

Report to Health and Adult Social Care Scrutiny Board

18 July 2022

Subject:	Adult Social Care Contributions Consultation
Director:	Director of Finance – Simone Hines Director of Adult Social Care - Rashpal Bishop
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1 Recommendations

- 1.1 The Board is asked to note the proposed policy changes agreed by Cabinet and now out for public consultation (as detailed in Appendix A below).
- 1.2 The Board is invited to consider and comment on the models and the equity issues identified and the methodology adopted for the public consultation.




2 Reasons for Recommendations

- 2.1 The Director of Adult Social Care and the Director of Finance commissioned a review to check the compliance of the Council's current Contributions policy against the Care Act and other case law, as well as addressing the financial pressures facing the service and Council as a whole.
- 2.2 This paper for Scrutiny Board's consideration aims to set out the main issues that were addressed in the work undertaken, in terms of legal requirements, equity and equality, and council income.



- 2.3 It summarises below the key issues identified, the solutions proposed in the report to Cabinet of 18 May 2022 and the methods applied in the public consultation which is now underway.
- 2.4 The presentation provides members the opportunity to understand the options proposed and seek clarification and provide comment into the consultation process.

3 How does this deliver objectives of the Corporate Plan?

	<p>People live well and age well - clarifying some elements of current policy makes it easier for users of services and residents to understand how we make decisions regarding their contributions and ensures equity amongst customers</p>
	<p>Strong resilient communities - ensuring residents understand our policy and principles will contribute towards creating stronger and more resilient communities</p>
	<p>A strong and inclusive economy – ensuring people have sufficient funds to meet all reasonable needs is essential for an equitable economy</p>

4 Context and Key Issues

- 4.1 The review commissioned by the Director of Adult Social Care and the Director of Finance aimed to assess the compliance of the Council’s current Contributions (Charging) policy (last revised in 2012) against the Care Act 2014, which repealed all previous national charging policies and guidance.
- 4.2 Legal issues; whilst the Care Act did not introduce major change, (the biggest reform - the care cap - was postponed and is only now the subject of national consultation), the current Sandwell policy was found to contain references that require updating to reflect the Care Act, new state benefits and other regulations.
- 4.3 In addition, some areas of policy and practice required clarification and Legal advice obtained during the review also identified some aspects of



the policy or of practice that are no longer consistent with recent case law and rulings by the Local Government Ombudsman, some with specific equalities implications.

- 4.4 The risks of operating with a policy that is technically outdated or does not align to practice meant it was considered prudent to make the identified changes immediately to avoid misunderstandings caused by lack of clarity or outdated wording. This also ensures people better understand our current policy.
- 4.5 Funding issues; as well as this work on compliance, the review was also expected to identify methods of increasing the financial viability of adult social care by increasing the income the council receives from contributions from those who can best afford it.
- 4.6 Despite increasing pressures within Adult Social Care funding nationally, Sandwell continues to provide allowances that exceed those required by the relevant regulations and which are out of line with other councils locally and nationally.
- 4.7 Sandwell currently allows people to retain 53% of their disposable income (if any), and bases contributions only on the remaining **47%**. In contrast, our research into 27 other councils identified that one bases contributions on **75%** of disposable income, one on **90%**, and the remaining 25 on **100%**.
- 4.8 The three different funding models proposed reduce this allowance but remain more generous than the majority of those councils researched. The proposed changes would increase income by between £1.2 million and £1.4 million pa. (depending on the model selected after consultation) over and above the current non-residential income of £2.3 million pa.
- 4.9 The variation in income between the three models arises purely as a consequence of the different methodology used in them. The review was not set a specific target, rather the focus was finding effective solutions to increasing income balanced against the desire to improve transparency in



how the funding model would work and greater equity in how people's charges were calculated.

4.10 It should be noted that 28% of clients currently pay no contributions at all (because they have no disposable income), and they are unaffected by any of the three models.

4.11 Equality and equity issues; the research and subsequent Equalities Impact Assessment (EIA) noted that increasing contributions inevitably has an overall negative impact, as all the models propose increasing the total income the council receives. Consequently, 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.

4.12 The research reveals that the national system of state benefits, pensions and other allowances appear to contain inherent discrimination, as they are relatively more generous for people of pension age. In turn, this disparity is a feature of any contributions model since it must reflect such income sources - this is not something the council can resolve.

4.13 The range of models tested for a new contributions policy were designed to try and minimise impacts on any specific group. The three models finally selected show no differential impact on any equalities characteristic. However, within that overall impact, the three 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 pensionable 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 model 3) which most benefit those people with disability related expenditure, lower disposable income and/or those of working age.



- 4.14 Ultimately, the overall negative impact of the changes proposed in this paper have been examined and reviewed but are unavoidable given the need to balance the council's budget. In turn, this could be justified as a 'proportionate means of achieving a legitimate aim' in accordance with the Equality Act 2010.
- 4.15 Proposed solutions; the work commissioned by the Directors has, therefore, focused on researching options for amending the Contributions policy both to address financial pressures as well as the need to address legal and equity issues.
- 4.16 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".
- 4.17 This ruling held that by disregarding earnings, 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. The fact that disregarding earnings is required by the Care Act did not affect the outcome of the judgement.
- 4.18 The attempt was made to assess alternatives that offered a real choice as to how to calculate contributions within the regulations and such case law. The three models proposed were those considered to minimise the impact on any one group.
- 4.19 The EIA identify variable impacts on groups with different equalities characteristics in both the current methodology and in the three proposed models. However, what has not been possible to explain is why these variances occur. To give only three examples;
- The *average* contribution that people pay under the current policy based on their available disposable income is £32.19 per week for



those of pensionable age, but is £18.32 per week for those of working age;

- people who identify as Asian currently have a lower average contribution than those who identify as Black;
- 22% of those clients recorded as having “learning difficulty” as their primary support reason face an increase in model 1, but only 19% in model 2 and 15% in model 3.

4.20 The conclusion is that the apparent variation between characteristics is most likely to arise from the personal circumstances of each person rather than from any impact on a particular characteristic. The modelling was based on the actual recorded capital and income of the 195 clients, applied to the allowances and limits set out in the financial assessments regime and set against their service whose cost will vary greatly according to its nature.

4.21 All these factors, plus the fact that the underlying government regulations and benefits do (apparently) benefit particular groups, make delivering “equality” a challenge, particularly in the situation where Sandwell is increasing contributions overall.

4.22 Based on this work, a range of changes were proposed in the report to Cabinet on 18 May 2022 which attempted to balance these issues. Some – particularly those proposing change in how we calculate people’s non-residential contributions - have a significant impact on some current users of our services. Others are more technical changes to the policy that clarify and update elements of it.

4.23 The aim of the proposed changes is to offer alternative models which produce a non-residential contributions regime which is financially viable for the Council whilst being fairer and complying with equalities expectations, i.e. it aims to avoid discriminating against any group of people with a protected characteristic.

4.24 As stated, the forecast increase in income is between £1.2m and £1.4m, and within this **net** increase, the models expend approximately £0.5m to address issues with current practice on Disability Related Expenditure



costs (a statutory requirement for non-residential services). Currently we only fund such costs as exceed the 53% allowance against income we provide, whereas the revised models all include such costs in full before any allowance is calculated, thus benefitting all clients facing additional costs due to their disabilities.

- 4.25 Cabinet agreement; the report to Cabinet proposed public consultation on the elements of the revised Contributions Policy that have a significant impact on the contributions people may pay, particularly on the three models that the paper proposes as options for calculating non-residential contributions.
- 4.26 Cabinet approved the proposals, and public consultation commenced on 6 June 2022, and will end after 12 weeks on 29 August 2022. The more technical changes which were not subject to consultation have been implemented with immediate effect. A summary of all the main changes is set out in **Appendix A**
- 4.27 Once the consultation closes and responses have been analysed, a final report making recommendations for changes to the Contributions Policy will be presented to Cabinet on 16 November 2022, proposing any implementation of revised policy from 1 January 2023.
- 4.28 The nature of consultation; the consultation has been accompanied by a range of publicity and documentation designed to encourage participation and feedback from the public, particularly those who currently use ASC services (or may do in the future) and who are likely to be impacted by the changes proposed.
- 4.29 It has been acknowledged from the start that Contributions is a complex subject which is difficult to simplify and may be challenging to engage people on, so the approach taken is to set out as clearly as possible the changes and provide as many opportunities as possible for people to identify the impact on them.
- 4.30 Notification of the consultation has been as follows;



- Notice to stakeholder groups such as voluntary organisations and partner statutory bodies in the form of a summary and link to the consultation documents on the Council website, asking them to promote the consultation to their members;
- A mailshot to all existing clients who have been assessed for contributions giving them details of the website and contact details;
- General social media posts on Sandwell Council’s platforms (Facebook, Twitter, LinkedIn);
- An article in the June edition of the Adult Social Care staff update;
- A short article in the forthcoming Sandwell Herald.

4.31 Opportunities to get more information have been provided for both the public and staff;

- Anyone participating in the consultation has been provided with a specific email address and phone number where they can raise any questions they have about the changes, or if they need alternative formats;
- Two drop-in sessions have been arranged where people can discuss the changes with staff from the financial assessments team and can be given an estimate of the effect of each of the proposed models based on their personal finances;
- An offer of a visit from the financial assessment team to community groups and locations across the borough to raise awareness of the consultation and answer questions.

4.32 A range of documentation has been provided on the council’s consultation page of the website (paper copies of all documentation is also offered);

- A full description of the changes being consulted on;
- A set of “frequently asked questions”;
- A document setting out a wide range of examples of the effect of the various changes on different people;
- A “calculator” which people can download and, by inputting a small amount of personal information, can see estimates of what they



currently pay as contributions against what they would pay under the three models;

- An online survey for their responses.

5 Alternative Options

5.1 The Council must have a Contributions Policy as it has discretion over aspects of both Residential and Non-Residential Contributions.

5.2 It would be possible to defer these updates until national decisions on recent case law and on the Care Cap proposals are reached, but some of these changes are essential and should be made without delay. The financial viability of the current policy is also important.

6. Appendices

Appendix A – summary of the proposed changes to the council's Contributions Policy

7. Background Papers

- Cabinet Report Adult Social Care Contributions Policy final
- Assessment of other councils' contributions policies
- The Care Act 2014
- The Care and Support (Charging and Assessment of Resources) Regulations 2014 (amended 2021)
- The Care and Support Statutory (CASS) Guidance October 2014
- The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014
- The Mental Health Act 1983 (mental health aftercare services commissioned under section 117 of this Act must be free from contribution)
- The Mental Capacity Act 2005 (the determination of a person's ability to manage decisions, specifically those relating to their finances)

