

<b>Report to:</b>	<b>EXECUTIVE CABINET</b>
<b>Date:</b>	20 December 2023
<b>Executive Member:</b>	Councillor John Taylor – Executive Member (Adult social Care, Homelessness and inclusivity)
<b>Reporting Officer:</b>	Stephanie Butterworth – Director, Adults Services
<b>Subject:</b>	<b>APPROVAL OF ADULT SOCIAL CARE CHARGING POLICY AND REVISED CHARGING SCHEDULE 2024/25 ONWARDS</b>
<b>Report Summary:</b>	<p>This report seeks approval of the revised Adult Social Care Charging Policy and associated charging schedule for 2024/25. This updates the previous policy agreed February 2022 to simplify and explain more clearly, the way we charge for care in a single policy document.</p> <p>The associated appendix provides a schedule of the associated fees and charges for 2024/25 which seeks to align the charges to people who use our services with the fee paid by the Council for care and support provided, within the context of the national means test. Having an effective charging policy is a key requirement for both Care Act 2014 compliance and CQC inspection readiness.</p>
<b>Recommendations:</b>	<p>That Cabinet be recommended to agree:</p> <ul style="list-style-type: none"> <li>(i) That approval is given to the revised ASC Charging Policy, and the associated charging schedule for 2024/25</li> <li>(ii) That approval is given to implement the alignment of charges (Appendix 2) with fees paid for all people who use our services with effect from 1 February 2024 (Option 1)</li> <li>(iii) To note and approve the need for public consultation on the charges referenced in section 3.3 of this report.</li> </ul>
<b>Corporate Plan:</b>	<p>The proposals align with the Living Well, Working Well and Ageing Well programmes for action.</p> <p>The service links into the Council's priorities:</p> <ul style="list-style-type: none"> <li>• Help people to live independent lifestyles supported by responsible communities.</li> <li>• Improve Health and wellbeing of residents</li> <li>• Protect the most vulnerable</li> </ul> <p>Also links to the Public Health Plan – Building Back Fairer, Equalities Strategy, Anti-Poverty Strategy, Corporate Housing Strategy.</p>
<b>Policy Implications:</b>	<p>This report seeks permission to implement the revised Adult Social Care Charging Policy from 1<sup>st</sup> February 2024 onwards for new people who use our services and 1<sup>st</sup> April 2024 for existing people who use our services. Having an effective charging policy is a key requirement for both Care Act 2014 compliance and CQC inspection readiness.</p>

**Financial Implications:**  
**(Authorised by the statutory  
 Section 151 Officer & Chief  
 Finance Officer)**

The 2023/24 Adult Social Care client income contributions budget for care provisions total £18.615m, £10.297m for Residential and Nursing care and £ 8.318m for Non-Residential care. The 2023/24 Period 7 forecast for client income contributions totalled £18.716m, £12.731m for Residential and Nursing care and £5.985m for Non-Residential care. This equates to a £0.101m over achievement in total shortfall in Non-Residential Client Income to budget for the financial year.

This report seeks approval to revise the current charging policy and align the charge to service user with either the fee paid by the Council for the care and support provided from an external organisation or the actual cost of the internal provision, for all provisions in Appendix 2. These include:

- Direct Payments (part)
- Support at Home – hourly rate
- Standard Homecare – hourly rate
- Extra care

This package cost would then be included in the financial assessment of the service user to determine their contribution, based on their ability to pay.

There are currently 2,325 Non-Residential clients in the Financial Assessment system of which 609 (26%) have been assessed as being able to pay the full cost of their care package. The average client contribution towards a Non-residential Care package currently equates to 36% of the total cost of the care package.

Any increase in service user charges will result in additional income to the Council to fund the care provided. However this would only effect full cost payers as all other service users have already been financially assessed in the current year.

The value of the estimated additional income that the Council will realise will be dependent on individual financial circumstances for the care provisions provided in Appendix 2. However, as a guide the table below provides a high-level summary of the estimated additional income in 2023/24 (2 months) and 2024/25 (full year). The 2024/25 values are dependent on the level of approved provider fee rates payable by the Council, which is subject to a separate report.

<b>Financial Year</b>	<b>2023/24 (2 Months) £m</b>	<b>2024/25 (Full Year) £m</b>
Estimated Additional Income (Lower Value)	0.054	0.350
Estimated Additional Income (Higher Value)	0.079	0.517

There is a risk that these estimated income values could reduce if existing full cost paying service users request a financial re-assessment on their ability to continue paying the full cost charge of care provided.

The full cost charging of the following care provisions will be subject to separate consultation as per recommendation 3:

- Daycare
- Transport
- Community Response Service
- Supported Living
- Respite (LD)
- Shared Lives

In addition, all Non-residential Care Packages are subject to a maximum weekly charge of £521.50 (2023/24) which a service user would pay. Any cost of care above this would be funded by the Council. This ceiling on the charge restricts the Council from realising any additional income above this value (subject to a means tested financial assessment). The proposed removal of this maximum charge will again be subject to consultation.

The outcome of the charges that are subject to public consultation will be included in a separate report at a later date, together with the related financial implications.

**Legal Implications:**

The body of the report correctly identifies and interprets the legislative requirements relevant to setting the adult social care charging policy. In addition to which, the decision maker has to have regard to general public law principles of “Wednesbury reasonableness” in considering the recommendations of the report ie to be assured that an appropriate process has been followed in proposing the recommendations, to take account of relevant considerations and to disregard irrelevant considerations. In that respect, the report highlights at section 4 that consultation has taken place and that the report has been formulated having regard to equality issues and mitigations that may arise from the options proposed.

Further, it is noted at section 1.8 of the report that no decision is sought at this stage in relation to those specified areas where it is considered that a further, wider, consultation is necessary and which will then be the subject of a further report for consideration.

**Risk Management:**

The risks associated with this decision are highlighted in detail in sections 5 and 6 of this report.

The key risks relate to people’s ability to pay the charges that they are assessed for and the need to have robust financial monitoring and swift reactions between Resources and Adult Services to ensure that if people are struggling to pay that as much help and support is available so that people are either not left with adequate weekly income or without the correct level of care and support.

**Background Information:**

The background papers relating to this report can be inspected by contacting Tracey Harrison Assistant Executive Director - Adults.



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## 1. INTRODUCTION

- 1.1 The Care Act 2014 placed a number of duties and responsibilities on local councils when considering charging for adult social care services including residential and non-residential care (such as homecare, day care and respite care). The Act continues to allow councils some discretion as to what services they can charge for and what income, savings and assets can be taken into account when calculating a person's ability to pay for their care.
- 1.2 In terms of the elements of the Act that are to do with charging for services, the Department of Health published two key sets of regulations that embody the statutory requirements of the Act as well as indicating the discretionary elements that are open to local interpretation and decisions.
- 1.3 The key regulations are:
  - The Care and Support (Charging and Assessment of Resources) Regulations 2014
  - The Care and Support (Deferred Payment) Regulations 2014
- 1.4 The review of the current charging policies and approaches has been undertaken following consultation with the public on the recently approved Adult Social Care Strategy 2024-2027. The consultation highlighted dissatisfaction with the quality and clarity of information relating to Adults Social Care and made particular reference to a lack of clarity on paying for social care. As a result, a full review of adult social care public facing information and web content has been undertaken as well as the improvement work to current systems supporting the commissioning, monitoring and charging for care and support.
- 1.5 As part of the aforementioned information review the current Charging Policy and associated charges has also been considered. This report outlines the key changes recommended to simplify and explain more clearly what and how we charge for care in a single policy document (Appendix 1).
- 1.6 Furthermore, the policy outlines key principles to ensure it is fair, equitable and sustainable for the Council in the long term by reflecting the true cost of care and support services and ensures consistency in applying charges and collecting income.
- 1.7 The review of the current policies and charging approaches has also involved benchmarking against other Councils policies and charging approaches to assess the most common approach to charging.
- 1.8 It should be noted that this report also identifies areas where wider consultation will be required and therefore will be subject to a separate report to Cabinet in due course. They are:
  - Daycare
  - Transport
  - Community Response Service
  - Supported Living
  - Respite (LD)
  - Shared Lives
  - Maximum charge for non-residential services
- 1.9 The following areas have been identified for aligning the cost of delivery to the current charges, in line with the fees currently paid:
  - Direct Payments
  - Support at Home – hourly rate
  - Standard Homecare – hourly rate
  - Extra care

- Residential & Nursing Care

## 2. POLICY CONTEXT

- 2.1 The Care Act 2014 (the Act) was implemented on 1 April 2015. Crucially part 1 of the Act focussed on the assessment and eligibility of people for social care and support and with that the acknowledgement that people who had the ability to pay should indeed pay for those services that they were assessed as requiring. This principle of financial assessment and payment for services has been well established within statute over the years and until the Care Act had been encompassed within the Fairer Charging Policy and the Charging for Residential Accommodation Guide (CRAG).
- 2.2 The Act repealed both these sets of regulations and in their place sets out the Government's expectations of what councils must charge for and what they might want to consider charging for.
- 2.3 The following are key to the Council's duty and powers when determining how it charges for care and support:
- Council's power to charge for services arises from Section 14 of the Care Act 2014.
  - Section 78(1) of the Care Act 2014 provides that Local Authorities should act under The Care and Support Statutory Guidance.
  - The regulations made under the Care Act 2014 are the Care and Support (Charging and Assessment of Resources) Regulations 2014 ("The Regulations").
  - The MIG (minimum income guarantee) is set by Regulation 7 of the Regulations.
  - Under the regulations when assessing the level of charge the Council is prohibited from taking into account the following:
    - i) Earnings from employment or self-employment (Regulation 14 of The Regulations).
    - ii) Housing-related costs (Regulation 15(1) and Schedule 1 para 2 of The Regulations).
    - iii) The mobility element of PIP (but not the daily living element of PIP) (Regulation 15(1) and Schedule 1 para 8 of The Regulations).
    - iv) Any disability related expenditure ("DRE") paid for with disability benefits (Regulation 15(1) and Schedule 1 para 4).
  - Otherwise, Regulation 15(2) gives the Council a discretion about what it will or will not take into account when means-testing the person to be charged for Council services.
- 2.4 The Regulations set the MIG amount and this is reviewed annually by the Department of Health and Social Care. The amount that a person is entitled to will vary depending on several factors, such as age and whether a person is married. The Council has agreed a more generous amount than this.

## 3. FINANCIAL CONSIDERATIONS

- 3.1 The Council relies significantly on income from charging for adult social care services. Table 1 provides the analysis of the 2023/24 budget together with the forecast outturn income as at 31 October 2023 (Period 7).

**Table 1**

<b>Care Provision</b>	<b>2023/24 Income Budget £m</b>	<b>2023/24 Income Forecast £m</b>	<b>2023/24 Variation £m</b>
Residential and Nursing	10.297	12.731	2.434
Non-Residential Services	8.318	5.985	(2.333)
Total	18.615	18.716	0.101
<b>% to Total Gross Expenditure</b>	<b>13.6%</b>	<b>12.6%</b>	

If the Council did not charge fees for these services, an equivalent level of efficiency savings from the Adult Social Care revenue budget would need to be made, which would significantly reduce the level of services provided in future years.

- 3.2 The review of the current policies and charging approaches has also involved benchmarking against other Councils' policies and charging approaches to assess the most common approach.
- 3.3 This review has also identified where there is a gap between the cost of delivering services and the charge made to people who use our services and therefore does not demonstrate best value for the Council. Where there is a significant difference between the cost to the Council and the charge to the client it is recommended that full consultation take place. These areas are:
- Daycare
  - Transport
  - Community Response Service
  - Complex Supported Living
  - Respite (LD)
  - Shared Lives
  - Maximum charge for non-residential services
- 3.4 The following areas have been identified for aligning the cost of delivery to the current charges, in line with the fees currently paid:
- Direct Payments
  - Support at Home – hourly rate
  - Homecare – hourly rate
  - Extra care
  - Residential & Nursing Care
- 3.5 A moderate increase in income from some charges is anticipated if the proposed policy is approved. The extent of this increase depends on the future uptake by customers of the disability-related expenses options and the financial assessment as permitted by Section 17 of the Care Act 2014.
- 3.6 Ongoing changes in the demographics of the borough, particularly increasing number of older people and younger adults with disabilities and life limiting health conditions, adds further pressure to the Adult Services budget.
- 3.7 Given the changes in the demographics, it is important that all aspects of budgets are scrutinised to ensure that services can be protected and maintained as much as possible and

to that end, charging for services continues to be a crucial element of the management of the total budget.

#### 4. EQUALITIES AND CONSULTATION

4.1 Throughout 2022-23, Adult Social Care engaged and consulted with local people about what mattered to them. A wide range of key stakeholders were involved including people who draw on adult social care and their families and carers. Conversations were based on what support they were accessing, what they needed and wanted, what worked well and where could be improved.

4.2 After hearing about people's views, the responses were grouped into emerging distinct themes. These themes were formally consulted with people (9 March – 15 April 2023) to check back that their views were accurately captured, whether they agreed with the vision for the future and if there was anything that was missed. A total of 73 responses through the formal consultation process.

4.3 The table below shows most respondents agreed with the themes.

Theme	Do you agree this is the right area of focus? (Yes)
Easier Access to Information, that is up to date, and communication is improved	86%
From people who receive support for social care services, that there are a range of high quality services that meet their needs, offer choice where possible and achieve their aspirations	88%
Support people to build confidence and maintain your independence in your community	91%
Organisations and different services work well together to support people	94%
People that provide support are well trained and understand your needs	90%

4.4 People told us that they wanted easier access to information in different ways, that it was in accessible formats tailored to the people that need it the most, information is accurate and communication is improved for people who already draw on support as well as people new to services.

4.5 The proposed Charging Policy (Appendix 1) has been reviewed in light of this to simplify and explain more clearly what and how we charge for care in a single policy document.

4.6 The charging for adult social care services is based on a person's ability to pay and a full financial assessment is carried out on anyone assessed as needing a social care service. If the savings and assets an individual has means that they are able to pay the full cost of their care then this would be appropriate and fair. If, on the other hand, a person is unable to pay for their care then it is right and proper that the Council pays all or a proportion of the cost of the care so that everyone is able to receive the correct level of care and support that has been

assessed as being needed to meet their needs.

4.7 The proposed changes are in line with these key principles and will treat people equitably.

## 5. PROPOSED CHANGES AND RECOMMENDED APPROACH TO IMPLEMENTATION

5.1 This section of the report refers specifically to the recommended alignment of the cost of delivery to the current charges, in line with the fees currently paid, as referenced in section 3.4. It also makes clear the requirements to inform the Client Finance Team of any change of circumstances and how charges will be applied thereafter.

- **Change 1** – to have a single policy which simplifies and explains more clearly all charging related to Adult Social Care, this would supersede the current non-residential and residential charging policies. A copy of the proposed policy can be found at Appendix 1 of this report.
- **Change 2** – to align charges to people who use our services with the cost of care and support provided within the context of the national means test. A full copy of the proposed charges (alongside the current charges) can be found at Appendix 2 of this report.
- **Change 3** – It is proposed that the policy be subject to an annual review in conjunction with the annual care fee setting process. An annual schedule of charges will be published as an appendix to the annual fees report.
- **Change 4** – Service users or their representative must tell the Client Finance Team about any change within one month of the change happening and we will then complete a new financial assessment from the date of the change. If people do not tell the Client Finance Team about any change within a month and the change means that they have been paying too much for their care we will only complete the financial assessment from the week we are told about the change. If people do not tell the Client Finance Team about any change within a month and the change means they haven't been charged enough they will have to pay the extra charges going back to when the change happened.

5.2 Should Cabinet approve the ASC Charging Policy and associated charging schedule for 2024/25 consideration need to be given to how and when this would be implemented. Options for implementation are outlined below:

- **Option 1** – To implement the alignment of charges with fees paid for all people who use our services with effect from 1st February 2024.

Benefits:

- Supports the immediate alignment of charges with fees paid for care and support for all people who use our services.
- Provides for the maximisation of income at the earliest opportunity.
- Ensures a single charging schedule in the payments systems.

Risks:

- Does not provide sufficient notice on the intention to align charges with fees paid for care and support for existing people who use our services.
- Potential for increased complaints to the Council which could result in reputational damage for the Council.

- **Option 2** – A phased approach to implementation where all new people who use our services will be charged in line with the new policy from 1<sup>st</sup> February 2024 and existing people who use our services will be informed of the change in advance giving them



notice the change will take effect from 1<sup>st</sup> April 2024.

Benefits:

- Supports the immediate alignment of charges with fees paid for care and support for all people who use our services.
- Provides for the maximisation of income at the earliest opportunity.
- Provides a notice period for existing people who use our services of an increase to charges and outline of the impact to them personally.

Risks:

- There is a low risk of challenge from new people who use our services to the phased approach of new and increased charges.
- There would need to be two parameters set up in Abacus for from 1<sup>st</sup> February – 1<sup>st</sup> April for charging purposes. This increases the potential for human error when selecting the correct charge for people who use our services.

- **Option 3** – To implement the alignment of charges with fees paid for all people who use our services with effect from 1<sup>st</sup> April 2024.

Benefits:

- Provides a notice period for new people who use our services of the change to charges for care and support.
- Provides a notice period for existing people who use our services of an increase to charges and outline of the impact to them personally.
- Ensures a single charging schedule in the payments systems.

Risks:

- Reduces the opportunity to maximise income in the current financial year.

- 5.3 It is recommended that **Option 1** be agreed – “To implement the alignment of charges with fees paid (appendix 2) for all people who use our services with effect from 1st February 2024”.

## 6. RISK MANAGEMENT

- 6.1 The table below outlines the key risks and mitigations associated with the content of this report.

Risk	Consequence	Likelihood	Impact	Action to Mitigate Risk
The Charging Policy is not equitable	Challenge to the Council regarding the equity of the Policy. Financial and reputational damage.	1	4	Legal advice has been sought on revised policy, consideration has been taken of Norfolk Judgement and Regulations and Care Act 2014 have been followed.  Where there is increased risk of legal challenge full consultation is advised and these areas will therefore be subject to a separate report see 5.3 of this report.
People are unable to afford the charges	Either they would decide not to receive the care or get into debt.	2	4	Full financial assessment of all people who use our services and clear determination of an ability to pay will be established. If someone cannot afford to pay then further assessment may be required to ascertain the situation. The

				Policy should not leave people without adequate funds for daily living.
People accrue large debts once a charge has been set	Added anxiety to service user and family. Council unable to receive the full amount of the charge	2	4	Close scrutiny of the debts being accrued by client finance team and early warning system to be in place between Resources and Adult Services Directorates so that early intervention and support can be put in place
Non-payment of charges	Council's budget negatively affected and services may need to be stopped	2	4	Effective debt recovery in line with the Council's policy will be in place together with an early alert system allowing Adult Services to intervene and ensure that the person is aware of the consequences of non-payment and also is able to afford the charges.
People refuse to pay the charges	Potential for services to be stopped	1	4	Importance of explaining the Charging Policy from the start of the assessment process so that people are aware that they will be charged, following consultation new leaflets are being produced to leave with people who use our services. The website will be updated with clear information and the policy. Charges will be based upon an ability to pay and so if they are correct and the person refuses to pay then the consequences will be explained and inevitable services may need to be withdrawn.
Withholding or giving incorrect financial information	This could lead to an inaccurate financial assessment and the wrong charge being calculated	2	3	Clear explanation given to the user from the start of the assessment process explaining the consequences of withholding or giving inaccurate financial information.
Impact on the Council's financial position	Revised charges would provide a moderate increase in income	4	2	The maximum charge for non-residential services will require full consultation and therefore isn't part of this policy update. The extent of the increase income under the proposed policy depends on the future uptake by people who use our services.
	Phased approach to implementation could lay the Council open to potential legal challenge or settlement from new people who	2	4	Clear explanation given to people who use our services from the start of the assessment process on the policy and current charges. Website to contain clear information, the policy and copy of explanatory leaflets <a href="http://tameside.gov.uk">Paying for Care (tameside.gov.uk)</a>

	use our services given a two tiered charging approach			
	Increased the potential risk for human error when selecting the correct charge for people who use our services during the implementation phase February 2024 -April 2024.	2	4	Training and additional quality assurance oversight to be in place for the phased implementation period.

## 7 FUTURE POLICY IMPLICATIONS

- 7.1 The Government long-term vision for reforming adult social care in England 'People at the Heart of Care' included an intention to introduce a cap on care costs and a more generous means test to further protect people against unpredictable and potentially unlimited care costs, however this proposal was formally delayed by Government until at least 2025.
- 7.2 The provision for an annual review of the policy and associated charges for care and support funded by the Council ensures the council can be responsive to any future national policy changes.

## 8. CONCLUSION

- 8.1 Every effort has been made to ensure people that could potentially be impacted by these proposals have had opportunity to feed into the consultation during 2023.
- 8.2 It is estimated that the proposed changes outlined in section 5 of this report will generate a moderate increase in income for the council by up to £0.350m annually. In addition, it will simplify the Adult Social Care Charging Policy and explain more clearly, the way we charge for care.
- 8.3 Furthermore if approved, this report makes provision for a further phase of consultation where it has been determined that changes may have a more significant impact on individuals for the charges referenced in section 3.3 of this report. Should it be approved, adult services will ensure consultation during 2024 to bring forward recommendations for subsequent changes at the earliest opportunity.

## 9. RECOMMENDATIONS

- 9.1 As set out at the front of the report.