

DERBYSHIRE COUNTY COUNCIL

CABINET

21 JANUARY 2014

REPORT OF THE STRATEGIC DIRECTOR – ADULT CARE

**CONSULTATION ON PROPOSED CHANGES TO ELIGIBILITY FOR
ADULT SOCIAL CARE AND INCREASED CONTRIBUTIONS FOR NON
RESIDENTIAL CARE**

ADULT SOCIAL CARE

1. Purpose of the Report

To seek Cabinet approval to commence formal consultation on increasing the level of Co-funding for Personal Budgets and a change in eligibility for Social Care (Personal Budgets) to be established at substantial needs and above.

2. Information and Analysis

Context

Due to reductions in funding from Central Government, the Council must reduce its expenditure by £157m over the next 5 years.

In order to achieve this budget reduction, Cabinet is reviewing all areas of expenditure. At its meeting on 1 October 2013, Cabinet approved a joint report by the Chief Executive and the Director of Finance on the revised budget for 2013/14. In approving the joint report, Cabinet also:-

- Approved a revised 5 year financial plan
- Noted the changes to funding received since Council approved the budget in February 2013 and approved the uses to which it will be applied.
- Agreed the proposals for budget reductions outlined in Appendix 2 to that report
- Noted that the possible areas for budget reductions in Appendix 3 to that report will be considered and detailed proposals brought before Members as appropriate

The Council meeting on 2 October 2013 confirmed and accepted the proposals agreed by Cabinet in relation to the revision to the 2013/14 budget and to the reductions detailed in the report.

Two of the proposals set out in Appendix 3 of the joint report, subject to Cabinet consideration and necessary consultation, were to increase client contributions and increase the Fair Access to Care Services (FACS) eligibility threshold from Higher Moderate to Substantial. Detailed proposals relating to these changes are set out below.

Over recent years most councils have taken decisions or are consulting on proposals to revise the FACS eligibility thresholds for adult social care services. Many councils have also introduced or raised the level of charges and financial contributions made by individuals towards the cost of providing their adult social care support. Comparisons with other Councils is detailed in **Appendix 1**.

2.1 Increase in Co-funding of Personal Budgets

2.1.1 Legal Framework Underpinning Co-funding

Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 (HASSASSA Act 1983) gives councils a discretionary power to charge adult recipients of non-residential services.

Section 17 of the HASSASSA Act 1983 provides that councils may recover such contributions in respect of relevant services as they consider are reasonable and reasonably practicable for clients to pay.

To ensure consistency and fairness, the Department of Health has issued statutory guidance, *“Fairer Charging Policies for Home Care and other Non-Residential Services”* (June 2013) using powers conferred under Section 7 of the Local Authorities Social Services Act 1970

The Department of Health has also issued further statutory guidance to local authorities *“Fairer Contributions Guidance – Calculating an Individual’s Contribution to their Personal Budget”*. (November 2010):

2.1.2 Current Co-funding Policy and Principles

Co-funding, introduced in April 2011, is the term adopted by Derbyshire County Council in relation to the cost sharing partnership arrangements for those clients who receive non-residential services, and has been designed to comply with the Department of Health’s Fairer Charging and Fairer Contributions Guidance.

To ensure compliance with the requirements of this guidance, local authorities’ contribution policies must adhere to the following principles:

- Ensuring clients' net income is not taken below the basic level of income support/employment support allowance/guarantee element of pension credit plus a 'buffer' of 25%
- The value of the main residence of the client will be disregarded
- Capital assets and savings will be assessed at a minimum level in line with those prescribed for long term residential care, in accordance with "Charging for Residential Accommodation Guide" (CRAG)
- Clients who work will not have their earnings included in the calculation of household income
- Partners' income and savings will be disregarded
- The additional cost of disability will be recognised and appropriate allowances made
- Clients with CJD will not be asked to contribute
- The total of any contributions made within the financial year will not exceed the total cost of services provided in that period.

The current policy in Derbyshire is based on receipt of attendance allowance/disability living allowance (care), except where individuals have capital resources in excess of £50,000. A summary of the current policy is set out below.

Attendance Allowance/Disability Living Allowance (Care)

Attendance Allowance (AA) and Disability Living Allowance (DLA) (Care) are non-means tested tax-free benefits for people who are physically or mentally disabled and who need help with personal care or supervision to remain safe.

The 2013/14 current rates are:

Attendance Allowance

Low Rate: £53.00 per week
High Rate: £79.15 per week

Disability Living Allowance (Care)

Low Rate: £21.00 per week
Middle Rate: £53.00 per week
High Rate: £79.15 per week

Where a client declares:

Income above the protected threshold,
Is in receipt of AA or at least middle rate DLA (Care)
But has less than £50,000

Under the current policy, clients are required to contribute 50% of the Low Rate Attendance Allowance/Middle Rate DLA (Care), even if the higher rates

are in payment. This AA/DLA (Care) 'standard' contribution currently, therefore, is £26.50 per week.

Co-funding Contributions from Capital

Where clients declare that they have in excess of £50,000 capital (excluding the value of a property owned which is their main residence) they will, depending on the value of the client's personal budget and level of capital, make a contribution on the following basis:

Above £50,000 but below £100,000 the first 25% of their personal budget

OR

Above £100,000 the first 50% of their personal budget

e.g.

A client with capital of £60,000 and a personal budget of £120.00 per week would make a Co-funding contribution of £30.00 per week.

A client with capital in excess of £100,000 and a personal budget of £120.00 per week would make a Co-funding contribution of £60.00 per week.

NB: The minimum contribution for a client with capital in excess of £50,000 is an amount equivalent to 50% low rate AA/middle rate DLA (Care) i.e. £26.50 per week.

2.1.3 National and Local Co-funding Policy Safeguards

- **Income Maximisation** Under national guidance as an integral part of the financial contribution assessment process all clients are offered appropriate benefits advice and assistance. This is to ensure that clients' incomes are maximised and is not limited to those benefits in relation to Co-funding.
- **Disability Related Expenditure Reviews** Under national guidance where a client feels that the additional cost related to their disability is over and above that already allowed in the contribution determination, they are entitled to an individual assessment of their disability related expenditure. The purpose of this review is to establish whether a full or partial reduction in the Co-funding contribution would be appropriate.
- **Protected Level of Income:** The County Council has used its discretion to increase the minimum income level to an amount equivalent to basic level of benefits plus a buffer of 32%. This has the effect of protecting 7% more of a client's income before they are required to make a financial contribution.

- **Sources from which contributions will be made:** Under current Derbyshire policy, clients are only required to contribute from those non means tested benefits already made available, on the basis of their care and/or support needs, i.e. Attendance Allowance and Disability Living Allowance (Care), or where they have capital above £50,000.
- **Capital Thresholds:** The Co-funding policy has regard for the capital levels as determined in CRAG; however, the Authority has applied its discretion to allow clients to retain a greater proportion of their capital before it is included in the determination of any contribution.
- **Terminal Illness:** Under Derbyshire's policy, we do not require a financial contribution from those clients who are terminally ill. Terminal illness for these purposes is defined as being where a person has received a prognosis of less than six months life expectancy.
- **Carers:** Under Derbyshire's policy, we do not require a financial contribution from carers who receive an individual support package.

2.1.4 Proposals to increase Co-funding contributions

The following three proposals are being put forward for consideration during the consultation process. Cabinet will decide, whether any, or all of these proposals will be implemented following the further report to Cabinet.

Proposal 1: It is proposed that there is a reduction in the income protection buffer.

The current Co-funding policy has an additional 7% protection for clients' income over and above that required by the Fairer Charging and Fairer Contribution guidance.

By removing this additional protection and only applying the standard protection of 25% above basic benefit rates, this would reduce the protected thresholds to:

- Over Pension Age: From £191.93 to £181.75 (a reduction of £10.18 per week)
- Under Pension age: From £160.58 to £152.06 (a reduction of £8.52 per week)

Proposal 2: It is proposed to increase the percentage contribution from 50% to either 60%, 75% or 90% of low rate AA or middle rate DLA (Care).

The combined effect of proposals 1 and 2 would be as follows:-

Level of AA / DLA	Standard Weekly Contribution	Annual Increase in Income
Current Level (50%)	£26.50	£0
60%	£31.80	£0.869m
75%	£39.75	£1.773m
90%	£47.70	£2.367m

Proposal 3: It is proposed that clients with in excess of £50,000 capital become responsible for 100% of their care package costs.

The current Co-funding policy has significantly more generous capital thresholds than the Department of Health guidance requires.

Current guidance does not require local authorities to provide financial assistance to a client where they have capital assets (as defined) in excess of those prescribed for care in a residential care home setting (CRAG). This threshold for 2013/14 is £23,250.

The current Co-funding policy requires that:

- Where a client has below £50,000 they only make a contribution from their Attendance Allowance or Disability Living Allowance (Care) if their other means warrant it.
- Where a client has above £50,000 but below £100,000 they are responsible for the first 25% of their personal budget (with a minimum contribution of £26.50 in line with AA/DLA (Care) contributions)
- Where a client has in excess of £100,000 they are responsible to the first 50% of their personal budget (with a minimum contribution of £26.50 in line with AA/DLA (Care) contributions)

It is proposed to retain the capital threshold at £50,000. However, it is also proposed that clients with in excess of £50,000 become responsible for 100% of their care package costs.

The introduction of this proposal is expected to affect up to approximately 640 people and generate income/savings of around £3.7m per annum.

2.1.5 Proposal to Introduce a Fairer Charging Financial Assessments Team

If, following consultation, Cabinet decides to implement any or all of these proposals it will be necessary to establish a much more rigours financial

assessments to complete the full financial declaration which would be required, with evidence of clients' income and savings. It would therefore be no longer appropriate for Social Workers to undertake this work. This would free up Social Workers' capacity to deal with assessments, reviews and complex casework and would mitigate revisions in fieldwork capacity, which may be required as a result of the proposals outlined in this report and the new financial plan generally.

It would therefore also be necessary to establish a financial assessments team and additional Benefit, Information and Advice Officers posts to support clients to maximise their income.

2.2 Eligibility for Social Care

The current statutory guidance to local authorities on eligibility criteria for Adult Social Care was issued by the Department of Health in February 2010. This superseded the 'Fair Access to Care Services: - Guidance on Eligibility Criteria for Adult Social Care 2003'.

Clause 13 of the Care Bill 2013, currently before Parliament, contains provision for regulations to set a national minimum threshold for eligibility. This is currently being consulted upon by the Department of Health but, it is anticipated that this will be set at 'Substantial'. The implementation of the new national framework is currently expected to be with effect from April 2016.

An individual's eligibility for statutory support is determined following an assessment. Under Section 47 of the NHS and Community Care Act 1990, local authorities have a duty to assess the needs of any person for whom the authority may provide or arrange the provision of community care services and who may be in need of such services.

As part of the assessment, information about an individual's presenting needs and related circumstances should be established and recorded. The NHS and Community Care Act 1990 requires that, having conducted the assessment, councils must decide whether a person's needs call for the provision by it of any community care services. Councils have to use a national eligibility criteria framework to draw up their own eligibility criteria. These should then be used to identify the needs which call for the provision of services (eligible needs) according to the risks to independence and well-being, both in the immediate and longer term.

In constructing the eligibility criteria and also in determining eligibility for individuals, councils should prioritise needs that have immediate and longer term critical consequences for independence and well-being ahead of needs with substantial consequences. Similarly needs that have substantial

consequences should be placed before needs with moderate consequences and so on.

The statutory guidance provides that councils should review their eligibility criteria in line with their usual budget cycles. Such reviews may be brought forward if there are major or unexpected changes, including those with significant resource consequences. Councils should be mindful of the evidence that suggests that raising eligibility criteria thresholds without a parallel investment in preventative strategies may lead to an increase in demand for services in the longer term.

Derbyshire County Council currently has its eligibility threshold set at 'Higher Moderate and above'. This level was agreed by Cabinet on the 29 March 2011, following a period of public consultation and the carrying out of an Equality Impact Assessment based on raising the eligibility threshold from Moderate to Substantial. The Higher Moderate threshold is based on criteria established locally by Derbyshire County Council with advice from Leading Counsel (**Appendix 2 to this report**)

Taking account of the current financial challenges faced by the Council and the revised 5 year financial plan, it is proposed that, subject to full public consultation, the threshold should now be raised to Substantial. This will affect up to 2,700 people currently assisted by the Council who are assessed as having FACS eligible care needs below the Substantial threshold. A reduction in the number of people eligible to receive Adult Care support would in turn affect workforce planning and would be a factor taken into account when deciding future requirements for the fieldwork service capacity.

Under national guidance, the Council would need to exercise considerable caution and sensitivity when considering the withdrawal of support to clients who may fall below the 'Substantial' threshold. In some individual cases it may not be practicable or safe to withdraw support even though needs may initially appear to fall outside the eligibility criteria. The Council would also check any commitments they gave to service users or their carers at the outset about the longevity of support provided. If, following a review, the Council did decide to withdraw support from an individual, it would be essential to be certain that their needs were not likely to worsen or increase in the short-term and the individual become eligible for help again as independence or well-being was undermined.

2.3 Consultation

The introduction of an increase in Co-funding contributions and proposals for a 'Substantial' FACS eligible care needs threshold would potentially affect all

people currently assisted by the Council with the provision of adult social care community based services and would require a period of a full public consultation prior to any decisions being made. The proposals also affect other departments of the Council, partner organisations including district and borough councils, local NHS services and community organisations. The extent of the potential impact will be determined through the period of consultation and will be taken into consideration and reported to Cabinet as part of the final decision-making on the proposals. The proposals would also be subject to a full Equality Impact Assessment.

The consultation process would involve a leaflet of explanation being sent to people currently in receipt of services along with the establishment of a helpline/phone-line to answer queries. The direct implications of the proposals on individuals would be set out in this leaflet. It is important for clients to understand how the proposals could impact on them personally in order for them to be able to participate in the consultation process in a meaningful way. The leaflet will also be provided in an easy read format.

Consultation would also involve the use of community newspapers and other media outlets as appropriate. The consultation would include engagement and workshops with forums and voluntary organisations who are representative of community interests in Derbyshire and engagement with partnership boards, commissioning partners and providers as relevant stakeholders for the consultation process. There would also be consultation with advocacy groups and frontline staff would engage with local people assisted by services, particularly those who need some assistance to participate with the consultation process. The process would at all times ensure consultation with hard to reach groups. The results of the consultation would be subject to a further report to Cabinet.

3. Financial Considerations

The income/savings generated as a result of the proposals set out in this report would amount to between £4.57m and £6.07m from increased contributions and a minimum of £4.5m for FACS. It should be recognised, however, that there will be an interplay between the eligibility criteria and income from Co-funding, which will be refined during the coming period and will draw on information arising from the consultation.

The potential costs of the financial assessment team and Benefit, Information and Advice Officers, if relevant, will be detailed within the further report to Cabinet following consultation.

4. Human Resources Considerations

In addition to the arrangements for public consultation outlined in the report, the workforce planning implications arising from the proposals will be the subject of consultation with staff and Trade Unions. The result of these consultations will be included in the further report to Cabinet as proposed by the officer recommendation.

5. Legal and Human Rights Considerations

The Director of Legal Services has advised that the proposals outlined in this report need to be considered with the proposed changes in other Cabinet reports, in particular, Consultation on Proposed Changes to Housing Related Support Services Programme and Consultation on the Introduction of an Adult Social Care Transport Policy.

Consultation on all the proposals should, as far as practicable, take place at the same time. The information provided to consultees, in each consultation pack, must link to the other proposed changes in order for them to fully understand the global impact of the proposals and allow them to provide informed comment. Consultees should be specifically asked to comment on whether other changes proposed by the Council will, in their view, make the consequences of the proposed changes outlined in this report better or worse and, if so, in what ways.

When considering the proposals it will be essential for Members to have due regard to protecting and promoting the welfare and interests of persons who share a relevant protected characteristic (age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation). The proposals will therefore be subject to an Equality Impact Assessment, which will be linked to the Equality Impact Assessments for the other proposed changes, in order for Members to fully consider the impact of all the changes in the round. The assessment of impact on protected groups will include an assessment of any safeguarding issues arising.

6. Equality of Opportunity Considerations

The proposals will be subject to an Equality Impact Assessment. This will be prepared in the light of the consultation and will be included with the subsequent report to Cabinet.

7. Other Considerations

In preparing this report, the relevance of the following factors has been considered: Prevention of crime and disorder; equality of opportunity; environmental; health, property and transport considerations.

8. Key Decision

No

9. Is it required that call-in be waived in respect of the decisions proposed in the report?

No

10. OFFICER'S RECOMMENDATION

1. That Cabinet approves the commencement of a period of full public consultation on the proposals set out in the report on the introduction of an increase in the rate of Co-funding for Personal Budgets and a change in eligibility for Social Care (Personal Budget) to be established at 'Substantial' needs and above.
2. That a further report is brought to Cabinet following the period of public consultation and an Equality Impact Assessment being carried out.

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MATLOCK**

APPENDIX 1

Derbyshire County Council Comparison with Other Local Authorities

Eligibility thresholds for Adult Care

<u>Local Authority</u>	<u>Eligibility threshold</u>
East Midlands Authorities	
Northamptonshire	Higher Substantial
Derby City	Substantial
Lincolnshire	
Leicester City	
Leicestershire	
Nottinghamshire	
Rutland	
Derbyshire	Higher Moderate
Nottingham	
Nearby authorities	
Rotherham	Substantial
Sheffield	
Tameside	

LA	Nos receiving services after a FACS Assessment
Rutland (510)	1095
Milton Keynes (613)	4865
Rotherham (206)	6615
Derby (507)	6990
Nottingham (512)	7285
Tameside (311)	7440
Leicester (509)	8015
Sheffield (207)	12480
Northamptonshire (504)	12565
Nottinghamshire (511)	13585
Leicestershire (508)	14195
Derbyshire (506)	17290
Lincolnshire (503)	17875

Finance

The Derbyshire County Council Co-funding Policy, for non-residential services, is distinctive because the contribution is directly linked to the payment of Attendance Allowance or Disability Living Allowance (Care) or clients with capital in excess of £50,000. Comparisons with other local authorities show that by far the vast majority charge hourly rates for services delivered.

From information available through CIPFA Benchmarking and National Association member it is believed that Derbyshire County Council is the only authority which charge for non-residential services with a protected threshold 'Buffer' of greater than 25%.

CIPFA Benchmarking Data (2012/13)

NB: Information collected from those authorities in the Council's regional audit group which are also members of the CIPFA Benchmarking Club.

Maximum Weekly Contributions:

Derbyshire County Council	£210.00
Lincolnshire County Council	£250.00
Norfolk County Council	£283.55
Northumberland County Council	£251.75
Leicestershire County Council	£No Maximum

Charges per hour (2012/13)

Derbyshire County Council	Standard AA/DLA max £25.92 per week irrespective of hours received
Lincolnshire County Council	£11.93
Norfolk County Council	£14.62
Northumberland County Council	£12.84
Leicestershire County Council	£13.25

Percentage of Clients financially assessed for Nil Contributions:

Derbyshire County Council	39.8%
Lincolnshire County Council	41%
Norfolk County Council	28.7%
Northumberland County Council	45%
Leicestershire County Council	23.5%

The national average for clients assessed as not requiring to make a financial contribution is 42.9%

Costs of Collecting Financial Information per new client

Derbyshire County Council	£33.00
Lincolnshire County Council	£40.00
Norfolk County Council	£67.00

Northumberland County Council	£67.00
Leicestershire County Council	£47.00

The national average collection costs £37.00

DERBYSHIRE COUNTY COUNCIL ADULT CARE ELIGIBILITY FRAMEWORK

	Critical Risk Band <i>There is a critical risk to the person's current or future independence in one or more of the areas below if help is not provided.</i>	Substantial Risk Band <i>There is a substantial risk to the person's current or future independence in one or more of the areas below if help</i>	Higher Moderate <i>There is a higher moderate risk to the person's current or future independence in one or more of the areas below if help is not provided</i>		Moderate Risk Band <i>There is a moderate risk to the person's current or future independence in one or more of the areas below if help is</i>	Low Risk Band <i>There is a low risk to the person's current or future independence in one or more of the areas below if</i>
Health and Safety	Life is or will be threatened. Significant health problems have developed or will develop. Serious Abuse or neglect has occurred, or will occur.	Abuse or neglect has occurred, or will occur.		Current DCC Adult Care Eligibility Threshold		
Autonomy and Control Over a Person's Environment	There is, or will be, little or no choice and control over vital aspects of the immediate environment.	There is, or will be, only partial choice and control over the immediate environment.				
Management of Daily Routines	There is, or will be, an inability to carry out vital personal care or domestic routines.	There is, or will be, an inability to carry out the majority of personal care or domestic routines.	There is, or will be, an inability to carry out several personal care or domestic routines: - Has personal care needs in excess of 2 hours per week - There is a single or several routines which if not sustained will cause a significant risk to independence and wellbeing - Has a need or needs which if not addressed would rapidly result in a substantial risk to independence and wellbeing			There is, or will be, an inability to carry out several personal care or domestic routines.

<p>Social and Economic Participation</p>	<p>Vital involvement in work, education or learning cannot, or will, not be sustained.</p> <p>Vital social support systems and relationships cannot, or will not be sustained.</p> <p>Vital family and other social roles and responsibilities cannot, or will not, be undertaken.</p>	<p>Involvement in many aspects of work, education or learning cannot, or will not, be sustained.</p> <p>The majority of social support systems and relationships cannot, or will not, be sustained.</p> <p>The majority of family and other social roles and responsibilities cannot, or will not, be undertaken.</p>	<p>Involvement in several aspects of work, education or learning cannot or will not be sustained:</p> <ul style="list-style-type: none"> - There are needs relating to aspects of work, education or learning which, if not provided for, will cause a significant risk to independence and wellbeing - Has a need or needs which, if not addressed, would rapidly result in a substantial risk to independence and wellbeing <p>Several social support systems or relationships cannot or will not be sustained:</p> <ul style="list-style-type: none"> - There is one single, or several in combination, support systems or relationships which if not sustained will produce a significant risk to independence and wellbeing - Has a need or needs which, if not addressed, would rapidly result in a substantial risk to independence and wellbeing <p>Several family and other social roles and responsibilities cannot or will not be undertaken:</p> <ul style="list-style-type: none"> - There is one single, or several in combination, social roles and responsibilities which if not undertaken will produce a significant risk to independence and wellbeing <p>Has a need or needs, which if not addressed would rapidly result in a substantial risk to independence and wellbeing.</p>	<p>Current DCC Adult Care Eligibility Threshold</p>	<p>Involvement in several aspects of work, education or learning cannot or, will not, be sustained.</p> <p>Several social support systems and relationships cannot, or will not, be sustained.</p> <p>Several family and other social roles and responsibilities cannot, or will not, be undertaken</p>	<p>Involvement in one or two aspects of work, education or learning cannot, or will not, be sustained.</p> <p>One or two social support systems and relationships cannot, or will not, be sustained.</p> <p>One or two family and other social roles and responsibilities cannot or will not be undertaken.</p>
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