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## **Adults and Health Committee**

**25 March 2024**

### **Adult Social Care Charging Policy**

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**Report of: Helen Charlesworth-May, Executive Director – Adults, Health and Integration**

**Report Reference No: AH/23/2023-24**

**Ward(s) Affected: All wards**

#### **Purpose of Report**

- 1 Members of the committee are asked to consider approval of the implementation of the revised Adult Social Care charging policies.
- 2 The proposals set out in this consultation support the council's priority in the Corporate Plan to support a sustainable financial future for the council, through service development, improvement, and transformation.

#### **Executive Summary**

- 3 The Care Act provides a single legal framework for charging for care and support and enables the council to charge a resident when it is arranging to meet a resident's care and support needs.
- 4 Adult Social Care services are means tested and a financial assessment is required for all residents receiving care and support, other than those types of care and support that are not chargeable. The financial assessment determines the level of contribution a resident would make towards the adult social care services they receive.
- 5 For residential services the Department of Health sets the Personal Expenses allowance which Councils disregard when assessing a resident's contribution.
- 6 Councils can use discretion when calculating contributions towards non-residential services, as long as allowances are no less than the minimum income guarantee set by the Department of Health.

- 7 A recent public consultation took place between 30 October 2023 and 21 January 2024 to seek feedback on changes to Adult Social Care fees and a revision of the Adult Social Care charging policies. The responses to the consultation have been reviewed to finalise the proposed changes to the charging policies. The report summarises how the consultation was carried out; the number of responses received; a summary of those responses and the recommendations for changes to the policy as a result.
- 8 On 27 February 2024, Council agreed the recommendations from Corporate Policy Committee in respect of the Medium-Term Financial Strategy 2024/25-2027/28 which included the scheme of charges.

## RECOMMENDATIONS

The Adults and Health Committee is recommended to:

1. To approve the implementation of the revised Adult Social Care charging policies.

## Background

- 9 The Care Act provides a single legal framework for charging for care and support under sections 14 and 17. It enables a local authority to decide whether or not to charge a person when it is arranging to meet a person's care and support needs or a carer's support needs.
- 10 Section 17 of the Act requires the Council to assess the level of an individual's resources and the amount which they may be liable to pay, when it is anticipated that a charge is to be levied by the Council for meeting an eligible need.
- 11 When the Council decides to levy a charge, the charging provisions in the Care Act, related regulations and statutory guidance must be followed; in particular, the Care and Support (Charging and Assessment of Resources) Regulations 2014 would apply.
- 12 Cheshire East Council last consulted on Adult Social Care fees and charges in 2015. Since this consultation, the council has recommissioned several social care services.
- 13 Through public consultation, feedback was sought on several changes to the policy and charges, which removed financial subsidy.

- 14 The proposed changes include aligning the calculation of assessed contributions with national framework, set out by the Department of Health, when assessing contributions towards non-residential care services.
- 15 The fees and charging were approved at Full Council on 27<sup>th</sup> February 2024 - [Agenda for Council on Tuesday, 27th February, 2024, 11.00 am | Cheshire East Council](#)

## **Consultation and Engagement**

- 16 A 12-week public consultation was completed between 30 October 2023 and 21 January 2024.
- 17 A flyer was sent to all residents who currently access Adult Social Care services on 26 October 2023, which detailed the ways in which residents could feedback on the consultation.
- 18 A dedicated online consultation webpage was developed to host the consultation material and to link to the 9 separate digital feedback questionnaires, with one questionnaire being provided for each proposal being put forward. Detail was also provided on this webpage about the various consultation events taking place. Social Care Business Support and Finance helpline number and dedicated email inbox were in place to take queries from residents who could not attend face-to face sessions, or complete feedback online.
- 19 Paper consultation packs, replicating the online content, were made available in libraries and upon request.
- 20 Nine consultation events have been held across Cheshire East as opportunity for residents to participate in the consultation and ask further questions. Over 120 residents registered for the events as follows:
  - (a) Thursday 9 November 2023 9am to 2.30pm - Capesthorpe Room, Old Town Hall, Macclesfield SK10 1EA
  - (b) Monday 13 November 2023 9am to 2.30pm - Chamber, Municipal Buildings, Crewe CW1 2BJ
  - (c) Thursday 16 November 2023 1pm to 4.30pm (Drop in for 30-minute slots) - R1 and R2, Ground Floor, Westfields, Sandbach CW11 1HZ
  - (d) Wednesday 29 November 2023 9am to 2.30pm - Chamber, Old Town Hall, Macclesfield SK10 1EA
  - (e) Thursday 30 November 2023 9am to 2.30pm - Chamber, Municipal Buildings, Crewe CW1 2BJ

- (f) Monday 04 December 2023 10am to 12pm – Oakmere, Spath Lane, Handforth SK9 3NS
- (g) Tuesday 05 December 2023 10am to 12pm – Heath View, Heath Road, Congleton CW12 4BB
- (h) Wednesday 06 December 2023 10am to 12pm - Mill House, Queens Drive, Nantwich CW5 5BX
- (i) Friday 08 December 2023 10am to 12pm – Willowmere, East Road, Middlewich CW10 9HW

- 21 Media releases providing detail on the consultation have been shared via the Council's webpage and social media platforms throughout the consultation period.
- 22 Detail on the consultation was shared with Adult Social Care providers and external supporting organisations such as Healthwatch, Age UK, Carers Hub, PeoplePlus and internal stakeholders.
- 23 Two member briefing sessions were delivered in the consultation period which provided an opportunity for members to gain more information on the changes and ask questions.

### **Summary of Consultation Findings**

- 24 Both paper and online copies of the surveys were made available to respondents during the consultation period. A total of 284 online (including email) and 151 paper sectioned responses were received.
- 25 Overall, the response to all the proposals was net positive with the exception of the proposal in respect of income disregards.
- 26 A copy of the full consultation response is attached as Appendix 3.
- 27 A common concern from the feedback received was in respect of affordability.

### **Reasons for Recommendations**

- 28 The changes set out support the Council's priority in the Corporate Plan 2021 – 2025: 'Support a sustainable financial future for the council, through service development, improvement and transformation'. By increasing the amount of the income that comes into the Council from Adult Social Care charges, the aim is to ensure quality services can be delivered to the residents of Cheshire East in a financially sustainable manner.

- 29 The changes aim to enable reinvestment of savings into front line services, contributing to maintaining service delivery and ability to meet growing demand.
- 30 On 27 February 2024, Council agreed the recommendations from Corporate Policy Committee in respect of the Medium-Term Financial Strategy 2024/25-2027/28. The proposed revision of the Adult Social Care charging policies, including a revised scheme of charges, would support the delivery of the budget commitment.
- 31 The Council has recommissioned a number of adult social care services since the last charging consultation in 2015 and in addition, has held fees levied to residents at old rates, without updating these to reflect the cost or adding inflation.
- 32 The Council will work to mitigate concern from residents in respect of affordability, by ensuring that every resident charged for Adult Social Care services, has a financial assessment review to confirm that any change is affordable to them, maximising welfare benefit entitlement and reviewing disability related expenditure.

**Other Options Considered**

- 33 One other option was considered as follows:

Option	Impact	Risk
Do nothing	The Council does not generate the additional income required to balance expenditure and income. The Adult Social Care charging policy does not align to updated legislation and practice.	The Council cannot continue to provide services in a financially sustainable manner. The current policy does not reflect legislation and practice.

**Implications and Comments**

*Monitoring Officer/Legal*

- 34 The Care Act 2014 and the accompanying Care and support statutory guidance (updated 5 October 2023) allows councils some discretion as to what services they can charge for and what income, savings and assets can be taken into account when calculating a person’s ability to pay for their care. Section 14 of the Care Act 2014 states that a local

authority may charge for meeting care needs and must follow the Care and Support (Charging and Assessment of Resources) Regulations 2014 if it chooses to charge. Section 17 of the Care Act 2014 states that, having determined that it will charge, the local authority must carry out a financial assessment to determine how much an individual should pay towards their care.

- 35 Paragraph 10.27 of the Care and Support Statutory Guidance updated 5 October 2023 states as follows:

10.27 In determining how to meet needs, the local authority may also take into reasonable consideration its own finances and budgetary position and must comply with its related public law duties. This includes the importance of ensuring that the funding available to the local authority is sufficient to meet the needs of the entire local population. The local authority may reasonably consider how to balance that requirement with the duty to meet the eligible needs of an individual, in determining how an individual's needs should be met (but not whether those needs are met). However, the local authority should not set arbitrary upper limits on the costs it is willing to pay to meet needs through certain routes; doing so would not deliver an approach that is person-centred, or compatible with public law principles. The authority may take decisions on a case-by-case basis which weigh up the total costs of different potential options for meeting needs, and include the cost as a relevant factor in deciding between suitable alternative options for meeting needs. This does not mean choosing the cheapest option; but the one which delivers the outcomes desired for the best value.

- 36 Paragraph 8.2 of the Care and support statutory guidance states that ...

The framework is therefore based on the following principles, that local authorities should consider, when making decisions on charging. The principles are that the approach to charging for care and support needs should:

- ensure that people are not charged more than it is reasonably practicable for them to pay.
- be comprehensive, to reduce variation in the way people are assessed and charged.
- be clear and transparent, so people know what they will be charged.
- promote wellbeing, social inclusion, and support the vision of personalisation, independence, choice and control.
- support carers to look after their own health and wellbeing and to care effectively and safely.

- be person-focused, reflecting the variety of care and caring journeys and the variety of options available to meet their needs.
- apply the charging rules equally, so those with similar needs or services, are treated the same and minimise anomalies between different care settings.
- encourage and enable those who wish to stay in, or take up employment, education or training, or plan for the future costs of meeting their needs, to do so.
- be sustainable for local authorities in the long-term.

37 Proposals to make significant changes in service provision require consultation with the public and those directly affected, including service users, staff and carers and relevant stakeholders. The Gunning principles set out the common law principles to be observed when undertaking consultation. *R v London Borough of Brent ex parte Gunning* [1985] 84 LGR 168 established these principles, which set out that a consultation is only lawful when these four principles are met:

- Proposals are still at a formative stage - A final decision has not yet been made, or predetermined, by the decision makers.
- There is sufficient information to give 'intelligent consideration' - The information provided must relate to the consultation and must be available, accessible, and easily interpretable for consultees to provide an informed response.
- There is adequate time for consideration and response- There must be sufficient opportunity for consultees to participate in the consultation. In the absence of a prescribed statutory period, there is no set timeframe for consultation, though it is widely accepted that twelve-week consultation period is sufficient. The adequacy of the length of time given for consultees to respond can vary depending on the subject and extent of impact of the consultation.
- 'Conscientious consideration' must be given to the consultation responses before a decision is made. Decision-makers should be able to provide evidence that they took consultation responses into account.

38 Following the consultation, members of the committee will now need to take account of the views expressed in arriving at their decision. Members must give clear and conscientious consideration to the responses received to the consultation which ran for a 12-week period between October 2023 and January 2024. Failure to do so could give rise to a judicial review challenge.

### Section 151 Officer/Finance

- 39 The proposals contained within this report align fully with the budget for 2024/25 as outlined in the Medium-Term Financial Strategy (MTFS) and agreed by Council on 27<sup>th</sup> February 2024. The recommendations would ensure full delivery of the new financial targets contained within the budget for 2024/25.

### Policy

- 40 The Adult Social Care charging policies sets out the Councils position in respect of charging for Adult Social Care Services. The policy has been revised to reflect updated legislation, local practice and fees.
- 41 The policy and fees for Adult Social Care services support the Council's Corporate Plan 2021-2025:

<b>An open and enabling organisation</b>	<b>A council which empowers and cares about people</b>	<b>A thriving and sustainable place</b>
<ul style="list-style-type: none"><li>Support a sustainable financial future for the council, through service development, improvement and transformation</li></ul>	<ul style="list-style-type: none"><li>Work together with residents and partners to support people and communities to be strong and resilient</li><li>Reduce health inequalities across the borough</li><li>Increase opportunities for children and young adults with additional needs</li></ul>	<ul style="list-style-type: none"><li>Thriving urban and rural economies with opportunities for all</li></ul>

### Equality, Diversity and Inclusion

- 42 A full Equality Impact Assessment has been prepared during the consultation process reflecting issues raised during the consultation process and is appended to this report (Appendix 4) Members must have due regard to this report to ensure that it is satisfied that any adverse impact and any proposed mitigation allows it to meet the legal obligations set out above.

- 43 In coming to a decision, the Council should also have regard to its statutory duties under the Care Act 2014 set out above and the Public Sector Equality Duty (PSED) under the Equality Act 2010.
- 44 The PSED requires public authorities to have "due regard" to: The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010 (section 149(1a)) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (section 149(1)(b)) foster good relations between persons who share a relevant protected characteristic and persons who do not share it . (section 149(3)(c)).
- 45 The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (section 149(1b)). This involves having due regard to the needs to:
- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic (section 149(3)(a));
  - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it (section 149(3)(b)); and
  - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low (section 149(3)(c)).

#### *Human Resources*

- 46 Additional posts will be recruited to support the implementation of the policy. The costs of these posts have been considered when calculated the savings to be attained.

#### *Risk Management*

- 47 The successful implementation of the policy will be measured through adult social care, with any significant risks reported through appropriate channels including Commissioning SMT, People's DLT.

#### *Rural Communities*

- 48 The policies will support people across all communities in Cheshire East including those in rural communities, ensuring equitable adoption of the policy.

*Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)*

49 There are no direct implications to Children and Young People as these policies applies to Adult Social Care service users only.

*Public Health*

50 There are no direct implications to Public Health.

*Climate Change*

51 There is no direct impact on climate change through the implementation of the Adult Social Care charging policies.

<b>Access to Information</b>	
Contact Officer:	Danielle Brooks <a href="mailto:Danielle.Brooks@cheshireeast.gov.uk">Danielle.Brooks@cheshireeast.gov.uk</a> Lee Hudson <a href="mailto:Lee.Hudson@cheshireeast.gov.uk">Lee.Hudson@cheshireeast.gov.uk</a>
Appendices:	Appendix 1: Non-residential charging policy Appendix 2: Residential charging policy Appendix 3: Adult Social Care Charging Policy Consultation response Appendix 4: Equality Impact Assessment
Background Papers:	Cheshire East Corporate Plan 2021 – 2025