

Item No. 10.	Classification: Open	Date: 2 June 2015	Meeting Name: Cabinet
Report title:		Adult Social Care, Fairer Contributions Policy – Consultation Exercise	
Ward(s) or groups affected:		All wards; existing & future users of adult care services	
Cabinet Member:		Councillor Stephanie Cryan, Adult Care and Financial Inclusion	

FOREWORD - COUNCILLOR STEPHANIE CRYAN, CABINET MEMBER FOR ADULT CARE AND FINANCIAL INCLUSION

The council's vision for adult social care underlines the importance of ensuring there is good quality, coordinated care and support available to people in their own homes and local neighborhoods. People are financially assessed to determine what amount they can afford to pay towards their service, and the funding this raises is used to help sustain current levels of care provision.

The existing charging policy has been in place since 2003 and is in need of reviewing. At the same time, local councils across the country are facing challenging financial times and the way existing services are funded needs to be considered in the face of financial restrictions imposed upon us. We need to be realistic about our available resources, and this includes looking at how people pay a contribution towards the costs of the care they receive.

Several proposals are contained within the outlines for a new policy which is being drafted. I wish to consult on them, and the aim is to introduce a modernised policy which takes due regard of the legislative requirements. I believe that people should be consulted and that their views should be heard and I am therefore asking the cabinet, after consideration of the officers' report set out from paragraph 1 onwards, to approve the recommendations below.

RECOMMENDATIONS

1. That the cabinet agrees to consult on proposals for a 'Fairer Contributions Policy'.
2. That cabinet agrees the consultation be started on 15 June 2015 to run for 12 weeks until 4 September 2015.
3. That cabinet proposes to consider the outcomes of this consultation at a meeting scheduled for 15 September 2015 where implementation decisions will be made.

BACKGROUND INFORMATION

4. The department currently uses an approach to charging for non-residential social care services which was first developed in 2003, using guidance issued by the Department of Health (DH) at that time. Since then, further guidance has been

issued and there has been a significant change in the law – notably the introduction of the Care Act and the regulations and guidance issued under it. There is now a need to consider the implications of these changes and ensure our practice fits. Changes to the existing policy, some of which are significant, will require a formal consultation exercise.

5. If agreed by cabinet, the proposed consultation will run for 12 weeks and will include letters (in appropriate formats such as easy-read versions) to existing clients and to advocacy/independent organisations, as well as web-based information. We will also write to provider organisations to ensure their staff are aware of the proposals and can assist service users where appropriate. Open meetings will also be held where service users and advocacy groups can attend and raise issues with officers.

KEY ISSUES FOR CONSIDERATION

6. The proposed Fairer Contributions Policy aims to ensure that a fair and consistent approach is applied to all service users. This policy does not include care services provided under section 117 of the Mental Health Act 1983 as the local authority is not permitted to charge for the provision of these services.
7. If the proposals contained within the consultation are agreed by cabinet and adopted, some existing clients will be expected to contribute a higher amount of their available income towards their care costs. In addition, people currently excluded from the existing policy will be financially assessed and as a result, some will be expected to contribute towards services they at present receive free.
8. Income received through the policy will be used to continue funding care services.

Policy implications

9. The existing policy needs revision and updating to ensure that it reflects changes in the law and that the relevant regulations and statutory guidance are followed.
10. The changes to existing policy are contained within the consultation document and summarised under the key points section – all proposals are designed to modernise the policy and to offer a clearer, more understandable system for service users. The proposed policy will also introduce greater fairness across service user groups, as it will include mental health clients who are currently excluded.
11. The separate meals at home charge will no longer exist, as meals will be included as part of a service user's care package, and that person's contribution will be assessed, resulting in one care charge per week.
12. Some of the proposals contained within the new policy may be unpopular or disagreeable to some service users, notably the inclusion of mental health clients and to increase from 80% to 100% of the disposable income (over the minimum income guarantee) that can be taken into account when calculating charges.
13. Some benchmarking has been undertaken with other local authorities and it is

believed that Southwark is the only authority which does not currently include mental health service users. Further information gained from this exercise is displayed below.

Benchmarking Exercise - Fairer Contributions					Current	Proposed
	Lewisham	Camden	Greenwich	Kent	Southwark	Southwark
is there a minimum charge?	£1 p.w.	£3.50p.w.	.50 p.w.	£1 p.w.	£2 p.w.	£3 p.w.
any discounts i.e. pay by DD = 5% less?	none	none	none	none	none	5%
disposable income level	100%	100%	100%	100%	80%	100%
maximum charge applied?	yes when capital = £23,250	yes when capital = £23,250	no max	yes when capital = £23,250	no max	yes when capital = £23,250
any customers excluded?	sect 117	sect 117	sect 117	sect 117	all mental health	sect 117

14. There are 6 key points contained within the proposed consultation on which we will be seeking views. These are:

- Introducing a ‘no charge to the service user if the assessed contribution is less than £3 per week’ rule**
 This in effect introduces a minimum contribution of £3 per week, and exempts any person who, after financial assessment, has less than £3 above the minimum income guarantee + 25% buffer amount.
- Changing the charge rate from up to 80% to up to 100%**
 After a financial assessment, a person must be left with at least the minimum income guarantee (set annually by government) +25% buffer. Any surplus above this can be included as available towards care contribution. We are proposing to allow a further £3 (key point no.1) and then charge at 100% of the remainder.
- Including all people who receive our services when assessing ability to pay a contribution**
 Under the current policy we do not charge any mental health service users for their non-residential care services. The consultation seeks views on including these people within the proposed policy (with the exception of section 117 people as at present).
- Including further services in the policy so that separate charges are unnecessary**
 This aims to simplify the process and make it more understandable, removing existing separate charging mechanisms for e.g. respite care and meals at home. In this way, service users will be financially assessed and, if the result is that they are chargeable, they will receive one charge per week for their entire care package.
- Changing the way we include savings above £23,250 in assessments**
 This point is seeking views on the proposal to have an upper threshold for savings (mirroring the existing rules for residential care). This means that any service user with savings above this amount would be expected to pay the full cost of their care.

- **Introducing a discount scheme for people who pay using Direct Debit**
This is seeking views on the viability of offering an incentive to encourage people to pay by Direct Debit in recognition this is the most efficient way of collecting income.
15. The proposed consultation document has full explanations of current process, proposed change, and reasoning. There are also worked examples of real-life situations to assist understanding. This forms Appendix 1 of this report.
 16. Responses to the consultation exercise will be collated and presented as part of the final report to cabinet (scheduled for September 2015) to be considered.

Community impact statement

17. The public sector Equality Duty, at section 149 of the Equality Act, requires public bodies to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity, and foster good relations between different people when carrying out their activities. The council's Approach to Equality ("the approach") commits the council to ensuring that equality is an integral part of our day to day business.
18. The proposed Fairer Contributions policy introduces potential charges to mental health clients who are at present excluded from the current system. Therefore the impact might be considered as negative in this respect to this particular client group.
19. At the same time, an existing disparity is being addressed and greater consistency and fairness is being introduced.
20. The proposal to increase from 80% to 100% of the available income above the minimum income guarantee that is taken into account means that people who pay an assessed contribution towards the cost of their care will face an increase to their weekly contribution in most cases. These people will be predominantly older service users and learning disabilities service users as they form the current customer base.
21. Alternatives would result in less income to the department, would mean that either fewer services could continue to be provided, or funding would need to be provided at the cost of a reduction elsewhere.
22. There are currently approximately 500 non-residential service users who, after financial assessment, are required to contribute towards the cost of their care. 70 (14%) of these people have available funds in excess of the cost of their care and therefore pay the full cost for their care. The remaining 86% pay currently at 80% of their available income and these people would therefore face an increase should the proposal be adopted.
23. A full Equality Analysis will be undertaken, the results of which will be available to inform final decision making planned for September.

Resource implications

24. Should the proposed Fairer Contributions policy be adopted after due regard to

consultation outcomes, then a potential increase in workload (case numbers) for staff undertaking financial assessments, invoicing and collection of payment will follow. At this stage, no estimates have been progressed. For the scheme to be cost effective it will be necessary for the potential increase in income to the department to be far in excess of the costs of collection.

25. It is anticipated that the growth in workload would occur at the point the Fairer Contributions policy (in its final form) commences. Before this, a review of the current staffing position will have been undertaken and reported to departmental management.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

26. The cabinet is being asked to approve a consultation on proposed changes to the council's approach to charging for social care set out in the draft 'Fairer Contributions policy'.
27. It is proposed that the consultation start on 15 June 2015 and conclude on 4 September 2015 with a further decision to be taken by cabinet on 15 September 2015.
28. Section 14 of the Care Act 2015 (and the previous legislation) allows a local authority to make reasonable charges for services outside of a care home. The power is subject to regulations and statutory guidance that requires local authorities to assess what a person can afford to contribute towards their care costs. Local authorities have some flexibility within this framework to disregard additional sources of income, set maximum charges or charge a person a percentage of their disposable income.
29. The statutory guidance requires local authorities to consult people with care and support needs when deciding how to exercise this discretion. It says that in doing this the local authority should consider:
 - How to protect a person's income because it is inconsistent with promoting independent living to assume without further consideration that all of a person's income above the minimum income guarantee is available to be taken in charges.
 - Whether it is appropriate to set a maximum percentage of disposable income (above the minimum income guarantee) to be taken into account in charges
 - Whether it is appropriate to set a maximum charge.
30. Local authorities are required to act under the statutory guidance issued under the Care Act 2014 unless there are compelling reasons not to. There is a risk of legal challenge to any policy adopted where consideration has not been given to these points.
31. The report states that all of the changes proposed by the Fairer Charging Policy will be subject to consultation. For effective consultation to take place there are 6 requirements:
 - Consultation must be conducted when the proposals are at a formative

- stage
 - The decision maker must give sufficient reasons for its proposals to permit intelligent consideration and response
 - Adequate time must be given for consideration and response
 - The product of consultation must be conscientiously taken into account before making the relevant decision
 - Where as here a consultation is aimed at the general public it should explain its proposals in more detail than if it were aimed at a professional audience with relevant knowledge of the issues involved
 - The authority will be held to a higher standard of fairness where the proposal will take away a benefit or advantage which people already enjoy.
32. Following the recent case in the Supreme Court, the authority should heed the Supreme Court's warning that public bodies have a more stringent duty of fairness in cases where what is proposed is the removal of a benefit or advantage.
33. There is no legal definition of what constitutes adequate time to consult and each case needs to be determined on its own facts. Guidance indicates that a 12 week consultation period is generally good practice.
34. Finally in making a decision to consult on the proposed policy the Cabinet is required to have due regard to its equalities duties as set out in the Equalities Act 2010 and specifically the need to:
- Eliminate discrimination, harassment, victimisation or other prohibited conduct
 - Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not
 - Foster good relations between those who share a relevant characteristic and those who do not.
35. Arrangements are being made to write to all existing service users to inform them of the proposed changes with additional information being offered to the clients from mental health who are not currently within the charging scheme and easy read versions for clients who may have difficulty understanding this information. The report notes that a full Equalities Analysis will be undertaken to inform policy development and decision making on the proposed policy.

Strategic Director of Finance and Corporate Services (FC15/001)

36. The strategic director of finance and corporate services notes the recommendations in this report for consultation on a 'Fairer Contributions Policy', and that the results of the consultation are due to be considered by the cabinet in autumn 2015.

Background Papers	Held At	Contact
Charging policy – web link below	Children’s and Adults’ Services Department	Kevin Almond 020 7525 3555
Link: http://www.southwark.gov.uk/info/200387/assessments_benefits_and_advice/2398/paying_for_your_care_assessments_and_contributions		

APPENDICES

No.	Title
Appendix 1	Proposed Fairer Contributions Consultation Document
Appendix 1a	Proposed Fairer Contributions Policy Consultation Document Key Points

AUDIT TRAIL

Cabinet Member	Councillor Stephanie Cryan, Adult Care and Financial Inclusion	
Lead Officer	Jay Stickland, Director of Adult Social Care	
Report Author	Kevin Almond, Finance and Corporate Services	
Version	Final	
Dated	20 May 2015	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
	Officer Title	Comments Sought
	Director of Legal Services	Yes
	Strategic Director of Finance and Corporate Services	Yes
	Cabinet Member	Yes
	Date final report sent to Constitutional Team	20 May 2015