

Report to Cabinet

Appendix A: contributions policy for consultation

- 1 **Introduction** This appendix sets out the details of the proposed changes to the council's Contributions Policy in preparation for public consultation during 2022.
 - 1.2 The aim of these proposals is to consider whether other models would produce a non-residential contributions regime which is financially viable for the Council whilst being fairer and complying with equalities expectations, i.e. avoids discriminating against any group of people with a protected characteristic.
- 2 **Items for consultation**
 - 2.1 This first section details changes on which we recommend the council conducts consultation, and members are asked to approve that recommendation.
 - 2.2 Joint financial assessment of couples: we are ending the current practice of offering a joint assessment of resources for couples. They have historically been offered such a joint assessment of their resources to determine which method is more beneficial for them, but the Care Act removed this option. Para 8.8 specifically states that “the local authority has no power to assess couples or civil partners according to their joint resources. Each person must therefore be treated individually.”
 - 2.3 We have already removed this option for any new cases that arise – they are assessed solely on their own income and capital in accordance with the Care Act. For existing cases, we are aware that in many cases, this will be to their disadvantage and may impact the individual charges of



people who are part of a couple. Nevertheless, as it is a requirement of the Care Act, we need to change our policy.

- 2.4 *Proposed practice for existing joint assessments*; in line with the Care Act, we propose that any future, any reassessment of the financial contribution of a person who has been assessed as part of a couple will now be based on them being treated as an individual. We will only take account of their share of any capital or income. Because this change is a part of this consultation, the *transitional funding* phasing proposed below may assist in phasing in this change.
- 2.5 Short-term (respite) care charges: the current (2012) contribution policy document states that Sandwell charges people having short-term (respite) residential care a flat rate charge, which varies by the age of the person (linked to DWP benefits). It is a very low rate so there does not appear to be a risk of people being charged more than the actual cost of the service – respite charges are generally much higher than the rates used for charging.
- 2.6 People are always charged this flat rate, irrespective of any financial assessment they may have had for other care services. They are only financially assessed for respite if they have more than 56 days in a 12-month period (and that period is now being reduced – see below).
- 2.7 The low cost implies that this is a subsidised service, not is it clear why a provider would in reality vary the actual cost of the service by age, so using a flat rate that varies in this way does not seem logical. Indeed, a recent LGO case (Lincolnshire 12/2/2021) found the council at fault for using the same type of age-based flat rates as Sandwell.
- 2.8 This was firstly because there was no financial assessment, nor any simple test to ensure the charge was affordable for the person. The second reason was that the LGO considered that the Care Act allows councils to choose not to charge at all, or to charge people as if they are receiving non-residential care, or to “depart from Care and Support Statutory Guidance with cogent reasons” – and Lincolnshire did not appear to have identified any cogent reason for the way they charged.



- 2.9 Short-term care is an assessed need, so no reason has been identified to justify charging for it without a financial assessment. Nor does there appear to be justification for charging it at a notional rate, as this means that people who may not have any disposable income are being expected to pay the full cost of the service
- 2.10 *Proposed policy for consultation on short-term care*; that the council move to basing contributions on the actual costs of the service, and to charge people a financially-assessed contribution based on residential regulations. We would not charge their usual non-residential contributions (if any) for that period as they are clearly not receiving that service whilst in short-term care.
- 2.11 This change will have significant financial implications for people using the service. Some who normally pay a significant contribution to their non-residential services currently get respite at a relatively low flat rate cost without paying a contribution, and this change means they must pay a contribution towards actual costs which are very likely to be much higher.
- 2.12 Others who normally pay a low contribution (or do not pay one at all) for their non-residential service are currently being charged in full for respite (albeit at a low flat rate cost) – with this change they will pay an assessed charge which for many will be less, or nothing at all.
- 2.13 However, this change may have significant implications for take-up of the service – this may reduce costs but also income for the council and potentially carries risk in that people may be reluctant to use the service, which may impact on their or their carer’s well-being.
- 2.14 The three models for calculating people’s financial contributions; these models, it is proposed, would be offered as alternatives in the consultation. All change the method by which a person’s financial contribution to non-residential services is calculated.
- 2.15 A key issue being addressed is that the existing Sandwell policy allows people to keep 53% of their disposable income when assessing their



contributions to non-residential care and support costs. This 53% allowance is generous compared with nearly all local authorities researched, and raises some equity and equalities issues, benefitting mostly those with higher incomes and/or a high level of costs which we are required to make allowance for (such as housing or disability related expenditure).

- 2.16 However, one of the core issues in modelling any new methodology is that *apparent inequality exists in national regulation and benefits*. For example, both basic state pensions and benefits and the national “minimum income guarantee” figures that we are required to apply in financial assessments are all (on average) higher for people over pension age compared with those under pension age.
- 2.17 Modelling of new options, and assessing the financial and equalities implications for the council and current clients, is based on the anonymised information of 195 people (out of the present number who have a financial assessment, approximately 2,500 clients).
- 2.18 Analysing that sample, the average income from State Pension and Guaranteed Credit for people over pension age is £176.30 per week, whilst that from non-disability benefits (such as ESA or Universal Credit) for working age adults is £123.69 per week.
- 2.19 Relatively simple changes to the current 53% “Sandwell Allowance” forms the basis of two of the models now being put forward. The third attempts to address the equity issue by replacing the “Sandwell Allowance” with alternative methods. These three models have been selected as offering the most practical solutions whilst delivering similar levels of extra income.
- 2.20 A summary of the estimated financial and equalities impacts is given in **Appendix B**, based on the sample 195 current cases used during modelling.
- 2.21 Model 1 – this amends the “Sandwell Allowance” from 53% to 25% of their disposable income, as well as delivering on the issues outlined in section 2 above. Inevitably this increases contributions for the majority (an



estimated 60%; 12% have a decrease (because of the changes in Disability Related Expenditure – DRE - detailed in section 3), and 28% are not affected by this or any other model because they pay no contribution anyway).

- 2.22 With transition in place, this still increases council income by £1.1m in year 1, rising to the full £1.2m by year 3. It can also be further adjusted easily in future years if the council considers this a requirement.
- 2.23 Model 2 – this model attempts to reduce some inequity by introducing a “flat rate” banded sum for DRE costs to set against the person’s income, which everyone getting a disability benefit and paying a contribution would receive. This is a methodology adopted by many councils for giving out non-targeted funds, and has the added advantage that people do not have to submit claims and associated paperwork for a DRE cost if it is less than the automatic allowance.
- 2.24 To deliver the same level of savings as Model 1, Model 2 amends the “Sandwell Allowance” to 20% of disposable income. It results in more people having an increase in contributions (an estimated 66% of people, whilst 16% now have a decrease and 28% are not affected), but the DRE allowance means the scale of change faced by anyone is less severe.
- 2.25 With transition, this increases council income by £1.0m in year 1, rising to the full £1.2m by year 3. Like Model 1, this model also has the advantage that, if the council considers a need to change the percentage, it is relatively simple to further adjust the “Sandwell Allowance”.
- 2.26 Model 3 – this model attempts to resolve some of the perceived inequity and inequality in the current model by introducing a “flat rate” banded allowance for DRE costs like Model 2, and by replacing the “Sandwell Allowance” completely with a method that benefits more people.
- 2.27 Firstly, the model increases the government “minimum income guarantee” (the MIG, which everyone should be left with in non-residential cases) for those under 65 to a minimum of £131.75 per week (the current basic rate



under 24s is £72.40, and those 24 to 64 is £91.40). This narrows the wide gap between the MIG for those under 65 and those over 65.

- 2.1 Secondly, to redistribute to everyone some of the funds from the removal of “Sandwell Allowance”, the value of the government MIG for all ages is inflated by 5%. This value, and that of the new minimum MIG above, has been selected because it leads to a similar increase in council funding.
- 2.2 This model takes more disposable income from those who have it, and is a more radical redistribution than the other two models. It has a significant impact on some people. Less people face an increase than in the other two models (only 49%, with 23% now having a decrease, and 28% still unaffected), but many more people face a *significant* increase and require transitional funding.
- 2.3 This model ultimately increases council income, after transition is over, by £1.0m in year 1, rising to £1.4m by year 3. However, it is more difficult to identify obvious ways of adjusting it in the future, and linking it to the government MIG may be risky if the government in the future made radical changes to the MIG values or concept.
- 2.4 It does tackle the apparent inequity in the current “Sandwell Allowance”, as well as that in state pensions/benefits and the national MIG where average values are far higher for those 65+. However, this may not be an issue that the council wishes to address.
- 2.5 *Proposed policy for contribution models*; the officer recommendation is that the consultation is based on *all three models detailed in this section*, and the forecast increase in income for the council shown against each.

3 General principles of change to be adopted

The changes in this section set out some general principles of change to the contributions policy that members are asked to approve. All three proposed models for consultation incorporate these principles.



- 3.1 Disability Related Expenditure; how Sandwell allows for Disability Related Expenditure (DRE – a statutory allowance) for non-residential contributions requires amending.
- 3.2 In the current contributions calculations, the cost of DRE is not considered prior to the calculation of disposable income. Once the disposable income has been identified no adjustment to the contribution is made if the DRE costs are affordable from the 53% allowance. It is recognised that this can negatively impact those with additional costs.
- 3.3 Our policy also needs to reflect recent Local Government Ombudsman rulings on what must be considered when allowing for DRE, i.e. that a financial assessment must consider whether the expenditure proposed as an offsetting allowance against benefits is a “reasonable additional costs directly related” to the person’s disability. It should not be limited to what is necessary only for care and support.
- 3.4 This concept of “reasonable additional costs” will be included irrespective of the model selected, as will the introduction of a “cap” to the total of DRE that we will *normally* allow, which is the value of the person’s disability benefit. This is in accordance with para 39 of the Care Act guidance which states that “where disability-related benefits are taken into account, the local authority should...allow the person to keep enough benefit to pay for necessary disability-related expenditure to meet any needs which are not being met by the local authority.”
- 3.5 Application of these principles ensures everyone gets the DRE that we are required in law to allow for, and that in reaching a decision on allowing a DRE, we apply the Care Act guidance in not limiting such costs to what is in a person’s care and support plan.
- 3.6 Proposed policy for DRE; the three models for calculating contributions detailed above all include the change in DRE methodology by allowing the full sum of a person’s DRE (if any) against their income *before* we calculate any allowance (currently 53%). The estimated full year cost of this to the council is £458,000, with that cost considered in all three models i.e. it has been absorbed within the overall saving.



- 3.7 No clients face increased contributions because of this proposed change. It is estimated that 812 clients will benefit from reduced contributions ranging from 7p a week to £30.71 per week (disregarding any other changes introduced by the three models).
- 3.8 The three models also include the concepts of “reasonable additional costs” and the “cap” to DREs; the financial consequences of these are not known as they would only arise in the event of an appeal.
- 3.9 Members should be aware that these changes are assumed to be implemented from the date that applies to the other changes in this consultation, without any consideration of backdating. This may expose the council to some risk of challenge and claims for backdating of the methodology applied for those claiming a DRE allowance.
- 3.10 Transitional Protection; as the proposals in this paper lead to increases in the contributions paid by some people, it is considered that some form of temporary protection should be introduced to mitigate against the immediate effects of major change by the council in its contributions policy.
- 3.11 This paper proposed the use of transitional protection, intended to limit changes in a person’s contributions *solely attributable to the changes proposed in this document* over three years if that person faces a significantly adverse impact. It should be noted that this methodology would not cover any increases in contributions arising for any other reason (e.g. annual inflation, or changes in a person’s capital or income).
- 3.12 If approved, transitional funding will be available to mitigate any effects from the changes proposed in this paper, including the three contribution models proposed as well as the ending of joint assessments for people who are part of a couple. This will protect people from the immediate impact of major increases in contributions arising from our policy decisions.



- 3.13 Any future changes in policy could also use this methodology, *providing* it was specified as being available during consultation on those changes.
- 3.14 Proposed policy for transitional protection; the method chosen limits changes in contribution *solely attributable to the changes proposed in the consultation* to a maximum of £30 a week for three years. Thus if, for example, a person faced an £100 per week increase in contributions, in the first year they would pay £30 a week more. In the second and third years, they would pay another £30 a week in each year, until in the fourth year they were paying the full £100 a week extra.
- 3.15 The £30 and three-year figures can be varied, but making it protect more people (by reducing the £30 to a more generous figure, or increasing the number of years it applies for) would mean further delays in the council receiving the increase in income. It is also a considerable administrative burden for the financial assessment team to recalculate each year.
- 3.16 Transitional protection will, it is proposed, be applied to all changes in contribution arising from the planned 2022 consultation, including the removal of joint assessment for couples.
- 3.17 Other changes in policy principles and wording; these changes remove out-of-date references and clarify what the council's policy will now be for both Residential and Non-residential contributions. This includes taking account of recent case law and decisions by the Local Government Ombudsman, as well as correcting any conflict between the original policy and actual practice. *It is proposed that all of these are made specific in the new policy.*
- Clarifying the principles that the Council follows in its Contributions Policy and subsequent practice, and how it is exercising its discretion in residential and non-residential contributions;
 - Removing all items that are duties rather than powers, and hence are not policy (they will be transferred to practice guidance and public information);
 - Setting out responsibilities for financial assessment actions, wherever those workers are in the council;



- Clarification of the Council’s duty to balance its use of judgement in individual cases with ensuring public funds are used in a reasonable and equitable manner in accordance with the “Wednesbury Principle”;
- Implementing changes in terminology and meaning made by the Care Act, e.g. “income threshold” being replaced by “Minimum Income Guarantee” (MIG);
- Reflecting the government’s decision in 2015 to remove the link between the MIG and basic benefit rates plus a 25% buffer. Consequently, the MIG value has been frozen since then, meaning more of peoples’ income is included in their chargeable income. With effect from April 2022, the MIG will once again be inflated, but this does not restore the link to basic benefit rates;
- Updating the list of services which we may not charge for, and which we choose not to;
- Clarifying the services for which we charge a fee which everyone must pay (rather than an assessed contribution) and that in accordance with the Care Act, these fees will need to be set annually by the Director of Finance under delegated authority, to ensure that they do not exceed the actual cost to the council of carrying out the work being charged for.
- Setting out the safeguards that are in place for people who we charge contributions towards the cost of their services;
- Being clearer what the offsetting financial assessment allowances in the Care Act mean in terms of various basic costs and needs;
- Remove references to actions that no longer apply, such as the Council always undertaking home visits for financial assessments, and updating references for new state benefits e.g. Personal Independence Payments and Universal Credit;
- Removing references to teams and services that have - or may - change over time.

4 Clarification of existing policy and practice

The following paragraphs set out clarifications to the existing contributions policy and associated practice guidance that members are asked to approve. They will be implemented *immediately*, and included in policy documentation on completion of the consultation.



- 4.1 Reviews and appeals; the existing policy from 2012 includes details of a process that allows people to ask for a review of their financial assessment and assessed contribution, but this is not operational in either residential or non-residential services. This results in disputes about our decisions being made through the corporate complaints process and/or to the Local Government Ombudsman (LGO), which is an administrative burden to both the person and the council.
- 4.2 Legal advice has also been obtained in the light of some recent LGO rulings which set out the need to;
- (a) consider disability related expenses (DRE) that are *not* directly related to the person's care and support plan (as in 3.3 above)
 - (b) to ensure that any person's assessed contribution is "affordable" - even if it has been assessed in accordance with regulation and policy, it may still not be affordable if the person has, for example, a sudden unexpected cost such as needing a new boiler, or because they are already repaying a loan required for essential repairs to their home.
- 4.3 *Proposed practice for reviews and appeals*; the following process for reviews and appeals is recommended for adoption for all financial assessments and contributions issues, and could be extended to other areas such as Direct Payments. Note the corporate complaints process would still be used for issues regarding service quality, such as staff behaviour or attitude; disagreement with the level or quality of service; the time taken to undertake an assessment:
- Review; the person concerned (or their carer or any other representative with appropriate permission) can request a review of their assessed contribution if they believe it is *incorrect* (e.g. on the grounds that we have made a mistake, or not applied the law correctly) or *not affordable* (as set out in 4.6 (b) above), conducted by a manager in CCBU, in consultation with social care staff
 - Appeal; if the person concerned is still unhappy, they may request an appeal which would be held by an informal panel led by a Service Manager. The person concerned will be invited to attend if they wish



- The panel will determine whether the decisions reached were appropriate. The outcome is likely to be that *either* the panel agree with the person, and the cost be added to the Care and Support Plan *or* it is decided that the cost is not something that SMBC can fund.
- Any decision that changes or reinterprets the Contributions Policy will be added to it and to staff guidance.

4.4 Contributions start dates and backdating; current practice for non-residential services is that a person will be charged contributions from the Monday following them being sent notice of the outcome of their financial assessment – unlike residential services, the contributions are not backdated if service has already started.

4.5 This does incur a cost to the council (an estimated £158,000 a year), but this must be offset against the risk of complaints, debts or service refusals if contributions are backdated - people may be unaware of the cost they face, and then may be sent an invoice for a significant sum in arrears.

4.6 A number of recent LGO cases have related to people's complaints about receiving an unexpected invoice for a large sum of backdated contributions, and the councils concerned have both been found at fault for this practice.

4.7 *Proposed practice for contributions start dates and backdating*; it is proposed that current practice be continued and that non-residential contributions will not be backdated *unless* the assessment has been delayed by the person unreasonably refusing to co-operate with the assessment process. The logic for this is that start dates for non-residential services are far less predictable than residential placements.

4.8 As this proposal is effectively a waiver of charges, it is included in the policy to ensure it is authorised in accordance with standing orders.

4.9 To protect people from long delays, and ensure that the sums waived remain reasonable for the council, it is proposed to include in the policy a service standard which states that we will aim to collect all the information we require from a person within two weeks (providing they co-operate), and to complete and issue their financial assessment within a third week.



- 4.10 It is also proposed to start publishing each year on our website a list of Fees and Charges which will include guidance as to the “typical” cost of different types of residential and non-residential services. This will ensure that people will have a better understanding in advance of their financial assessment what the *maximum* contribution would be for the various service options that are being considered for them.
- 4.11 Services excluded from assessed contributions; there are some services for which we charge a fee which everyone must pay (rather than an assessed contribution) – or which we provide without a charge and the council meets the cost. These must be specified in our policy.
- 4.12 The Care Act requires that any such charge for a service cannot be set at a level that is higher than the actual cost to the council of providing the service. Consequently, the cost of the service will need to be reviewed each year, and the charges set ahead of each financial year by the Director of Finance under delegated authority.
- 4.13 It is also noted that there are some services missing from the list in the contributions policy. Some specialist Direct Payment support services which the council provides free of charge to people assessed as needing them need to be added; they cover account management, payroll, liability insurance, employment advice and recruitment support.
- 4.14 The logic for providing these specialist services is that people were (for example) not taking out liability insurance, putting them and any personal assistants at risk. It is considered appropriate to fund these services, as they help deliver personalisation whilst providing specialist support to help people achieve their aims.
- 4.15 *Proposed policy for services excluded from assessed contributions* - that any fees charged for these services be reviewed and set annually by the Director of Finance, and that Direct Payment account management, payroll, liability insurance, employment advice and recruitment support be added to the list of services that the council has decided not to charge for when they are provided to people assessed as needing them.



- 4.16 Arranging care for self-funders; the Care Act requires councils to arrange *non-residential services* for self-funders if they ask, but they can charge a fee on top of the care costs. It appears that Sandwell do not offer this service (or no-one has yet asked for it).
- 4.17 For *residential care services*, councils may arrange residential care for self-funders but because it is a choice, they may not charge a fee. Currently Sandwell arrange care for Appointeeship cases, and legal advice may be required on whether it is fair to only do so in such cases; there may be other people whose needs are such that they could benefit from such a service.
- 4.18 In either of these situations, the potential benefit to people needs to be balanced against the risk to the council – it will involve more work (even if it is covered by fees), and exposes the council to more debt should the person not pay their full-cost contributions and/or the fees raised.
- 4.19 *Proposed practice for self-funder fees*; whilst if asked the council must provide the service for non-residential cases, there is no obligation to charge a fee for it – for residential a fee may not be charged even if we chose to provide the service. Hence it is proposed that we only offer an ad-hoc service when asked, and absorb the cost of doing so. This situation would be reviewed if the volume of requests becomes significant.
- 4.20 Short-term (respite) care charges; to reflect Adult Social Care’s revised short-term care policy by amending the existing Contributions Policy to reduce the number of days respite charged at flat rate from 56 to 28 within a 12-month period.
- 4.21 Please also see section 2 above for additional changes to short-term care proposed in this consultation.
- 4.22 Contract issues; as a part of the study of current practice in relation to financial contributions, it was noted that there are some services where practice in the council may be inconsistent in terms of what contracts require of providers or what is included in people’s care and support plan.



4.23 These are *not* issues for consultation; rather they are equity issues that it is recommended are resolved now, and will be implemented immediately if Cabinet approve this paper. They cover 24-hour schemes (Extra Care and supported living), transport (allowances and contracted services) and day centre meals.

4.24 Previous work on these areas has identified a range of different approaches between providers and clients' care and support plans, but a full investigation is likely to simply confirm the situation rather than resolve it. A pragmatic approach is proposed: that the following practice be adopted now in respect of these services, and that commissioning and care planning practice are matched to it as contracts and care plans are renewed.

- Extra Care and Supported Living: the Care Act requires us to make allowance for certain housing-related costs (rent, mortgage, Council Tax) that are not funded by benefits, but some people in Extra Care placements are being charged by the provider for “Core Support” (24-hour emergency call services).
- In Supported Living placements, people can be receiving 24 hour services or daytime only, and the difference (aside from the cost to the council) impacts on whether we take full account of the enhanced rate of a person's DLA or PIP benefits. There is some evidence that the nature of such placements recorded on a person's care and support plan may be incorrect in some cases. This will be addressed and any corrections made.
- *Proposed practice on Core Support charges*; that we continue to treat Core Support charges for Extra Care Placements as a valid housing-related cost in line with our policy.
- Transport: current Sandwell practice is that if a person has PIP or DLA/AA mobility allowance, we do not consider general travel costs as Disability Related Expenditure (DRE) unless those costs exceed the mobility allowance and the person has no other facility available (such as a Mobility vehicle). This appears to be Care Act compliant.
- However, the situation for day centre transport is less consistent, both in terms of what is included in care and support plans and what is



charged in contract payments. Currently, some independent day centres provide their own transport for people, and include it in the charge to the council, hence those people are effectively paying an assessed contribution towards that cost.

- In other situations, day centres (whether independent or in-house) use transport arranged/commissioned by Sandwell's Passenger Transport service, which is not chargeable to clients and is not included in their care and support plans or personal budget.
- Transport and travel are an intrinsic element of the provision of care and support and are needs-based, hence subject to financial assessment means testing and the requirements of the Care Act. It follows, therefore, that clients must be charged the actual cost as a part of their financial assessment.
- *Proposed practice on transport*, the proposed solution to removing this inequity in contracts and care and support plans is to ensure that;
 - any transport provided, whether by the day centre or the Passenger Transport service, exists to meet the needs of the client, so if a person requires it, it should be included in the care and support plan and personal budget;
 - the cost that is included must be the *actual cost*, since some people with more severe needs require need more expensive transport than others - and should be receiving a higher level of mobility benefits accordingly;
 - contracts with transport and day care providers should be reviewed to ensure compliance with this requirement
 - day centre and other provider contracts that offer their own transport should identify the cost of that transport separately from the normal attendance charge
 - As is currently the case for other travel costs, if the sums charged to the person for the transport element of day centre attendance exceeds their PIP or DLA/AA mobility allowance, and the person has no other facility available (such as a Mobility vehicle), they should be allowed this cost in their Direct Payment or (if they have a council-managed budget) as a DRE for the excess cost.
- Day centre meals: as with transport, there are inconsistencies between different centres as to what is charged for in terms of meals, and



inconsistencies as to what is charged as a contribution and what is detailed in care and support plans.

- However, unlike transport, meals are a basic human requirement and fall within the government definition of costs that everyone is expected to pay from their income or benefits. This is one of the reasons why every financial assessment is required to leave a person with a minimum sum to cover such essential costs.
- *Proposed practice on meals*; meals are not a needs-based service and should not be provided for in a personal budget or direct payment, nor included in the care and support plan.
- It is expected that if a person is provided with a meal in a day centre, the person themselves should pay the cost directly to the day centre. It follows, therefore, that any such cost is a *fee* as defined in the contributions policy which is paid for by everyone, irrespective of their income or needs. It is proposed that meals be added to the list of fees in the policy accordingly.

4.25 Debts and client liability; traditionally, notice of non-residential contributions due is issued via statement, rather than on a formal corporate invoice, which has resulted in very limited recovery action for unpaid contributions being taken, resulting in a loss of income.

4.26 Aside from the money being lost to the council, it could be argued that not pursuing recovery of a person's contributions could be indirect discrimination against those who do pay - which includes those clients whose affairs are managed by the council through Appointeeship: they presumably always pay.

4.27 The situation with regard to invoicing is in the process of changing so that (as with residential contributions), formal invoices will now be issued for contributions, non-payment of which can then be pursued by the corporate debt function.

4.28 *However*, the Care Act is explicit that dealing with debt and non-payment for social care clients requires a social care input, even if the function itself is a corporate one. The guidance does not preclude legal action or formal



debt recovery processes, but does require additional consideration of the fact that those receiving our services are vulnerable.

4.29 *Proposed practice on debts and client liability*; to both prevent debt as well as deal with it when it arises, the following practice is proposed, which *impacts on corporate debt, financial assessment and social care functions*:

- Debt prevention; many people are at a crisis point or unwell at a time of agreeing their packages of care and support with us, so social care and financial assessment staff must advise people (and their representatives where applicable) at all relevant points of their journey through adult social care that they may have to contribute towards the cost of their care
- To help people choose care options appropriately, they must be given an indication of the *maximum contribution* in different care scenarios to help them plan. This is the full cost of different types of service, and a guideline for each will be published annually based on the council's contractual arrangements
- Assessing the person's ability to manage finances; social care staff must assess the person's ability to manage finances, including a bank account, and discuss this throughout assessment and care and support planning. Consideration should be given to both mental capacity and accessibility
- Financial agreements; the person (and/or their representatives) must sign - and be given copies of – their care and support plan which will be amended to include their acceptance of their liability to pay any assessed financial contributions. This will make debts easier to enforce
- Monitoring and Case Review; when conducting a review, social care workers should have to hand a full picture of the person's finances by identifying whether there are any debt or other client finance issues with CCBU and/or the client system.
- This will enable them to discuss any financial/debt issues during the review to try to identify reasons which in turn will allow the social worker and their manager determine what action will be required.



- This may include a Safeguarding referral, support to access advocacy or to manage finances, agreement to cancel or adjust to the service, or reporting any failings of third-party representatives with Lasting Power of Attorney (LPA) or Enduring Power of Attorney (EPA)
- Debt recovery; it is proposed that where standard recovery methods have been exhausted, the corporate debt function notify CCBU so that they can liaise with relevant social care workers – they have a key role in balancing the need to protect the person’s interests against the need to safeguard the council’s assets. The options available to them are;
 - (a) *Negotiating a repayment plan*; the worker should ensure that such a plan is affordable for the person without affecting their care or outcomes, using the person’s most recent financial assessment to identify any available capital or income and any other commitments not considered in the financial assessment (such as pre-existing personal debt)
 - (b) *Authorisation of Legal Proceedings*; it is proposed that legal recovery of debts must be authorised by a social care Service Manager after the full debt process has been followed. The engagement of the council’s Legal team for debt recovery will only be applied where it is considered that there is a good chance of recovering the funds and that the legal and court costs likely to be incurred are less than the sums to be recovered.
 - (c) *Write-off of the debt*; if it is decided that recovery of a debt is impossible or too costly, a write-off can be considered by a social care Service Manager under appropriate delegations, since the sum written off will be a cost to ASC care and support budgets.

4.30 Residential services policies; the council has only limited discretion in the way in which financial contributions for residential care are assessed, but there are a number of areas already in operation which need to be re-stated in the revised policy.

4.31 The first relates to the value of the person’s main home. Generally, if a person has not already sold their property when they move into residential care, its value will be included in the financial assessment as capital, along with other assets and savings. However, we operate discretion to disregard it in some situations set out below, *providing* that we balance



this discretion with “ensuring a person’s assets are not maintained at public expense”.

4.32 The second area of discretion relates to the statutory Personal Expenses Allowance (PEA). This is the minimum amount of income that the Care Act says a person must be left with after contributions have been deducted (although, where a person has no income, we are not responsible for providing one). We have discretion in one situations to allow more than the set sum, and this too is set out below as our policy.

4.33 *Proposed policy for long-term disregard;* we must exclude a property when it is occupied by the person’s partner (including former partner or civil partner, except where they are estranged), a lone parent who is the person’s estranged or divorced partner, or a dependent relative has continuously occupied it since before the person went into a care home. The Care Act guidance defines “dependent relative” as;

- aged 60 or over and/or
- a child of the resident aged under 18 and/or
- incapacitated.

4.34 Where the dependent relative is not a partner and does not meet all the criteria, we have discretion and our policy is as follows;

- they are aged 18 to 59 and match the Care Act definition of a relative – we will offer the option of a Deferred Payment Agreement should the person going into care qualify;
- we will disregard the property whilst any person (not necessarily a relative) who can demonstrate that the house is their sole residence lives in it, providing they can show that they gave up their own home to care for the person who is now in a care home, and they did so significantly before this time, when neither party had any reason to think residential care may be required in the future.

4.35 *Proposed policy for twelve-week disregard;* we must disregard the value of a person’s main/ only home for 12 weeks in some situations to allow them and/or their family and representatives time to consider their options at a time of crisis;



- when someone is entering permanent residential care for the first time;
- where a long-term disregard of a property ends unexpectedly due to the death of the qualifying relative living in it.

4.36 We have discretion as to whether to apply a twelve-week disregard in some other situations, and our policy is to consider applying it;

- where there is a sudden and unexpected change in a person’s financial circumstances forcing them to approach us for assistance, e.g. the shares which they have used to fund their care suddenly lose half of their value;
- where a person who is a “self-funder” in a care home approaches us for assistance or a deferred payment agreement (DPA) because their savings or liquid assets are falling below the qualifying capital limit. This allows the person time to make the necessary decisions and arrangements.

4.37 *Proposed policy for Personal Expenses Allowance* – we will exercise our discretion where a person is part of an unmarried couple and is paying half their occupational/personal pension or retirement annuity to their partner (who is not living in the same care home) to disregard this sum (we must in law do this for married couples and civil partnerships).

