

ADULT SOCIAL CARE AND PUBLIC HEALTH COMMITTEE**Monday 6 March 2023**

REPORT TITLE:	SOCIAL CARE CHARGING POLICY REVIEW
REPORT OF:	DIRECTOR OF CARE AND HEALTH

REPORT SUMMARY:

The Council has a current Adult Social Care charging and financial assessment policy which came into effect on 1 April 2015. It covers charging information for both residential care and non-residential care. This report sets out the result of an officer review of the provisions of the current policy.

Following the review, it has been proposed that Adult Social Care should operation with two key charging policies. The current policy has been split in two and strengthened to include more information which allows for a clear and transparent approach to charging, the two key policies drafted are:

- Residential Charging Policy – Appendix 1
- Community Services Charging Policy (previously referred to as Non-Residential) – Appendix 2

The adoption by the Council of a revision to current policy is recommended. Both charging policies will be subject to public consultation, therefore this is an in-principal decision, pending feedback from the consultation process (please see recommendations below).

The new policies do not fundamentally change existing policy, they do however provide significantly more detail to enable people to make decisions regarding charging. Examples are provided to help the policy to be more understandable by people that contribute towards their social care costs. The new policy will not directly impact current charging arrangements.

The report supports the following priority from the Council's Wirral Plan:

- Working to provide happy, active and healthy lives for all, with the right care, at the right time to enable residents to live longer and healthier lives.

This is a key decision which affects all wards.

RECOMMENDATIONS

The Adult Social Care and Public Health Committee is recommended to:

1. Approve the draft charging policies, as set out in Appendix 1 and 2 of the report and authorise the Director of Care and Health to undertake public consultation on both policies.
2. Give delegated authority to the Director of Care and Health in consultation with the Chair and Spokespersons to finalise both policies following receipt of any feedback from the public consultation.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 Wirral Council has a duty to arrange care and support for those with eligible needs. This applies to adults, aged 18 or over, who are unable to perform some of their day-to-day tasks as a result of age, illness, disability or any significant change in their life. The Care Act 2014 provides a single legal framework for charging and enables a Local Authority to charge a person when it is arranging to meet a person's care and support. This is set out in Sections 14 and 17 of the Care Act 2014.
- 1.2 Following the review, it has been proposed that Adult Social Care should operate with two key charging policies. The previous policy has been split in two and strengthened to include more information which allows for a clear and transparent approach to charging. The two key policies which have been drafted are:
- Residential Charging Policy
 - Community Services Charging Policy (previously referred to as Non-Residential)
- 1.3 The Annual Complaints Report for Adult Social Care has highlighted an increase in complaints about charging over a number of years. In addition to this, several complaints have been escalated to the Local Government and Social Care Ombudsman about the Council's financial processes and practice. Learning from both complaints and Ombudsman decisions have been embedded into the new policies.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The Council could not update the charging policies; however, this would not mitigate the risks which can arise from both complaints and Ombudsman decisions/reports, particularly those identifying faults in Council financial processes and practice and may lead to the Council being in breach of its statutory duties. The recommendation detailed in this report, is to strengthen the current policy. These improvements will ensure:
- people using Adult Social Care services have access to clear information which will allow for a full understanding of their care and support charges
 - the Council is fully compliant with statutory guidance in respect of charging

3.0 BACKGROUND INFORMATION

- 3.1 The policies have been devised having due regard to the Statutory Guidance issued by the Secretary of State. Wirral Council will apply the guidance contained in the Care and Support Statutory Guidance 2014, save where the contrary is indicated in the policies. The policies are made having regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010, together with the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

- 3.2 The new charging policies will ensure that people are not charged more than it is reasonably practicable for them to pay. The policies are comprehensive, to reduce variation in the way people are assessed and charged, and also to ensure our financial information is clear and transparent, so people are able to gain a full understanding that charges will be applied for their care and support.
- 3.3 The overarching principle in both policies is that people should only pay what they can afford to pay, and this will be based on a means-test financial assessment unless the person has more than the upper capital limit (which is currently set at £23,250). Some people will be entitled to free care, more information on this can be found in the policies.
- 3.4 In addition to the two charging policies, a financial guide document will also be produced for people who receive support. The guide will be created following the consultation process and sit alongside both policies; it will be a condensed version of the full policy.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications arising from the introduction of either charging policy. The changes discussed above, have been made to strengthen the Council's current policy which allows for a clear and transparent approach to charging. Over time, the policies have the potential to reduce the number of financial contacts, queries and complaints as the public will have access to clear information which will allow for a full understanding of their care and support charges.
- 4.2 Whilst the changes in policy will not incur additional cost to the Council, or to people receiving care, income from social care is a significant part of the Council's budget and has a direct impact upon individuals. This area does generate a number of queries/contacts and requires greater clarification which may help people to make charging more efficient and effective.

5.0 LEGAL IMPLICATIONS

- 5.1 If the Council does not update the current charging policy it will be in breach of its statutory duties under the Care Act 2014. Both the Care Act 2014 and Health and Care Act 2022 provide the legal framework.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 There are no direct resource implications arising from the introduction of either charging policy. However, there is a dedicated team dealing with social care charging and income collection. The Personal Finance Unit undertake this work and deal with a large number of enquiries. The changes may assist with more effectiveness ways of working.
- 6.2 As noted above, over time the policies have the potential to reduce the number of financial contacts, queries and complaints.

7.0 RELEVANT RISKS

- 7.1 As referenced in 1.4, the Annual Complaints Report for Adult Social Care has highlighted an increase in complaints about charging over a number of years. Several of which have been escalated to the Local Government and Social Care Ombudsman about financial matters. By strengthening the current charging policy, the Council is working towards mitigating associated risks which can arise from both complaints and future Ombudsman decisions/reports, particularly those identifying faults in Council financial processes and practice.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 The review was completed by Adult Social Care Staff alongside colleagues from the Personal Finance Unit, the Collection and Recovery Team, Income and Debt Team and the Lead Solicitor.
- 8.2 In exercising its functions the Council has to have regard to the public sector equality duty and the principle running throughout the Care Act that there will be a requirement to consult wherever the measures taken by a Council could potentially have unfair consequences. Whilst there are no known unfair consequences at this time, this report recommends that the Council embarks on a public consultation process in relation to the revised policies.

The consultation process, including the Council's consideration of the responses, is required to comply with the following overarching obligations (unless detailed statutory rules supplant these):

- a) Consultation must be at a time when proposals are at a formative stage.
 - b) The proposer must give sufficient reasons for its proposals to allow consultees to understand them and respond to them properly.
 - c) Consulters must give sufficient time for responses to be made and considered.
 - d) Responses must be conscientiously taken into account in finalising the decision.
- This is the same whether or not a public body was required to consult or chooses to do so. This is because all of those rules are aspects of an overriding requirement for 'fairness'. The process must be substantively fair and have the appearance of fairness.

- 8.3 The Council will consult with the public over a 4-week consultation period and any feedback from the consultation will be taken into account in finalising the policies.

9.0 EQUALITY IMPLICATIONS

- 9.1 An Equality Impact Assessment (EIA) has been completed and is located: - <https://www.wirral.gov.uk/communities-and-neighbourhoods/equality-impact-assessments/equality-impact-assessments-january-202-6>.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

- 10.1 There will be no environment or climate implications as a result of this report.

11.0 COMMUNITY WEALTH IMPLICATIONS

- 11.1 Under section 4 of the Care Act local authorities have a duty to establish and maintain an information and advice service relating to care and support for adults and support for carers. Information and advice must be proportionate and accessible. This applies to financial information and advice and means that the person concerned (or their representative) must be able to understand any contributions they are asked to make and how they can pay.
- 11.2 The introduction of the two charging policies will ensure people using Adult Social Care services have access to clear information which in turn, will allow for a full understanding of their care and support charges. This information will ensure people can make informed decisions about both ongoing and future care and support.

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APPENDICES

Appendix 1 - Adult Social Care Residential Charging Policy
Appendix 2 - Adult Social Care Community Services Charging Policy

BACKGROUND PAPERS

Preparing for reform: understanding the impact of adult social care charging reform and planning for successful implementation

Department of Health and Social Care - National costs for charging reform and estimating demand at a local level

Care Act Statutory Guidance on Financial Charging and Assessment:
<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#Chapter8>

Build Back Better - Our Plan for Growth
<https://www.gov.uk/government/publications/build-back-better-our-plan-for-growth>

People at the Heart of Care White Paper
<https://www.gov.uk/government/publications/people-at-the-heart-of-care-adult-social-care-reform-white-paper>

Care Act: Charging and Financial Assessment Factsheet
<https://www.gov.uk/government/publications/care-act-2014-part-1-factsheets/care-act-factsheets#factsheet-5-charging-and-financial-assessments>

S.117 Mental Health Act 1983 (as amended 2007)
<https://www.legislation.gov.uk/ukpga/1983/20/section/117>

Continuing Health Care (CHC) under the NHS.

<https://www.nhs.uk/conditions/social-care-and-support-guide/money-work-and-benefits/nhs-continuing-healthcare/>

TERMS OF REFERENCE

This report is being considered by the Adult Social Care and Public Health Committee in accordance with Section 2.2(a), (b) and (e) of its Terms of Reference: adult social care matters (e.g., people aged 18 or over with eligible social care needs and their carers), promoting choice and independence in the provision of all adult social care and undertaking the development and implementation of policy in relation to the Committee's functions).

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Adult Social Care and Public Health Committee	24 October 2022