allowance for council tax in its non-residential care charging assessments so any increase in council tax payments would reduce the impact of any increased charge for people affected by this proposal. This will mean that people affected by the two proposals will not pay more than the amount of any increase in their non-residential care charge.
14. Examples of how this proposal would affect individuals were made available as part of the consultation. As already stated, Appendix 1 shows the numbers of people who would be impacted by these proposals together with examples of how these proposals would affect people's charges. It must be emphasised that, if this proposal is agreed, not everyone would be required to pay £27.45 per week more as the exact amount of any increase would depend on their personal financial circumstance.

STRATEGIC CONTEXT

15. The proposal is considered to meet the council's short term outcome as set out in the Corporate Plan 2017-2020 approved by Full Council on 18 October 2017 in the following way:
- *A financially balanced and sustainable council.* The proposal is seen to support a key focus of making sure that the council has sufficient resources to be financially sustainable.

In particular this proposal seeks to achieve the following key activities as set out in the Corporate Plan 2017 to 2020:

- Deliver the savings plan necessary to achieve an annual balanced budget;
- Create a three year savings plan ensuring the council's planned expenditure is, ultimately, no greater than its expected income;
- Continually review further options for expenditure reductions and income growth as part of the budget management process.

CONSULTATION

16. The consultation on the proposed changes to the council's non-residential care charging policy by including disability related benefits at the higher or enhanced rate as part of a person's means tested financial assessment began on 16 August 2017 and ended on 16 October 2017. The consultation was mainly aimed at 900 people who receive non-residential care services via a paper survey, including those who receive a personal budget to meet their assessed care needs.
17. In summary, a total of 498 responses were received of which 337 paper survey responses were received and 161 further responses were received online. Importantly, 62 per cent of those who responded indicated they were either someone who received social care (201 responses) or were an unpaid carer (107 responses). The overall response rate of 55 per cent is considered to be a very good level of engagement.
18. The responses to the two month consultation are included in Appendix 3. The overall outcome was that a majority of people who responded were not in favour of the proposed changes. Out of 498 responses, 425 people responded to the specific question about how the council treats disability related income as part of its financial assessment as follows:
 - 58.4 per cent of these respondents (248) feel that people paid at the higher or enhanced rate should only have the lower, middle or standard rate of their benefit taken into account (as now). From the responses of these 248 people, 219 indicated which type of benefit they received with 156 saying they received a higher or enhanced rate of benefit and 63 saying they received lower, middle or standard rates.
 - 16.5 per cent of these respondents (70) feel that people paid at the higher or enhanced rate should have the full amount of the benefit taken into account (proposal). From the responses of these 70 people, 56 indicated which type of benefit they received with 21 saying they received a higher or enhanced rate of benefit and 35 saying they received lower, middle or standard rates.
 - 25.1 per cent of the respondents to this question (107) indicated they don't know but responded to other parts of the survey.
 - In addition, 73 respondents did not answer the question about how the council should treat disability related income as part of its financial assessment process but responded to other parts of the survey.
 - Overall, a large majority of comments made by these responders indicated that they were not in favour of the council's proposal. A total of 282 responders gave written views as to how they felt proposal would affect them and 150 further written comments were received.
19. In addition to the responses received from individuals, one response was received from a representative of an organisation and seven from town and parish councils. None of these responses were in favour of the proposal.

CONSULTATION METHOD

20. In order to offer an impartial support service to both people who receive services and carers, it was decided to build on the lessons learned from consultations on charging undertaken in 2014 and 2015 by developing a consultation partnership with People Matter IW. The method of consultation is shown in Appendix 3 and the response rate of 55 per cent reflects well on the involvement of People Matter IW by ensuring the letters and paperwork used were understood.

FINANCIAL / BUDGET IMPLICATIONS

21. The council's medium term financial strategy requires Adult Social Care to contribute to the councils overall savings targets which are £7.5 million in 2018/19 and £19 million in total over the next three years (2018/19 to 2020/21).
22. If Cabinet agree to change the way the council considers disability benefits at the higher or enhanced rate as part of a person's income when making charges for non-residential care, it is anticipated that reviewing financial assessments and informing people of the outcome could be introduced from 1 April 2018. This would allow for people to be supported through any changes caused by these proposals. At the June meeting of Cabinet, the position was that if this was approved the additional income that the council would receive was as follows:

2017/18	No savings
2018/19	£1.2 million (full year effect)
2019/20	£1.2 million (full year effect)

23. However, people's circumstances change (as well as some people in June having since sadly died) and so at the request of the Director a further detailed analysis of those people in receipt of these benefits and adult social care services was undertaken on 23 October 2017. This most recent analysis has revealed that the additional income that the council would receive is as follows (with the specific numbers of people affected and the additional income raised set out in Appendix 1)

2017/18	No savings
2018/19	£934,440
2019/20	£934,440

LEGAL IMPLICATIONS

24. The Care Act 2014 supported by regulations and statutory guidance provides a framework for charging for adult social care services. The council has some discretion on how to apply the framework to enable people who can afford to contribute towards their care and support to do so, while ensuring that those people who are unable to make a contribution continue to receive the necessary care and support to help maintain their independence and wellbeing.

25. The Care Act 2014 (Annex C: Treatment of Income) states that there are a number of benefits that must be fully taken into account when considering what a person can afford to pay towards their care from income including:
- Attendance Allowance, including Constant Attendance Allowance and Exceptionally Severe Disablement Allowance;
 - Disability Living Allowance (care component);
 - Personal Independence Payment (daily living component).

Currently, the council only takes account of these benefit payments at the lower, middle or standard rate of payment.

The act is also clear that the mobility component of Disability Living Allowance and Personal Independence Payments must be fully disregarded.

26. Para 8.46 of the Care Act 2014 (Care and Support Statutory Guidance) requires a local authority to consult people with care and support needs when exercising discretion as to how to apply its charging policy. Having consulted on the proposed changes, it is within the council's powers to make a decision in this matter.

EQUALITY AND DIVERSITY

27. The council, as a public body, is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
28. Under the Equality Act 2010 we are required to have due regard to our equality duties when making decisions, reviewing services, undertaking projects, developing and reviewing policies.
29. An equality impact assessment has been undertaken using equality monitoring data that was collected as part of the consultation. The assessment of the full impact of this proposal on the protected characteristic groups is included in Appendix 4.
30. While the council recognises the main outcome of the assessment is that people with a disability who receive disability benefit income at the higher or enhanced rate will be negatively impacted, the proposal will ensure everyone who receives a disability related benefit is treated equally by making sure that the care component of all disability related benefit income is taken into consideration as part of their charge. Currently, people who receive these benefits at the higher or enhanced rate do not have their full care related income taken into account whilst those people who are paid benefits at the lower, middle or standard rate are required to have all their benefit income included in their charging assessment.

OPTIONS

31. Option 1 – To approve a change to the council's non-residential care charging policy by including benefits at the higher or enhanced rate as part of a person's means tested financial assessment.
32. Option 2 – To maintain the council's current non-residential care charging policy by having the difference between the lower and higher rates effectively ignored for purposes of means testing for non-residential care.
33. Option 3 – To create a transitional hardship fund to provide additional financial support for those people for whom the introduction of new charges, following a change to the council's non-residential care charging policy by including benefits at the higher or enhanced rate as part of a person's means tested financial assessment, is particularly unfavourable.
34. Option 4 – Reflecting upon the outcome of the consultation, to defer a decision until the Cabinet meeting on 15 February 2018 when Cabinet will have considered all savings proposals across the council and is able to evaluate them against corporate priorities.

RISK MANAGEMENT

35. Option 1 is contrary to the views received from the consultation.
36. Option 2 would represent a risk to the council in not meeting the savings required of Adult Social Care. It would also mean that the way the council continues to treat people who receive disability related benefits at the lower, middle or standard rates is different from those people who receive these benefits at the higher or enhanced rate in that all their disability related income is taken account.
37. Option 3 would represent a risk to the council in not meeting all the savings required of Adult Social Care.

EVALUATION

38. Option 1 is not consistent with the outcome of the consultation. Option 1 is considered to meet the objectives of supporting Adult Social Care to meet its obligations to make savings required by the council. If approved, it is important to note that the council will be required to make sure that it follows guidance issued by the Department of Health in making sure that people are able to retain standard amounts considered appropriate for everyday living and housing costs. Option1 also meets the need to treat everybody who receives disability related benefits more fairly by taking all of their care related benefit income into account in their financial assessment.

39. Option 2 will require Adult Social Care to consider other ways to make savings and does not address the issue of treating the income received by people who receive these benefits equally.
40. Option 3 will require the director of adult social services to work with the lead member for resources and the section 151 officer to create a transitional hardship fund. This option recognises the views and comments made as part of the consultation that people may suffer hardship.
41. Option 4 recognises the outcome of the consultation and allows the council to consider this proposal alongside the budget review process and a full impact assessment based on the comments received.

RECOMMENDATION

42. Option 4 – Reflecting upon the outcome of the consultation, to defer a decision until the Cabinet meeting on 15 February 2018 when Cabinet will have considered all savings proposals across the council and is able to evaluate them against corporate priorities

APPENDICES ATTACHED

43. [Appendix 1](#) – Impact of proposal
44. [Appendix 2](#) – Consultation responses (summary)
45. [Appendix 3](#) – Consultation method
46. [Appendix 4](#) – Equality impact assessment

BACKGROUND PAPERS

Gov.uk description of disability related benefits

<https://www.gov.uk/attendance-allowance>

<https://www.gov.uk/dla-disability-living-allowance-benefit>

<https://www.gov.uk/pip>

IW Council Charging Policy for Non-Residential Adult Social Care Services

<https://www.iwight.com/documentlibrary/view/charging-policy-for-non-residential-asc-services>

Dept. Health Care and Support Statutory Guidance issued under the Care Act 2014

<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

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