

Equality Impact Assessment Template

Title of proposal (include forward plan reference if available)	Adult Social Care Contributions Policy
Directorate and Service Area	Adult Social Care/Finance (joint)
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Partners involved with the EIA where jointly completed	None
Date EIA completed	22 nd March 2022
Date EIA signed off or agreed by Director or Executive Director	
Name of Director or Executive Director signing off EIA	
Date EIA considered by Cabinet Member	

1. The purpose of the proposal or decision required (Please provide as much information as possible)

The Cabinet paper proposes changes in the contributions policy to identify a model which is more financially viable for the council, whilst also reflecting recent case law and Local Government Ombudsman findings so as to be fairer and comply with equalities expectations.

2. Evidence used/considered

The main evidence that has been used to determine the impact of the policy updates is:

1. Using the recent 'Norfolk' judgement to consider whether other funding models would produce a 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. An analysis of the equalities data on current clients in the sample cases used for modelling is shown in Table 1 below, with a further analysis in Appendix B to the cabinet Paper
2. Legal advice on the need to align policy and practice to recent developments, including removing outdated references and inconsistencies which could form the basis of a challenge that the policy is incoherent or based on erroneous figures and is therefore irrational.
3. An initial assessment of the contributions policies of a range of other councils to assess how up to date they are.
4. A review of data on people who have been assessed to pay a financial contribution to their non-residential services in terms of take-up by different groups (see table below) and comparison with Sandwell population profile on Sandwell trends by ethnicity, gender etc.

3. Consultation

Subject to the agreement of Cabinet to the changes proposed in the main paper, public consultation will be undertaken on the options offered and setting out the impact on the assessed contributions of a range of people of the proposed funding options.

The other changes proposed are to align policy and practice and do not impact on the sums paid by any current user of services.

A further consultation may be required later in 2022 or early in 2023 to reflect the government's recent announcement of proposals for Adult Social Care Act funding reform. It is currently consulting on the introduction from October 2023 of a new cap on the amount anyone in England will need to spend on their personal care (but not their daily living costs) over their lifetime, as well as increased limits on the amount of capital a person can retain. Until

these proposals are finalised in Parliament, no work is yet possible on them, although their general direction has guided this work.

4. Assess likely impact

Overall, the changes proposed in the Cabinet Report for 18th May 2022 will have a **negative** impact in that all the models propose increasing the total income the council receives from contributions. Inevitably, therefore, a significant number of people face an increase in costs. However, an examination of the various options does not reveal any obvious or intentional discrimination.

Within that overall impact, the different models proposed have a range of impacts as they attempt to deliver an equitable solution within an overall increase in contributions charged;

- For a significant group of people, the changes are **negative** in that they face an increase in the contributions they must pay. This particularly affects people with a higher disposable income which in turn is often those of pension age;
- For some people, the changes are **positive** in that notwithstanding the overall increase, their individual contribution is reducing because of the redistributive effects of the various models - particularly benefiting those people with disability related expenditure, lower disposable income and/or of working age.
- There are a group of people who see **no impact** from any of the models proposed. These are people who do not have disposable income and hence do not pay any contribution under the current method or any of the three alternatives proposed – they are unaffected.

The modelling work undertaken to identify alternative methods for calculating contributions used anonymous actual data for 195 current clients in a range of models that attempted to address perceived inequalities such as those referred to in the Norfolk Judgement. The attempt was made to assess alternatives that offered a real choice as to how to calculate contributions within the regulations.

The focus of modelling was to reduce or remove any direct or indirect discrimination against any group of people with a protected characteristic, so as to address the issues in the 'Norfolk Judgement' in which it was decided that by disregarding earnings (as required by the relevant regulations),

Norfolk County Council's policy for charging for non-residential adult social care "indirectly discriminated against [a] severely disabled person who was unable to work", and Norfolk had been unable to objectively justify that differential impact.

However, current legal advice is that this judgement may be limited in impact as any discrimination arises from the regulations made under the Care Act which requires councils to disregard earnings. This situation is likely to change once further cases are heard, but if it is held to be of wider application, then Sandwell, like all councils, will have to review their policies accordingly. There is no obvious mathematical approach that would eliminate the apparent discrimination, unless earnings are no longer disregarded by the government.

The key issue that arises from the study undertaken of the present Sandwell model and a range of alternatives 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) significantly higher for people over pension age compared with those under pension age.

As a consequence, the work on a range of models to be applied by Sandwell has had to attempt to minimise the effect on any one group of people, even though the underlying government regulations and benefits do (apparently) benefit particular groups. Whilst this may be a deliberate choice by central government, it makes delivering "equality" a challenge, particularly in the situation where Sandwell is obliged to increase contributions overall. The impact of the "**care cap**" changes could be also significant but until the government publishes final details, it cannot be assessed.

Table 1 - analysis of impact of contribution models on sum a person can afford to pay

Current contributions policy - analysis of sample cases by equalities characteristics				Model 1 contributions method excluding transition - analysis of sample cases by equalities characteristics			
Characteristic	Number	Average contribution person can afford based on income		Characteristic	Number	Average contribution person can afford based on income	% change compared with current policy
Female	119	£ 26.19		Female	119	£ 35.24	35%
Male	76	£ 24.05		Male	76	£ 33.48	39%
Over 65	99	£ 32.19		Over 65	99	£ 41.82	30%
Under 65	96	£ 18.32		Under 65	96	£ 27.05	48%
Asian	19	£ 15.24		Asian	19	£ 20.28	33%
Black	21	£ 16.74		Black	21	£ 24.28	45%
Mixed	4	£ 7.34		Mixed	4	£ 11.72	60%
Not known	1	£ 37.90		Not known	1	£ 37.90	0%
White	150	£ 28.24		White	150	£ 38.38	36%
Lower rate disability benefit	6	£ 7.93		Lower rate disability benefit	6	£ 12.65	60%
Middle rate disability benefit	44	£ 29.09		Middle rate disability benefit	44	£ 38.90	34%
Higher rate disability benefit	145	£ 24.95		Higher rate disability benefit	145	£ 34.14	37%
Learning Disability	55	£ 21.93		Learning Disability	55	£ 33.91	55%
Mental Health	10	£ 30.95		Mental Health	10	£ 45.60	47%
Physical	114	£ 26.75		Physical	114	£ 34.28	28%
Sensory	4	£ 25.47		Sensory	4	£ 40.62	59%
Social	3	£ 28.74		Social	3	£ 45.87	60%
Memory and Cognition	9	£ 21.30		Memory and Cognition	9	£ 23.16	9%

Model 2 contributions method excluding transition - analysis of sample cases by equalities characteristics				Model 3 contributions method excluding transition - analysis of sample cases by equalities characteristics			
Characteristic	Number	Average contribution person can afford based on income	% change compared with current policy	Characteristic	Number	Average contribution person can afford based on income	% change compared with current policy
Female	119	£ 35.26	35%	Female	119	£ 37.23	42%
Male	76	£ 32.58	35%	Male	76	£ 35.25	47%
Over 65	99	£ 42.62	32%	Over 65	99	£ 46.40	44%
Under 65	96	£ 25.55	39%	Under 65	96	£ 26.20	43%
Asian	19	£ 19.59	29%	Asian	19	£ 20.21	33%
Black	21	£ 23.34	39%	Black	21	£ 25.38	52%
Mixed	4	£ 8.22	12%	Mixed	4	£ 8.38	14%
Not known	1	£ 37.90	0%	Not known	1	£ 37.90	0%
White	150	£ 38.26	35%	White	150	£ 40.81	44%
Lower rate disability benefit	6	£ 13.49	70%	Lower rate disability benefit	6	£ 0.94	-88%
Middle rate disability benefit	44	£ 39.59	36%	Middle rate disability benefit	44	£ 43.28	49%
Higher rate disability benefit	145	£ 33.44	34%	Higher rate disability benefit	145	£ 35.86	44%
Learning Disability	55	£ 31.55	44%	Learning Disability	55	£ 33.32	52%
Mental Health	10	£ 44.62	44%	Mental Health	10	£ 49.33	59%
Physical	114	£ 35.01	31%	Physical	114	£ 37.55	40%
Sensory	4	£ 40.36	58%	Sensory	4	£ 46.69	83%
Social	3	£ 44.93	56%	Social	3	£ 35.17	22%
Memory and Cognition	9	£ 22.53	6%	Memory and Cognition	9	£ 23.36	10%

An equalities assessment of the *current* contributions policy and the three models proposed for consultation is shown in **Table 1 above**. These figures show the outcome in 195 anonymous current cases of applying their actual financial assessments to the three models, compared with their current assessed contribution.

The cash figures shown represent the *average* weekly assessed contribution of people in the 195 cases which were used in the options modelling for the Cabinet paper. These were mapped over a range of characteristics for which data was available;

- Gender
- Age
- Ethnicity
- Level of disability (using disability benefit awarded as proxy)
- Primary support reason

Thus, for example, 19 people in the 195 cases had self-identified as Asian. The average weekly contribution of those 19 is £15.24 in the current methodology, but the average weekly contribution rises to £20.28 if model 1 were applied, £19.59 in model 2, and £20.21 in model 3.

These are genuine figures showing the effect of the models on 195 people, based on a range of equalities characteristics and using these people's actual recorded capital and income, applied to the allowances and limits set out in the financial assessments regime. What the figures cannot explain is why people who (for example) identify as Asian have a lower average contribution than those who identify as Black. The reasons can only be speculated on, as shown in section 4a below.

Table 2 – change in contributions arising from the various models, extrapolated to total client base

Current methodology

CURRENT METHOD																					
47% DISPOSABLE INCOME TAKEN ("SANDWELL ALLOWANCE")																					
Charges scaled to year		Charges scaled to 2,500 clients	By gender		By age		By ethnicity					By disability severity			By primary support						
£257,137		£3,296,634	F	M	<65	65+	Asian	Black	Not known	Mixed	White	Low	Middle	High	LD	MH	Phys	Sens	Social	Memory	
		Income	No.	61%	39%	49%	51%	10%	11%	1%	2%	77%	3%	23%	74%	28%	5%	58%	2%	2%	5%
Clients under 65 in sample		£1,172,289	100																		
Clients over 65 in sample		£2,124,345	95																		

Model 1

DRE DEDUCTED FIRST, AMENDED % SANDWELL ALLOWANCE - NO TRANSITION INCLUDED																							
75% DISPOSABLE INCOME TAKEN ("SANDWELL ALLOWANCE")																							
Charges scaled to year		Charges scaled to 2,500 clients	Change from present		By gender		By age		By ethnicity					By disability severity			By primary support					Overall	
£350,343		£4,491,573	£1,194,939	36%	F	M	<65	65+	Asian	Black	Not known	Mixed	White	Low	Middle	High	LD	MH	Phys	Sens	Social	Memory	
Clients whose contributions increase					35%	25%	33%	28%	5%	6%	0%	2%	48%	2%	15%	44%	22%	5%	29%	1%	2%	2%	61%
Clients whose contributions decrease					7%	5%	3%	9%	2%	0%	0%	0%	10%	0%	2%	10%	2%	0%	9%	0%	0%	2%	12%
Clients whose contributions unchanged					19%	9%	13%	14%	4%	5%	1%	1%	18%	1%	6%	21%	5%	1%	21%	1%	0%	1%	28%

The reduction in Sandwell Allowance leads to 61% of people paying a higher contribution, although (as with the current method), those with a higher disposable income still do relatively well. The 12% of people with a reduction in contribution have benefited from the change in the way DRE is allowed for, as it now offsets their income in full. As with all three models, 28% of clients are unaffected by any changes - they continue to pay no charge, as they still do not have any disposable income (either because of low income, or because they receive higher offsetting DRE and/or housing allowances)

Table 2 above shows an equalities assessment of the impact on contributions of the models. It is based on the same 195 anonymous clients, but in these tables, the results have been scaled up to estimate the **total** impact on the council's income based on the current 2,500 clients financially assessed for contributions.

This shows the estimated increase in income delivered by the three models – they deliver different sums because they were not built to deliver a specific sum, rather they were modelling different methodologies that could be applied. These figures show what percentage of the current 2,500 clients would face an increase or decrease (or no change) in contributions compared with the current methodology.

Again, the outcomes when shown against the equalities characteristics do show variation, but the data does not provide an explanation of *why*, for example, 29% of those clients recorded as having “Physical” as their primary support reason face an increase in model 1, but only 26% in model 3. Again, the reasons can only be speculated on, as shown in section 4a below.

4a. Use the table to show:

- Where you think that the strategy, project or policy could have a negative impact on any of the equality strands (protected characteristics), that is it could disadvantage them or if there is no impact, please note the evidence and/or reasons for this.
- Where you think that the strategy, project or policy could have a positive impact on any of the groups or contribute to promoting equality, equal opportunities or improving relationships within equality characteristics.

Protected Characteristic	Positive Impact ✓	Negative Impact ✓	No Impact ✓	Reason and evidence (Provide details of specific groups affected even for no impact and where negative impact has been identified what mitigating actions can we take?)
Age		✓		<p>Overall, the changes proposed increase the contributions to be paid by all age groups, so there is a negative impact. Within the number of cases, older adults form a growing proportion of Sandwell’s population; 51% are age 65 or over in the dataset.</p> <p><u>Table 1</u> identifies that people aged 65 or over have on average a significantly higher level of “disposable income” from which to pay contributions – this could be because their average income is higher, or because they receive higher allowances in the financial assessments regulations.</p> <p><u>Table 2</u> shows that, despite having a lower level of disposable income, those aged under 65 face the biggest percentage increase in contribution under models 1 and 2. Only in model 3 is there some equity in that the percentage increases between the two groups similar. This demonstrates the greater “redistributive” effect of model 3 - the differential impacts on specific age groups between the three models is a direct consequence of their (apparent) disparity in disposable income – which in turn appears to be the result of national disparities rather than any discrimination.</p>
Disability		✓		<p>Based on 2011 census data, Sandwell has a relatively high share of people with disabilities, and those with complex needs are a growing proportion of the population.</p>

Table 1 identifies that people on the highest rate of DWP benefit (being used as a proxy for “disability severity”) actually have a lower disposable income than those on the middle rate – but that is probably due to the fact that Sandwell disregards the higher rate unless the person receives 24-hour care.

In terms of primary support reason, the two categories that are large enough to draw conclusions on are Physical and Learning Disabilities. In the current model, LD clients have the lower disposable income, but face a much higher percentage increase in the three models compared with Physical. This could be argued to be more equitable, but the reason for this redistributive effect is not obvious.

Table 2 identifies that 74% of clients in the sample are on the highest rate of DWP benefit (being used as a proxy for “disability severity”), and that the majority of that number face an increase in contributions. However, model 1 here has the largest number facing an increase, and model 3 the lowest. This implies that model 3 does benefit those on the highest DWP benefit.

In terms of primary support reason, Physical forms the largest group in the sample with 58%, followed by Learning Disability at 28%, (other categories are too small to draw conclusions on). Again, whilst the majority of these face an increase in contributions, it is model 1 here that delivers the largest number facing an increase, and model 3 the lowest – particularly for LD. However, it is not obvious what is causing this relationship.

Gender reassignment			<p>It is not known how many residents in Sandwell have had a gender reassignment, nor how many pay a contribution to service costs, due to low numbers or declaration rates. Consequently, there is no evidence that the revisions to the Contributions Policy will contribute to any differential impact (positive or negative) on gender reassigned people</p>
Marriage and civil partnership		✓	<p>The breakdown by marital status of Sandwell residents or those paying a contribution to service costs is unknown. We do know who is in a couple if they have had a joint assessment of funds, but the requirement to end a joint assessment for couples will inevitably have a negative impact. However, this is unavoidable as it arises from the Care Act regulations.</p>
Pregnancy and maternity			<p>The breakdown by pregnancy or maternity status of Sandwell residents or those paying a contribution to service costs is unknown. Consequently, there is no evidence that the revisions to the Contributions Policy will have any differential impact on those of this status, and this is not an outcome that the service works to</p>
Race		✓	<p>The 2011 national census data shows the Sandwell population is 66% self-declaring as white and 34% other ethnic groups. For those people receiving non-residential care, there is a higher number of those declaring themselves white (71%), but this is likely to be due to the high proportion of older adults amongst users of ASC services, and older adults are numerically more likely to declare themselves white.</p> <p><u>Table 1</u> identifies that there is a clear differential in disposable income by race – those identifying as white have an average of £28.24 per week under the current model, and this increases the most in model 3, which again implies that redistribution is working, but with no obvious explanation. For those identifying as black, the current average is much lower at £16.74,</p>

				<p>yet it is model 3 that increases it the most. For those identifying as Asian, the current average is the lowest at £15.24 and it is model 1 (marginally) that gives the highest increase.</p> <p><u>Table 2</u> indicates that in all three statistically-significant groups, more face an increase under model 1 than under model 3. No explanation for this has been identified.</p>
Religion or belief				<p>The recorded breakdown of Sandwell residents is that 55.2% are Christian whilst the remaining 44.8% are either “other” or “no” religion. A breakdown of those people who are subject to the Contributions Policy for non-residential care shows is not available, so there is no evidence that the revisions to the Contributions Policy will have any differential impact on people of different religion or belief</p>
Sex			✓	<p>The 2011 national census data on the Sandwell population shows that there are slightly more women (51%) than men. In terms of people who are subject to the Contributions Policy for non-residential care, the proportions are higher for women (57%), likely to be because they have higher life expectancy.</p> <p><u>Table 1</u> identifies that men have a lower average disposable income than women in the current model, but more face an increase from the new models, particularly model 3, which could be taken as redistributive.</p> <p><u>Table 2</u> identifies that the lowest number of people – male and female – face an increase in model 3.</p>

Sexual orientation				The breakdown of Sandwell residents by sexual orientation is not known. Consequently, there is no evidence that the revisions to the Contributions Policy will have any differential impact on people of different sexual orientation
Other – health conditions				The breakdown of Sandwell residents by health condition is not known. Consequently, there is no evidence that the revisions to the Contributions Policy will have any differential impact on people of different health condition. Adult Social Care services are focused on people with age- or disability-related care or medical conditions which impact on their ability to maintain their independence. There is no evidence that suggests that the revisions proposed would have a differential impact on the contributions being paid by people of different health conditions

Does this EIA require a full impact assessment? Yes No

If there are no adverse impacts or any issues of concern or you can adequately explain or justify them, then you do not need to go any further. You have completed the screening stage. You must, however, complete sections 7 and 9 and publish the EIA as it stands.

If you have answered yes to the above, please complete the questions below referring to the guidance document.

5. What actions can be taken to mitigate any adverse impacts?

It is proposed to offer transitional protection to those who are significantly impacted by the various changes proposed to the contributions policy

6. As a result of the EIA what decision or actions are being proposed in relation to the original proposals?

All have been included

7. Monitoring arrangements

The financial assessments service will continue to monitor the take up of their service by protected characteristics

8. Action planning

You may wish to use the action plan template below

9. Publish the EIA

This EIA will be published as part of the Cabinet Report and will be available on Corporate Management Information System of Sandwell Council

Where can I get additional information, advice and guidance?

In the first instance, please consult the accompanying guide “Equality Impact Assessment Guidance”

Practical advice, guidance and support

Help and advice on undertaking an EIA or receiving training related to equalities legislation and EIAs is available to **all managers** across the council from officers within Service Improvement. The officers within Service Improvement will also provide overview quality assurance checks on completed EIA documents.

Please contact:

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