

## **Cabinet – December 15 2021**

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

**Portfolio:** Councillor Keir Pedley

**Related portfolios:** All

**Service:** Adult Social Care

**Wards:** All

**Key decision:** Yes

**Forward plan:** Yes

#### **1. Aim**

- 1.1 To present proposals for a public consultation on the new Adult Social Care charging policy for Walsall and to gain approval to launch the public consultation necessary to inform the content of the final policy.
- 1.2 The draft policy has been produced to comply with the Care Act 2014 and aims to provide clear, transparent, and consistent guidance on Adult Social Care charging for Residential and Community Care services.

#### **2. Summary**

- 2.1. Changes to the Walsall Adult Social Care Charging Policy are necessary in order to ensure that charges to individuals in receipt of Adult Social Care services are equitable and to maximise the amount of income that the council can realise whilst ensuring the principle of “people paying what they can afford” is adhered to. Residents receiving residential services are charged according to national guidance. For people who receive services to support them at home, the Council is able to make some choices about the way they decide to charge. This is explained in the Adult Social Care Charging Policy.
- 2.2. The proposed changes will enable timely collection of service user contributions and ensure that everyone is treated equally, currently there are sometimes delays to the collection of income because financial assessment forms are returned late by the customer. This can result in sporadic collection of income and difficulties in applying the policy as the expectation is that the person pays once we have received the form and the Council has assessed their contribution. In some cases, receipt of forms has been months after care has commenced and this makes backdated collection difficult.

- 2.3. The changes to the policy will also introduce a charge for arranging support for people who fund their own care. Currently, the Council incurs costs as it utilises its own resources to arrange this. Councils are permitted to charge for this as set out in national guidance.
- 2.4. It is considered, subject to consultation, that the proposed changes to the Policy are an appropriate way for the Council to respond. They have been developed on the basis that individuals who have been assessed as being required to make a financial contribution to the cost of providing them with services should make that contribution and that the operation of the charging policy should be clear, fair and efficient. The proposed changes are considered to be proportionate and lawful and bring this Council in line with other Councils. The guiding principle is that if people can afford to pay towards their care then they should do so.
- 2.5. Proposal 1 identified in the report, if approved, will have an impact on all service users. In order to be consistent and fair for all residents, the new policy will charge all Community based clients from day 15 of commencement of care. Completed financial assessment forms also known as 'data capture forms' will need to be returned back to the Council by service users within 14 days of care commencing. Returned forms will need to be accompanied with supporting documents, such as copies of bank statements, proof of income and outgoings. However, service users who do not return their financial assessment form within 14 days will be charged the full cost of the services they receive, unless they have provided written evidence of extenuating circumstances.
- 2.6. Proposal 2 identified in the report, if approved, will have impact on service users who are known as self-funders. A self-funder is an individual who organises or funds their care in residential or community settings and have income and savings above £23,250, as opposed to receiving financial support from the local authority or another third party. Proposal 2 is only relevant to self-funders within a community care setting. The proposed change will implement a charge to cover the Councils costs in arranging support for those individuals. It is important to note that no individual would ever be asked to contribute more than they can afford to pay towards the cost of their care. The legal framework for charging is set out in the Care Act 2014, sections 14 and 17. The Council cannot charge more than the cost that it incurs in meeting the assessed needs of the person.

### **3. Recommendations**

- 3.1. That Cabinet approves the commencement of a public consultation on the draft Adult Social Care Charging Policy for Walsall as set out in **Appendix 1** to this report.
- 3.2. That Cabinet agrees to commence consultation on the proposed changes to the Adult Social Care Charging Policy and that the consultation seeks to gather feedback on proposals to amend the current charging policy and most substantively to set a fee for the arrangement of brokerage services which will be paid on each occasion a self-funding service user requests the Council arrange a care package for them. If approved, and subject to consultation, it is proposed that the arrangement fee will be introduced from May 2022.

- 3.3. That following consultation, Cabinet delegates to the Executive Director of Adult Social Care, in conjunction with the Portfolio Holder for Adult Social Care, authority to make appropriate changes to the Adult Social Care Policy by way of updating and bringing the Policy in line with current legislation, regulations and guidance.
- 3.4. That Cabinet note that further changes are envisaged for the Adult Social Care Charging Policy due to imminent national policy changes aimed at the health and social care sector, which will result in a further submission of a report to Cabinet during 2023 to reflect the impact of these changes to residents and alignment of residential and community care charging to the Local Authority Circular.

#### **4. Report detail - Know**

- 4.1. The existing Community Care policy was agreed by the Council in 2017. It is good practice to review policies regularly and to make sure they are up to date, clear and easy to understand. An internal review of the Adult Social Care Charging Policy was carried out August 2021 to November 2021. The review has identified a number of potential changes to the Policy, and it would be appropriate for the Council to carry out a public consultation in advance of deciding whether to implement these changes. This report sets out the background to the review and the rationale for those changes on which it is proposed to consult and seeks approval to go out to public consultation.

#### **Context**

- 4.2. As well as significant reductions in funding the Council has to respond to increases in demand for its services. There are increasing demands on health and social care services with life expectancy rising for both men and women.
- 4.3. The number of people aged 65 and over is projected to grow by 20.4% over 10 years and by nearly 60% over 25 years in England.
- 4.4. Walsall is expected to see continued and consistent population growth, projected to increase by 7% to an estimated 304,400 by 2030 and further by 13% to an estimated 320,400 by 2040 (2020 ONS, 2018-based projections). The largest increases are expected to be seen within older age groups; the population over 65 years of age will increase their share of the population from approximately 18% to 20% by 2040.
- 4.5. Adult Social Care supported approximately 4,201 clients during April 2020 to March 2021 the majority of these service user clients were over 65 years of age.
- 4.6. 2167 service users were in a receipt of a long-term community care service as at 30/09/2021, of which 170 are marked as full cost (self-funders). 835 service users were in a long-term placement as at 30/09/2021, of which 71 are marked as full cost. *NB: service users marked as full cost on Mosaic can include those people for which we have not yet received a completed financial assessment form.*
- 4.7. People are living longer with complex needs; there are increasing numbers of people living with co-morbidities, an increased number of people living at home with dementia and more people who choose to receive end of life care in their own home.

- 4.8. As funding decreases and demand in areas like Adult Social Care increase, the ability of the Council to fund other areas of activity reduces. The cost of Adult Social Care services cannot therefore be divorced from its impacts on the Council's ability to respond to other needs and pressures in other directorate areas.
- 4.9. It is imperative in those circumstances that the Council reviews opportunities to generate additional income to offset the cost of providing services. In particular it is important to review its policies in relation to contributions for Adult Social Care services so that service users (people receiving services paid for by the Council after their needs have been assessed) are paying appropriate amounts towards their own care. Such contributions from service users are already an important part of income in the Council's Adult Social Care budget.

#### The Policy and its Review

- 4.10. The Policy under consideration is the Adult Social Care Charging Policy for Residential, Nursing and Community Care services. The Policy governs those areas of discretion where the Council can influence the way in which and the amounts that service users are charged for non-residential care services.
- 4.11. This Policy is governed by the Care Act 2014, the Care and Support (Charging and Assessment of Resources) Regulations 2014 and the detailed Statutory Guidance on Charging and Financial Assessment. This detailed legal background lays down a number of rules for the calculation of service user contributions that the Council must follow. Within this framework, however, the Council has a degree of discretion as to how it operates the charging framework.
- 4.12. Council officers have been guided by a number of aims. Firstly, to ensure that the Policy is up to date with the latest law and guidance and reflects conscious decisions concerning those matters that the guidance urges Councils to consider. Secondly, to identify areas where the operation of the Policy could be made administratively less burdensome for the service users and the Council, fairer, more equitable and more consistent. Thirdly, to identify areas where amendments to the Policy would potentially increase the Council's income from contributions by service users to the cost of their care. The review has resulted in two types of changes:-
- General changes to update the policy that do not require consultation; and
  - Significant changes with impacts on service users which require consultation prior to any decision to implement being made.
- 4.13. Operational effectiveness of the financial assessment process is simultaneously being reviewed alongside this review.

#### Proposal 1 - To introduce a new rule about when people are expected to start paying their contribution

- 4.14. The current Community Care Charging Policy states that contributions for community services apply from the date the service user is told of the outcome of their financial assessment.

- 4.15. Under the Care Act councils are entitled to charge and ask service users to pay contributions, from commencement of care.
- 4.16. It is therefore proposed that residents in receipt of Community Care will be charged from day 15 of care commencing. To allow sufficient time to gather evidence and complete their financial assessment form.
- 4.17. Residents will continue to be expected to return their financial assessment form, also known as 'data capture form' back to the Council within 14 days of receipt of the form. This is particularly important, if their care has already commenced, prior to receiving the financial assessment form. Returned forms will need to be accompanied with copies of supporting documents, such as bank statements, proof of income and outgoings.
- 4.18. In certain circumstances, people may have longer than 14 days to return their form (for example if their care doesn't start immediately). However, in all instances the financial assessment form must be returned within 14 days of care commencing and ideally sooner.
- 4.19. Residents who do not return their financial assessment form within the specified time-frame (within 14 days) will result in the resident being charged full cost of the services they receive unless they have provided written evidence of extenuating circumstances
- 4.20. Where the form is not returned and it is clear that there is no intention to provide the information, legally that person will be treated by the Council as someone who has to pay the full cost of the services they receive. The full cost contribution will be charged from day 15.
- 4.21. The Council is proposing this policy change so that service users are treated equally and can be clear about what happens if financial information is not returned quickly.

Proposal 2 - To introduce an administration fee to cover the cost of arranging services for people who have savings and/or assets over the capital limits (ie self-funders)

- 4.22. Regulations made under the Care Act 2014 give the council a power to charge what is known as an 'arrangement fee' for providing support to set up a service for someone who would be liable to fully fund their own care. The regulations state that arrangement fees charged by the council must cover only the costs that are actually incurred in arranging the care. Arrangement fees should take account of the cost of negotiating and/or managing the contract with a provider. It may also cover any administration costs. This is a service Walsall Council currently provides free of charge but will align to wider council practice in place across England.
- 4.23. However, any such fee must not be higher than the cost the local authority has incurred in arranging that care and support. Currently Walsall Council does not charge self-funders for support planning; arranging their care and support or any ongoing costs incurred by the council. In summary therefore, Walsall Council can charge an arrangement fee within the scope of the Care and Support Statutory

Guidance provided the self-funder has specifically requested that Walsall Council provide the relevant care and support service on their behalf.

4.24. The council proposes to introduce fees for self-funding clients who specifically ask the council to arrange for care and support to be put into place on their behalf for non-residential care services (See Table 1). It is important to note that no individual would ever be asked to contribute more than they can afford to pay towards the cost of their care.

4.25. The impact of any future charging will be monitored and reviewed annually. The charge will help recoup the costs associated with negotiating and/or managing the contract with a provider and cover any administration costs incurred.

4.26. This includes;

- The cost of contacting care providers to arrange care
- Setting up a contract with the Care Provider
- This proposal would mean that the council would recoup all of the costs it currently spends on helping those who are not eligible for council funding as self-funding clients.

4.27. Table 1: Proposed Fees and Charges for Self-Funders 2022/23

Type of Fee / Charge	Rate/Amount
Administration fee for setting up care arrangements	£300
Annual fee for ongoing management of care arrangements	£265

4.28. The above rate/amount is based on internal benchmarking undertaken during 2019 comparing a number of local authorities charging approaches. See Appendix 2 for further information.

### **Council Corporate Plan priorities**

4.29. This proposal links to the Council's corporate priority 'People have increased independence, improved health and can positively contribute to their communities.'

4.30. The principles and actions contained within this report are in full accordance with the Marmot objective enabling all people to maximise their capabilities and have control over their lives.

### **Risk management**

4.31. There is a risk that some customers, carers, residents and groups will experience a level of anxiety or uncertainty about the areas to be consulted on, particularly in relation to decisions about changes to the charging policy. Consequently, there may be further reputational and financial risks associated with this. This could

occur both during the consultation, as well as following the implementation of the Act.

4.32. Walsall Council will seek to mitigate these risks by:

- Designing and communicating the consultation in a way that encourages contributions and concerns to be raised through that medium rather than through complaints.
- Carefully explaining the implications of the changes, in the context of reducing public finances and the expectation that all the community's needs will be met.

### **Financial implications**

4.33. The introduction of arrangement fees for self-funders will result in additional income within Adult Social Care. It is estimated that the additional income that will be received, resulting from the implementation of the new charges to self-funders will be £53,830, based upon activity over the last two financial years.

### **Legal implications**

4.34. The legislative framework which governs the contents of these policies is dominated by the Care Act 2014 which, together with the related statutory instruments and regulations, provides a single framework for charging for care and support. Section 14 of the Act affords local authorities the power to charge individuals in receipt of care and support services, for these services where the local authority is permitted to charge. The same Section also provides the power to charge for services meeting carers' needs, by providing services directly to the carer. There are also certain types of care and support which Local Authorities are not permitted to charge for.

### **Procurement Implications/Social Value**

4.35. There are no procurement implications arising out this report.

### **Property implications**

4.36. There are no property implications arising out this report.

### **Health and wellbeing implications**

4.37. The Council will take into consideration the mental capacity of clients and residents as well as any illness or condition they may have, when communicating with them. In line with the Care Act 2014, and the principles set out in the Mental Capacity Act 2005, the Council will assume that clients, residents will have mental capacity and can make decisions for themselves unless it is established otherwise, in which case appropriate support will be identified. The Council is in the process of re-modelling their wellbeing services, which will provide additional support around financial wellbeing and benefit maximisation.

## **Staffing implications**

- 4.38. There are no staffing implications arising out of this report. However, activity is currently underway to improve the financial assessment 'end to end' process, digitise processes, improve operational efficiencies which will result in the re-alignment of roles, responsibilities, activity, and potentially resources. Any envisaged changes will be undertaken in accordance with the Council's HR policies and procedures.

## **Reducing Inequalities**

- 4.39. The consultation will be undertaken in a way that will allow the contribution of people with protected characteristics, particularly those who are likely to be disproportionately affected by the provisions of the Act, i.e., older people and people with disability, although all people with protected characteristics will be invited to participate.
- 4.40. The consultation will take specific account of the need to involve under-represented groups, such as minority and ethnic communities and any barriers to participation will be removed wherever possible.
- 4.41. An Equality Impact Report has been undertaken and is in Appendix 3.

## **Climate Change**

- 4.42. There are no climate change implications arising out of this report.

## **Consultation**

- 4.43. Consultation will primarily be designed to gather the views of those directly and indirectly affected by the draft proposal. Self-funders as well as all other service users in receipt of care will be invited to have their say via a questionnaire sent to them/their nominated person.
- 4.44. In addition, anyone will be able to have their say through an open questionnaire hosted online and key stakeholders will also be contacted and invited to respond. So that as many people as possible have the opportunity to have their say, the consultation will be widely publicised through a range of channels including social media and existing local networks.
- 4.45. To elicit meaningful comment, a wide range of supporting information will be published online for anyone to access. Easy read versions as well as alternative formats will be made available online and on request.
- 4.46. The key timelines for the delivery of the consultation process are as follows:
- Consultation commences on **4<sup>th</sup> January 2022** and closes on **1<sup>st</sup> March 2022 (8 weeks)**.
  - Council analysis of consultation responses and outcomes **1<sup>st</sup> March to 18<sup>th</sup> March 2022**
  - Final report completed **21<sup>st</sup> March 2022**
  - Report **20<sup>th</sup> April 2022**



## **Joint Strategic Needs Assessment (JSNA)**

- 4.47. The Council must take into account the JSNA when exercising its functions.
- 4.48. The JSNA for Walsall is an overarching needs assessment. A wide range of data and information was reviewed to identify key issues for the population to be used in planning, commissioning and providing programmes and services to meet identified needs:-
- Promoting healthier lifestyles
  - Improving the health and wellbeing of older people
  - Delivering high quality systematic care for major causes of ill health and disability
  - Improving health and social outcomes and reducing inequalities for children
  - Tackling the social determinants of health
- 4.49. The proposals for consultation in this report are considered to provide a fair and proportionate way of determining the contributions service users should be expected to make to the cost of the Council meeting their needs. In supporting the sustainability of the Council's services the proposals as well as the services they underpin support the theme of improving the health and wellbeing of older people in Walsall. This issue will be addressed again however in the light of the consultation feedback.

## **5. Decide**

### Option 1 - Not to consult to vary the policy

- 5.1. The Council could maintain the current policy (2017 version), but this may lead to criticism from the Local Government and Social Care Ombudsman if someone suffers an injustice as a result of the policy failing to reflect the statutory guidance or best practice currently in force.
- 5.2. Opportunities to increase the income of the Council will not have been considered leading to potential increased pressure to make savings from Adult Social Care and other directorate budgets. Opportunities will be lost to consider ways to introduce greater equity and fairness into the operation of the charging regime.
- 5.3. This option is not recommended.

### Option 2 - Commence consultation to vary the policy

- 5.4. The Council can consider findings from the consultation and seek to revise the policy ensuring that it reflects best practice, law and guidance currently in force.
- 5.5. If approved the introduction of arrangement fees for self-funders would align to wider council practice in place across England and consequently will introduce income that can be re-invested back into Adult Social Care services to support the delivery of care and support services to the most vulnerable client groups.

5.6. The proposals are considered to be appropriate revisions to the policy, subject to consultation, increases fairness while ensuring that service users make appropriate contribution to the cost of their care thereby relieving pressure on Adult Care and other Council budgets.

5.7. This option is recommended.

## 6. Respond

6.1. Cabinet is asked to approve the commencement of consultation of the ASC Charging Policy, which is attached as Appendix 1.

## 7. Review

Responses received from the consultation process will be monitored regularly and will be presented in a report to Cabinet.

**Background papers none**

## Appendices:

Appendix 1 – Draft Adult Social Care Charging Policy

Appendix 2 – Self-funders benchmarking against other local authorities

Appendix 3 – Equality Impact Assessment

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7 December 2021



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