



**ADULTS AND COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE**  
**7 MARCH 2022**

**CHARGING FOR SOCIAL CARE AND SUPPORT POLICY**

**REPORT OF DIRECTOR OF ADULTS AND COMMUNITIES**

**Purpose of the report**

1. The purpose of this report is to brief the Committee on a number of proposed changes to the Council's Charging for Social Care and Support Policy to be introduced from 11 April 2022. The Committee is asked to note the contents of the report and invited to comment on the revised Policy set out at Appendix A prior to approval for implementation being sought from the Cabinet at its meeting on 29 March 2022.

**Previous Decisions**

2. The Cabinet approved the current Charging for Social Care and Support Policy on the 11 September 2015. The Policy has only been subject to subsequent change to reflect changes in legislation, to improve the clarity of the wording and to address issues arising from the Council's initial response to the Covid-19 pandemic.
3. On 24 January 2022, the Committee received a report on the "People at the Heart of Care: Adult Social Care Reform White Paper" and its impact on social care provision in Leicestershire and proposals on the Adult Social Care charging reform; the charging of which is set out under the "Build Back Better: Our Plan for Health and Social Care" command and subsequent policy papers.

**Background**

4. The Care Act 2014 allows local authorities to charge for most care and support services. The Care and Support Statutory Guidance (the CSS Guidance) requires that where a local authority decides to charge for services, it must follow the Care and Support (Charging and Assessment of Resources) Regulations (the Regulations) and have regard to the Guidance. Local authorities have a discretion to adopt a more generous charging policy than the statutory scheme; for example, they may choose to disregard additional sources of income, set maximum charges, or charge a person a percentage of their disposable income. The CSS Guidance requires that local authorities should develop and maintain a policy on how they wish to apply this discretion locally and how it can:
  - 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.
5. In the CSS Guidance it states that Central Government considers that it is inconsistent with promoting independent living to assume, without further consideration, that all of a person's income above the minimum income guarantee (MIG) is available to be taken in charges. The Guidance suggests that local authorities should therefore consider whether it is appropriate to set a maximum percentage of disposable income (over and above the guaranteed minimum income) which may be taken into account.
6. A recent High Court judgment (SH v Norfolk County Council) established that local authorities should have a clear and transparent process and a recorded position on its charging policy, including the MIG (i.e. the income a person receiving care outside a care home is left with after charges) and Personal Expenses Allowance (PEA) (i.e. the income a person receiving care in a care home is left with after charges). The statutory amounts have not been increased since 2015 though the Government has indicated that these will be increased in line with inflation from April 2022. The actual amounts will be confirmed in a local authority circular from the Department of Health and Social Care along with any amendments made to the Regulations. At the time of writing these are not yet available.
7. The High Court Judgment also concluded that Norfolk's proposed changes to its charging policy had an unintended consequence resulting in unjustifiable discrimination against people with more severe disabilities (see Appendix B attached to this report). In particular:
- a. The different approach to earned and unearned income.
  - b. Demonstrating consideration of whether it is appropriate to set a maximum percentage of disposable income which may be taken into account in charges.
8. Following the judgement, all social care authorities have been contacted by at least one disability lobby group highlighting the decision and requesting that councils review their charging policies.
9. In September 2021, the Government published its proposals to transform the funding of social care. The proposals will require a more fundamental review of the Council's charging policy covering the lifetime cap on the amount anyone in England will need to spend on their personal care, alongside a more generous means-test for local authority financial support which will apply from October 2023. This is planned to be undertaken in the next financial year and will include consultation and an equalities and human rights impact assessment pursuant to the Council's public sector equality duty under the Equality Act 2010.

## Proposals

### MIG/PEA

10. It is proposed that the Council adopts the statutory amounts for the MIG/PEA which will be set out by Central Government for its charging policy for 2022-2023. These are the minimum amounts allowed under the legislation, and at the time of writing are unpublished. These amounts will be revised each April in line with changes to the Regulations under the powers delegated to the Director for this purpose and to achieve transparency this will be accompanied each year by an Executive Decision Record published on the Council's website.
11. Anyone who feels that their assessed contribution towards their care and support charges is unaffordable can request a review and appeal the decision under the current Charging for Social Care Policy.

### The Norfolk Judgement

12. A synopsis of the High Court judgement in SH v Norfolk County Council is set out in Appendix B attached to this report.
13. Norfolk County Council decided not to appeal the judgement but have made interim changes to its policy to mitigate the effects of unintended discrimination. These included disregarding the difference in the amount received under the Standard Rate and the Enhanced Rate of the Daily Living Component of Personal Independence Payment (PIP) and not implementing the proposed reduction in the rate of MIG. The Daily Living Component of PIP is a benefit paid to adults with a disability or long-term health problem who need support or assistance in relation to their daily living tasks.
14. The Council has not adopted this approach. Its proposals focus on the MIG and PEA which are set to increase in line with inflation following revision by HM Government. This will ameliorate the impact of current charging decisions by setting more generous amounts, in addition to net housing and Council Tax costs, than the current rates set under the Regulations which have not kept pace with costs of living and inflationary increases. This provides a benchmark that the Council considers will assist it in complying with the Guidance, in particular (paragraph 8.42) that a local authority must ensure that a person is left with sufficient funds to meet their daily living costs, such as rent, food and utilities.
15. It is worth noting that the Local Government and Social Care Ombudsman has looked at two previous complaints against the Council for including the full amount of the Enhanced Rate Daily Living Component of Personal Independence Payment in 2018 and 2019 and not found the Council to be at fault.
16. In relation to the requirement that where a person receives benefits to meet their disability needs that do not meet the eligibility criteria for local authority care and support, the charging arrangements should ensure that they keep enough money to cover the cost of meeting these disability-related costs. The Council is confident that its charging policy in relation to disability-related expenses is able to address any hardships that may arise.

17. If these measures do not eliminate any unjustifiable discrimination of the type complained of in the Norfolk judgement in an individual case there is a right of review/appeal exercisable by the person affected by the decision.
18. The Council will respond to any disputes/appeals based on 'Norfolk' principles on this basis. The Norfolk Judgement is widely known, the potential implications of the judgement are recorded by the Council as a Strategic Risk including loss of income, reputational damage and loss of trust.

### Energy Costs

19. In April 2022, the biggest rise in the energy bills price cap ever set by Ofgem will be implemented. Ofgem announced, on 3 February 2022, that the price cap will increase the average annual domestic energy bill from 1 April by £693. Central Government has also announced a package of support to help households with rising energy bills.
20. The CSS Guidance requires local authorities to carry out a financial assessment and ensure that people are not charged more than it is reasonably practicable for them to pay. The Government has announced a package of measures to support households with rising energy bills. This includes:
  - A £200 repayable discount on their energy bill this Autumn for domestic electricity customers. This will be paid back automatically over the next five years.
  - A £150 non-repayable rebate in Council Tax bills for all households in Bands A-D in England.
  - £144 million of discretionary funding for district councils to support households who need support but are not eligible for the Council Tax rebate.
  - Expansion of the Warm Homes Discount to around an additional 800,000 low-income households.
21. People disputing the affordability of their assessed contribution towards the cost of their care and support services due to the increase in energy costs will be directed to seek assistance from the district councils' discretionary fund, noted above and similar funds where appropriate. In relation to the £150 rebate on Council Tax, unless the Council changes its charging policy people in receipt of a chargeable care and support service will not benefit from the additional support the Government has introduced. Therefore, the financial assessment will retain the pre-reduction liability for Council Tax in order avoid a consequent increase in their care and support charges, in line with the arrangements for Council Tax Support. This will ensure the resident receives the full benefit of the reduction in their Council Tax charge for 2022-23.
22. A person incurring greater energy costs due to their disability, compared to average costs, can be considered for disability-related expenditure under the existing policy.
23. For residential placements where the resident still holds liability for energy costs at their former home, under paragraph 46(d) of the CSS Guidance the Council has to consider whether the PEA is sufficient to enable the person to meet any resultant costs. Under the Charging for Social Care and Support policy a standard amount based on average costs originally published by British Gas is allowed. It is proposed to increase these amounts by the increase in energy costs (54%) rather than the

Consumer Price Index generally. As a result, the amounts allowed would be £9.07 for an unoccupied property i.e. frost protection (current £5.89) and £32.02 for an occupied property, divided by the number of occupants (current £20.79).

### New Government Compensation Schemes

24. Schemes compensating victims of historical institutional child abuse and from the Windrush Compensation Scheme are disregarded from 1 January 2022 in relation to means-tested social security benefits: Council Tax Support, Housing Benefit, Income Support, Income-based Jobseeker's Allowance, Income-related Employment and Support Allowance, State Pension Credit, and Universal Credit. No amendment has yet been made to the Care and Support (Charging and Assessment of Resources) Regulations 2014 relating to financial assessments for care and support services.
25. It is proposed to mirror the disregards in means-tested social security benefits in the Council's Charging for Social Care and Support Policy in relation to compensation paid to victims of historical institutional child abuse and from the Windrush Compensation Scheme.

### Resource Implications

26. The proposed charges to the Charging for Social Care and Support Policy can be implemented using the existing capacity within the Adults and Communities Department. It is envisaged that the changes will avoid or reduce the volume of disputes and appeals that would otherwise be received in relation to these matters.
27. The changes will need to be reflected, as far as possible, on the Council's online financial assessment tool.
28. Although the Government has not yet published the MIG/PEA figures for 2022-23 the impact on income from service users in receipt of chargeable care and support services is expected to be minimal.
29. The Director of Corporate Resources and the Director of Law and Governance have been consulted on the contents of this report.

### Timetable

30. This report sets out the proposed amendments to the Charging for Care and Support Policy which is intended to be implemented from 11 April 2022.
31. The Committee is asked to note the report and is invited to comment on the revised Policy set out at Appendix A prior to approval for implementation being sought from the Cabinet at its meeting on 29 March 2022. The comments of the Committee will be submitted to the Cabinet for consideration at that meeting.

### Background Papers

Progress with implementation of the Care Act 2014 and Request for consultation - Cabinet: 11 September 2015

<https://politics.leics.gov.uk/ieListDocuments.aspx?MId=4230>

Report of the Local Government & Social Care Ombudsman - Leicestershire County Council (18 003 606) - 17 July 2018.

<https://www.lgo.org.uk/decisions/adult-care-services/charging/18-003-606>

Report to the Adults and Communities Overview and Scrutiny Committee: 24 January 2022 – Adult Social Care Reform and Charging –

<https://politics.leics.gov.uk/ieListDocuments.aspx?CId=1040&MId=6838&Ver=4>

Care and Support Statutory Guidance - 27 January 2022

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

The Care and Support (Charging and Assessment of Resources) Regulations 2014

<https://www.legislation.gov.uk/uksi/2014/2672/contents/made?text=care%20act#match-1>

SH v Norfolk County Council [2020] EWHC 3436 (Admin).

<https://www.bailii.org/ew/cases/EWHC/Admin/2020/3436.html>

The Social Security (Income and Capital Disregards) (Amendment) Regulations 2021

<https://www.legislation.gov.uk/uksi/2021/1405/made>

Energy Bills Rebate - Factsheet

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1052320/Energy\\_Intervention\\_factsheet.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1052320/Energy_Intervention_factsheet.pdf)

Energy price rises and the Energy Bills Rebate – UK Parliament Research Briefing

<https://researchbriefings.files.parliament.uk/documents/CBP-9461/CBP-9461.pdf>

### **Circulation under the Local Issues Alert Procedure**

32. None.

### **Equality and Human Rights Implications**

33. This report provides an opportunity for comment by the Committee on proposed changes to the Council's Charging for Social Care and Support Policy prior to seeking approval for those changes by the Council's Cabinet. An Equalities and Human Rights Impact Assessment screening will be undertaken prior to presentation to the Cabinet.
34. It is likely that the outcome of the screening will be that the changes will have a positive impact as the proposed changes are to make the policy more generous than the current position.
35. In relation to the decision in SH v Norfolk County Council the proposal is to retain the existing Policy. As detailed above there is an existing dispute and appeal mechanism in the charging policy in addition to the statutory complaints process that enables people to challenge the Council's decision on their assessed contribution.

**Appendices**

Appendix A - Charging for Social Care and Support Policy

Appendix B - Synopsis of the High Court judgement in SH v Norfolk County Council

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