

Report to:	JOINT MEETING OF OVERVIEW/EXECUTIVE CABINET
Date:	9 February 2022
Executive Member:	Councillor Eleanor Wills – Executive Member (Health, Social Care and Population Health)
Reporting Officer:	Stephanie Butterworth – Director, Adults Services
Subject:	APPROVAL OF REVISED NON-RESIDENTIAL CHARGING POLICY
Report Summary:	<p>This report seeks approval of the revised Non-Residential Charging Policy following a public consultation exercise on the following matters:</p> <ul style="list-style-type: none"> • The level the Council sets the Minimum Income Guarantee (MIG). • The way that the level of income is disregarded. • The introduction of an arrangement fee and annual charge for self-funders. • General feedback on the revised Non-residential Charging Policy. <p>The current Policy was approved on 25 March 2015, following the implementation of the Care Act 2014.</p> <p>The residential and non-residential arrangements for financial assessment and charging have been separated out to make it easier for the public to access the information relevant to them.</p>
Recommendations:	<p>That Strategic Commissioning Board be recommended to agree:</p> <p>(i) That permission is given to implement the following elements of the revised Adult Services Non-Residential Charging Policy:</p> <ul style="list-style-type: none"> • The Minimum Income Guarantee level remains at the level the Council currently uses • The level of income disregarded is changed to disregard the difference between DLA care higher and middle rate and PIP daily living allowance enhanced and standard rate • An annual fee for managing non-residential self-funders' accounts of £95 is implemented from 1st April 2022, with an annual review of the level. This will apply only to non-residential packages of care created from this date, rather than existing packages. <p>(ii) That permission is given to implement the proposed Non-Residential Charging Policy from 1 April 2022.</p>
Corporate Plan:	Healthy, Safe and Supportive Thameside
Policy Implications:	This report seeks permission to implement the revised Non-Residential Charging Policy following a public consultation exercise. The current Policy was approved on 25 March 2015, following the implementation of the Care Act 2014.
Financial Implications:	The report presents two proposals with financial implications: 1) to amend the Council's policy to set aside any higher or enhanced

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

payment of Disability Living Allowance and Personal Independence Payment whilst calculating a financial assessment- 'Option 2' in October's paper- and 2) to introduce an annual fee of £95 for self-funders making use of Council-commissioned non-residential care services. Following consultation, no change is proposed to the Council's treatment of Minimum Income Guarantee.

The financial context is set out at Section 5 onwards. The Council's duties towards social care clients under the Care Act sit alongside its obligations to collect all due contributions from social care clients, and to ensure the sustainability of social care and other services in the Borough. A charging policy should be set so as to avoid the creation of perverse incentives or false economies.

Per 6.2, the proposal on DLA and PIP is estimated to result in a loss of fee income of up to £203k, based on rates and client volumes in October 2021 and almost entirely affecting non-residential care charges. For context, this amount represents approximately 1.3% of Adult Services' fee income and 0.2% of its gross expenditure in the 22/23 budget. This is essentially the cost of bringing the current policy into line with the Norfolk Judgement and, in principle, preventing legal challenges to the Council's policy. No direct mitigation or alternative income stream is identified, and a pressure would arise against the department's budget from FY22/23 onwards.

The second proposal on non-residential annual fees may bring in offsetting income, although the amount is difficult to predict. In the scenario at 6.3, £28,500 annually would be generated after two years if (as is unlikely) volumes are unchanged by the introduction of a fee. Even if this amount was not realised, it is still likely that some income would be recouped, and there would also be a non-cashable benefit in reduced demand on Council services. While this proposal is unlikely to generate significant income, it will partially cover the costs of the proposed change and will mitigate the increased pressure on an already challenged financial position.

Some responses to the consultation were opposed to the introduction of a fee and saw it as a barrier to accessing vital services. However, a self-funder will still benefit from the Council's quality assurance and financial control frameworks, and as such the fee is essentially nominal compared to the cost of a private package.

The risks associated with revisions to the Charging Policy are set out at Section 8, and are largely as anticipated in the earlier paper. The reduction in fee income must be weighed against the potential legal and financial impacts of non-compliance, and there are instances in which the cost of non-compliance with the legal requirements would outweigh the direct loss of income arising from changes to the charging policy.

Per Section 9, there will be wholesale changes to social care charging from October 2023, and hence these proposals will be considered again as part of a comprehensive review of the Council's charging policy, and may only operate for eighteen months.

**Legal Implications:
(Authorised by the Borough**

Section 14 of the Care Act 2014 allows the Council to charge for Care and Support Services. This framework enables the Council to

Solicitor)

decide whether or not to charge a person when it is arranging to meet a person's care and support needs, and is intended to make charging fairer and more clearly understood by everyone. Where the Council decides to charge, it must follow the Care and Support (Charging and Assessment of Resources) Regulations, or whichever regulations apply at the time, and have due regard to the associated guidance, ensuring that it does not charge more than is permitted therein.

This means that where a local authority chooses to charge, the maximum and the way in which it does so is determined by the current regulations, and in turn, the Council must develop, agree and maintain policies setting out how they will do so in settings other than care homes, where separate rules apply. Only where a financial assessment has been carried out in accordance with the regulations can a charge be made, and this should be fully explained within local authority policies.

Policies should be in place regarding how the Council communicates, carries out financial assessments, collects debts, and which take into consideration the capacity of the person as well as any illness, condition or if they are in prison. The wellbeing principle lies at the heart of all policy decisions.

There has been a recent High Court decision (2020) involving Norfolk County Council, which found that their Charging Policy discriminated against 'severely disabled' people under the European Convention on Human Rights because the Council would be charging those with the highest support needs proportionally more than those with lower support needs.

The implementation of the legislation and guidance should be effective at all times, to ensure the Council is behaving lawfully and fairly, and therefore safe from successful challenge in the courts or from complaints. The need to comply with the legislation is paramount as well as providing due consideration of outcome of the consultation.

Risk Management:

The risks associated with this decision are highlighted in detail in section 7 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 Exchequer 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 Reyhana Khan, Programme Lead.



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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 In response to the implementation of the Act, following a period of consultation, Executive Cabinet approved the current Charging Policy on 25 August 2015. This Policy included the Council's approach to assessing and charging for both residential/nursing care and for non-residential care, for example home care and respite care.
- 1.5 As part of the review of the current Charging Policy, it is proposed that two separate Charging Policies are developed – one to reflect the Council's policy with regards to residential/nursing care and one for non-residential care. The reason for this is to simplify the process for members of the public so they only need to consider the document relevant to their own situation.
- 1.6 On 18 December 2020 Mr Justice Griffiths ruled against Norfolk County Council that its charging policy discriminated, albeit inadvertently, against 'severely disabled' people contrary to Article 14 of the European Convention on Human Rights.
- 1.7 Norfolk County Council provided services to SH, charging on a means-tested basis. SH was a 24-year-old woman with Down syndrome who, because of her disabilities, had never been able to earn money. She had no income apart from her state benefits. The local authority provided SH with services in accordance with its duties under the Care Act 2014 and sought to charge for those services on a means-tested basis. SH was required to pay those charges out of her benefits.
- 1.8 Following a change in the local authority's charging policy, SH found her assessed contribution increased significantly which she challenged by way of judicial review. SH alleged that the amended policy was unfair and discriminated against her, as a severely disabled person. This was on the following 2 grounds: Ground 1: The Charging Policy discriminates against severely disabled people, contrary to Article 14 read with Article 1 of Protocol 1 and/or Article 8 of the European Convention on Human Rights. Ground 2: The Charging Policy indirectly discriminates against adults with Down Syndrome, contrary to section 19 and 29 of the Equality Act 2010.
- 1.9 The Court found that her 'severe disability' was capable of being an 'other status' for the purposes of Article 14, concluding that the local authority's amended charging policy had treated SH differently to others subject to the same policy, and could provide no justification for that difference in treatment. Consequently, he granted the relief sought.
- 1.10 In essence, the council's policy meant that the charges that the service user would have had to pay the council from her benefits for day services, respite care and a personal assistant would have risen from £16.88 per week to £50.53 per week and the court found that the new policy discriminated against "severely disabled" people under the European Convention on

Human Rights because the council would be charging those with the highest support needs proportionately more than those with lower support needs.

- 1.11 The Judge's Findings: Griffiths J found that the local authority's charging policy did discriminate for the following reasons: The local authority argued that SH's proposed 'other status' of 'severely disabled' was not precise enough to warrant protection under Article 14 ECHR. Griffiths J agreed that the proposed status needed to be ascertainable for it to be protected, but felt that as her disability had been assessed for the purposes of her entitlement to Employment Support Allowance and PIP granting her the highest level of support available, it was as precise as the category of 'a severely disabled child in need of a lengthy in-patient hospital treatment' which had been recognised previously in *Mathieson v Secretary of State for Work and Pensions* [2015].
- 1.12 Differential treatment: SH's needs as a severely disabled person were higher than the needs of a less severely disabled person, hence her needs-based benefits were awarded at higher rates. Under the local authority's charging policy, all of this income fell to be included in her assessment. By contrast, a less severely disabled person might receive less benefits but may be able to work, and their earnings from employment or self-employment would be protected and not included in the assessment. The local authority argued that this was not differential treatment because the same policy applied. Griffiths J found that the local authority's argument missed the point: the policy was equal but not equitable [emphasis added], and it had a disproportionate impact against severely disabled people. The local authority had not taken steps to mitigate this and therefore, on the facts, the court held that there was a difference of treatment between two persons in an analogous situation.
- 1.13 Norfolk County Council had made a decision to implement a new policy on the level of the Minimum Income Guarantee (MIG) it would set locally, and to change the amount of the Personal Independence Payment (PIP) that is included in someone's financial assessment. It was determined that while inadvertently, both decisions discriminated against people who were most disabled, and were most unlikely to be able to earn income from paid employment.
- 1.14 The new policy "significantly reduced the minimum level of income (the "Minimum Income Guarantee" or "MIG") that an adult in SH's position could receive before being charged for care. It also included the PIP Enhanced Daily Living Rate in the calculation of the MIG.
- 1.15 Mr Justice Griffiths noted that Norfolk had "exercised its discretion to charge SH the maximum permissible (disregarding only those elements it is required to disregard by law), and, at the same time, has lowered the overall cap on her charges by reducing the council's minimum income guarantee". The way the Charging Policy was constructed means that, because her needs as a severely disabled person are higher than the needs of a less severely disabled person, the assessable proportion of her income is higher than theirs.
- 1.16 Her needs-based benefits are awarded at higher rates (daily living PIP and ESA) and are fully assessed, and their earnings from employment or self-employment are not available to her and other severely disabled people, but are not assessed."
- 1.17 A Cabinet Decision was taken by Norfolk Council following Judicial Review of Care Charging on 12 January 2021. The following recommendations were approved.
 - a) to make an initial amendment to the charging policy for non-residential care for people of working age, setting a minimum income guarantee of £165 per week, and using discretion to disregard the enhanced daily living allowance element of Personal Independence Payment
 - b) to apologise to those affected and implement that amendment as soon as practicable and backdate it to July 2019
 - c) to initiate further detailed work on the impact of the charging policy as it relates to the group of severely disabled people identified by this judgment, and wider groups.

- 1.18 Under the Care Act 2014, charges must not reduce people's income below a certain amount but local authorities can allow people to keep more of their income if they wish. This is a weekly amount and is known as the Minimum Income Guarantee (MIG).
- 1.19 Adult Services, Exchequer, Finance and Legal teams have worked together to review the current Charging Policy and to develop a stand-alone non-residential Charging Policy that reflects the local position and is compliant with the Care Act and relevant Regulations.
- 1.20 While ensuring that the Policy is equitable, the Council must also take into account the long term financial sustainability of the Council, so must consider to charge, what it can afford while acting in a lawful and equitable way.
- 1.21 Following a period of public consultation, this report is seeking approval of the revised Non-Residential Charging Policy and a number of specific proposals that relate to the Minimum Income Guarantee (MIG), the elements of Disability Living Allowance (DLA) / Personal Independence Payment (PIP) care component that may be disregarded and on the introduction of an annual fee for setting up care for self-funders, and for on-going management of the account.
- 1.22 The report does not cover the Residential Charging Policy. A revised Residential Charging Policy is being drafted – the revised policy will be presented appropriately at a future Executive Cabinet for approval.

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. AREAS OF CONSULTATION

- 3.1 Following permission to consult on the proposed Non-Residential Charging Policy in general, there were three specific areas that the public consultation explored.

3.2 Level of Minimum Income Guarantee

The Council consulted on two options for the level of the MIG it sets from April 2022. The options were:

- **Option 1 (current approach)** - The Council continue to provide a MIG over that provided by the statutory MIG, which means it is more a more generous amount and supports the most vulnerable. It uses the MIG as set by The Care and Support (Charging and Assessment of Resources) Regulations 2014 with the following *increased amounts*:
 - The amount for working age people to include the Disability Premium
 - Higher amounts to be allowed for the following elements
 - a) Enhanced Disability Premium
 - b) Carer Premium
- **Option 2** - The Council will use the MIG as set by The Care and Support (Charging and Assessment of Resources) Regulations 2014 (and updated each year by The Department of Health & Social Care) - *with no additional allowances*. This is set centrally to ensure that a person's income is not reduced below a specified level after charges have been deducted, but does not reflect the additional living costs that more severely disabled individuals encounter.

3.3 Level of Income that is disregarded

The Council has the power to disregard aspects of income received by individuals when carrying out a financial assessment. Two options were proposed – the first is the current arrangement, while the second option recognises that more severely disabled people may have a higher level of spend to meet their enhanced needs, therefore it is proposed that the additional benefit they receive is disregarded in recognition of this:

- **Option 1 (current approach)** – Current practice is to use the full amount of *higher* rate Disability Living Allowance (DLA) care component and the *enhanced* rate of Personal Independence Payment (PIP) daily living component in the Financial Care Assessment. The difference in income between the two is disregarded only if the client does not receive care at night.
- **Option 2** – To disregard the difference in income between the *higher* rate and the *middle* rate for those clients who receive the *higher rate of DLA care component*, and to disregard the difference in income between the *enhanced* rate and the *standard* rate for those clients who receive the *enhanced rate of PIP daily living component*.

3.4 Arrangement and annual fee for setting up care for self-funders

It was proposed that the Council introduces an arrangement and annual fee of between £50 and £150 to cover the costs of setting up care for individuals who have been determined to have funds above the upper limit of £23,250 and therefore fund the full cost of their care.

- 3.5 Consultation proposed an arrangement fee and an on-going annual fee for managing the self-funder account. Should an individual who has been determined to be a self-funder not wish to pay this fee, they would be required to arrange their own care package. The Council would

provide details of providers within the local market who can be approached to meet the identified outcomes and needs.

3.6 The feedback received in the consultation exercise is set out in section 4 of this report.

4. CONSULTATION EXERCISE

4.1 **Consultation Rationale:** In determining the direction of the consultation a number of financial factors had to be taken into consideration, in particular with regard to the discretionary decisions in relation to charging for care services and the arrangement and administration of care services for self-funders.

4.2 Whilst the Act states that the local authority now has a power rather than a duty to charge for care it may choose not to charge in circumstances where it was previously obliged to do so. The Council is not in a financial position to take the decision to not charge for care services and the proposals presented in the consultation related to the level of income considered in the Financial Assessment.

4.3 The financial justification for continuing to charge for adult social care services is essentially to ensure the continuation of key services that assist and protect the most vulnerable people in society. In light of Government funding reductions, it would not be financially viable for the Council to radically change its current charging arrangements for social care. Such changes would result in the cessation of a number of key services and an inevitable reduction in quality for those services that remain.

4.4 **Consultation Exercise:** Permission was given at Executive Cabinet on 27 October 2021 to consult with the public and the consultation period was live from 28 October 2021 to 23 December 2021.

4.5 Consultation methods used included the Big Conversation website, paper surveys upon request, telephone surveys and focus groups to give people who will be potentially directly impacted upon by the Policy to give their opinions on the proposals.

4.6 Following requests for paper versions of the Policy and documentation over 80 copies of the paperwork were posted to members of the public.

4.7 In total 52 completed responses were received to the survey consultation, which includes Big Conversation, paper forms and telephone surveys. Not all of the respondents completed each question.

4.8 Two focus groups were also conducted to ensure the target audience was reached (approximately 30 people were part of these groups). Working with Adult Services colleagues specific groups of people were identified and the content of the focus groups was adapted according to the audience. The focus groups were well attended and valuable feedback was gathered from each session. Details of the groups are documented in **Appendix A**.

4.9 In summary, the content of the consultation is outlined in table 1 below.

Topic	Questions
Minimum Income Guarantee: <u>Option 1</u> Retain current MIG	How far you agree or disagree with the proposal to continue providing the level of MIG that the council currently provides.
<u>Option 2</u> Reduce the MIG to the rate set by the DHSC.	How far you agree or disagree with the proposal to provide the level of MIG that the DHSC sets annually

<p>Income to be disregarded</p> <p><u>Option 1</u> Retain the current practice of disregarding the difference between the higher rate of DLA care component and middle rate where the client does not receive night care.</p> <p><u>Option 2</u></p> <ul style="list-style-type: none"> • For those clients who receive the higher rate of DLA care component – to disregard the difference in income between the higher rate (currently £89.60 per week) and the middle rate (currently £60.00 per week) • For those clients who receive the enhanced rate of PIP daily living component – to disregard the difference in income between the enhanced rate (currently £89.60 per week) and the standard rate (currently £60.00 per week). 	<p>How far you agree or disagree with the proposal to disregard the difference between DLA Higher and Middle rate care component</p> <p>How far you agree or disagree with the proposal to disregard the difference between DLA care higher and middle rate and PIP daily living allowance enhanced and standard rate.</p>
<p>Self-funders arrangement and annual fee</p>	<p>How much you agree or disagree with the proposal to introduce an arrangement and annual fee of between £50 and £150 for setting up care for self-funders, and an annual fee of the same for administering the care.</p>
<p>General feedback on the revised Non-Residential Charging Policy</p>	<p>Any other comments you have regarding the revised adult social care Non-Residential Charging Policy</p>

4.9 **Analysis of Consultation:** The full details of the responses to both the survey consultation and focus groups are details in **Appendix B** and detailed below are the key findings from the Big Conversation consultation.

Level of Minimum Income Guarantee (MIG) – 68% of the respondents strongly agreed/agreed with the Council’s proposal to continue to retain the MIG at a higher rate than the level set by the DHSC; 11% disagreed/strongly disagreed and 21% neither agreed nor disagreed.

Level of Income Disregarded – The results of both the proposals relating to this topic were broadly similar. 57% of people strongly agreed/agreed to continue current practice of disregarding the higher and middle rates of DLA where the client does not receive night care; 14% strongly disagreed/disagreed, and 29% neither agreed or disagreed.

However, 48% of the respondents strongly agreed/agreed with the proposal to disregard the difference between DLA care higher and middle rate and PIP daily living allowance enhanced and standard rate; 14% disagreed/strongly disagreed and 38% neither agreed nor disagreed.

Charging an arrangement and annual fee for self-funders where the Council arranges care and support – 17% of respondents were in favour of charging an arrangement and annual fee for care and support for people who were not entitled to receive financial support for care in a non-residential setting; 62% were not in favour and 21% were unsure. One response has been disregarded as the response was strongly agree, but the comments indicated they disagreed.

5. FINANCIAL POSITION

- 5.1 The Council relies significantly on income from charging for adult social care services. In the financial year 2022/23 income from charging is budgeted to be £15.746 million, breaking down to £8.528 million for residential and nursing care, and £7.218 million for other care. Income from charges accounts for 15.7% of the Adult Services gross budget of £100.03 million. If the Council did not charge fees for these services, an equivalent level of efficiency savings from the Adult Social Care budget would need to be made, which would significantly reduce the level of services provided in future years.
- 5.2 The current financial pressures placed upon councils does mean that where possible, a person's ability to pay for the services that they receive is acknowledged. A fair and equitable system is in place to ensure a thorough financial assessment is carried out, and any charges levied are proportionate to an individual's level of income and assets and ability to contribute.
- 5.3 Continued increases in the demographics of the borough, particularly of older people and younger adults with disabilities and life limiting health conditions, adds further pressure to the Adult Services budget at a time when unprecedented reductions in funding need to be made due to the Government's financial austerity measures.
- 5.4 Each year the Council also faces rising costs associated with the delivery of care. The gross expenditure requirement in Adult Services is budgeted to increase by £10.03 million between FY21/22 and FY22/23, excluding most of the impacts of managing demand from COVID. Reductions in funding from central Government are expected to continue, widening the financial gap between demand and resources in the local social care economy over the coming years. Funding for social care is scarce and wherever possible, compensating savings or alternative income streams would be identified to match any reduction in fee income.
- 5.5 The Council budgets to fund £13.565 million of its adult social care expenditure by applying charges for services such as residential, homecare and daytime activities. The Council has a legal requirement to deliver a balanced budget, so if the Council was to cease charging for such services it would be necessary to reduce the amount that it spends accordingly. The financial rationale for continuing to charge for social care services is fundamentally to ensure future sustainability of key services which assist and protect the most vulnerable people in society.
- 5.6 Given the additional pressures placed on the Council 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.
- 5.7 It is also recognised that local residents have been hit heavily by recent government policies, for example changes to benefits system with the introduction of Universal Credit, and also the significant impact, health and economic, of the current COVID pandemic. It is important that any changes to the Charging Policy do not discriminate against the most vulnerable in our community and place more pressure on them to live a good quality life.

6. PROPOSED CHANGES TO CURRENT PRACTICE

- 6.1 **Minimum Income Guarantee** – it is proposed that the current Council practice continues. At present the MIG is set at a slightly higher rate than the government levels. Feedback from the consultation was that maintaining the current rates was the preferred option – 68% of people strongly agreed/agreed with this position. An example of a response to this is *'The currently MIG level must be maintained in order to support current anti-poverty strategies in the borough and throughout GM. Tameside is one of the most deprived areas of England, prices/inflation are at a 10 year high and Universal Credit recipients' have just had a £20 per week cut in their*

income. It is unconscionable to propose to increase the charge by reducing the MIG at this time.'

There is no change to financial pressure this places on the Council as the current arrangements would continue.

- 6.2 **Level of income disregarded**— Although the results of both the proposals were similar, it is recommended that the Council changes the way that income is currently disregarded in the financial assessment. It is proposed that in future the difference between DLA care higher and middle rate and PIP daily living allowance enhanced and standard rate, will be disregarded. 48% of the respondents strongly agreed/agreed with the proposal to disregard the difference between the middle and higher rate of DLA/PIP. Responses to this question included '*DLA is to be used for extras the person needs like car access. Not to decrease the persons finances.*' and '*Disabled person has high living expenses - heating, ready meals, different clothing, personal aids not provided by the council so need all money they receive to help with their (sic) changed circumstances.*'

This change will result in a financial pressure to the Council of up to £203k, based on client numbers and prevailing rates as of autumn. This figure represents an approximate limit to the loss of income to the Council, assuming that it is deprived of the maximum possible amount of income from all clients in scope. In practice, the actual loss of income may be lower, if other aspects of these clients' financial circumstances already prevent the Council from charging the full amount. The rationale for this change to the income that is disregarded is so that the Council recognises and ensures that the most disabled individuals in the borough have sufficient income to meet their potential additional needs as a result of their disability. People who are more severely disabled have more enhanced needs and this option allows for those people to have more income to meet these needs.

6.3 **Arrangement fee and annual fee for self-funders**

The majority of the individuals who responded to this question, 62%, were not in favour of introducing an arrangement and annual fee for self-funders. Comments included '*The council should not penalise people just because they have what are only quite modest assets*' and '*Ar (sic) a time of great stress and distress free access to this service is essential as one feels that the council are approachable , and this cost is not a barrier to access.*'

While there was minimal support for the introduction of an arrangement and annual fee, it is proposed that this is implemented. The Care Act does give the Council the power to charge an administration fee for arranging care for self-funders. The proposed charges reflects the time and resource taken to support an individual to establish the care they require to meet their identified needs and will only cover the cost of the administration of arranging care for self-funders. Many other local authorities do charge for this service and the proposed fees are comparable/lower than the charges in other authorities.

It is proposed that an annual fee of £95 is charged for the management of a self-funder's package of care. This would be applied to new self-funders for non-residential services from 1 April 2022, and would be intended to cover the cost of setting up the original care arrangements and managing the package on an ongoing basis. The proposed charge was calculated by considering the staff time taken to set up and manage care, between Exchequer Services and the Adults Commissioning Team. The calculation also takes into account that changes will be needed in packages of care from time to time.

The key benefits of requesting that the Council contracts on behalf of a person (who would normally contract directly with the provider) is the additional oversight and protection from the Council's contractual relationship, i.e.:

- The Council has regular oversight of the providers (over and above the Care Quality Commission) to endeavour to ensure the service is of a good standard. Where

improvements are required the Council will support the provider to make those improvements.

- Should the person have an issue, which cannot be resolved by the provider, the person can access the Council's complaints process
- The Council will facilitate payment of the fees to the provider and check they are invoicing for the correct amount (albeit the full fees will be recoverable from the service user)

The annual cost of care in the private market for a client receiving seven hours of domiciliary care per week would typically be over £8,000; as such, an additional £95 represents a nominal charge in exchange for the benefits of the Council's quality assurance and financial controls.

As stated in October's consultation paper (see 4.28-34) it is unrealistic to forecast the income recouped from an arrangement and annual fee, because of the change in demand that would occur once a charge is introduced for a previously free service. However, for illustration, as of October 2021 the Council managed 392 placements for full cost payers, of which approximately 150 had been set up within the last 12 months. On this basis and assuming (as may be unlikely) no change in demand, with an annual fee of £95 applying to all non-Residential packages set up from 1st April 2022 onwards, additional fee income would be approximately £14,250 after one year and £28,500 after two years:

	FY22/23	FY23/24
New Self-funders	150	300
Cumulative packages managed	150	300
Additional income at £95 per head	£14,250	£28,500

No projection is made beyond two years, given 1) the uncertainty in turnover of clients as they either leave the service or their circumstances change, and 2) as noted at Section 9 from October 2023 there will be wholesale changes to the basis of social care charging, with which the annual fee may not be compatible.

6.4 **General comments on the Policy**

The general feedback on the revised Policy is that:

- people found it difficult to understand because of the technical nature of the content. Easy read copies were developed, letters sent out to people in receipt of non-residential services to offer additional support, and a couple of focus groups were held to talk through the proposals.
- People should be able to remain in their own homes without being financially penalised and concerns about affordability of care once assets are stripped.
- Those who have paid all their lives should benefit when they need the support.
- Council cuts are detrimental – and to focus on funding areas such as mental health services

Once the Policy is approved a user-friendly version of the document will be developed and available on the Council's website.

7. **EQUALITIES**

7.1 A full equality impact assessment has been carried out and which is detailed at **Appendix C**. The Equality Act 2010 makes certain types of discrimination unlawful on the grounds of:

- Age
- Gender
- Race
- Gender reassignment
- Disability
- Maternity

- Sexual orientation
- Religion or belief 3.2

- 7.2 Section 149 of the Equality Act 2010 places the Council and all public bodies under a duty to promote equality. All public bodies, are required to have regard to the need to:
- Eliminate unlawful discrimination.
 - Promote equal opportunities between members of different equality groups.
 - Foster good relations between members of different equality groups including by tackling prejudice and promoting understanding.
 - Eliminate harassment on the grounds of membership of an equality group.
 - Remove or minimise disadvantages suffered by members of a particular equality group.
 - Take steps to meet needs of people who are members of a particular equality group.
 - Encourage people who are members of an equality group to participate in public life, or in any other area where participation is low.
 - This specifically includes having regard to the need to take account of disabled people's disabilities.
- 7.3 The Act therefore imposes a duty on the Council which is separate from the general duty not to discriminate. When a local authority carries out any of its functions, the local authority must have due regard to the matters within the section of the Act outlined above. The Courts have made it clear that the local authority is expected to rigorously exercise that duty.
- 7.4 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.
- 7.5 The proposed changes are in line with these key principles, and will treat people equitably.

8. RISK MANAGEMENT

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.
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 service users 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	Added anxiety to service user and family. Council	2	4	Close scrutiny of the debts being accrued by Exchequer and early warning system to be in place between Exchequer and

once a charge has been set	unable to receive the full amount of the charge			Adult Services 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 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. 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 reduce fee income	4	2	Changes to the Charging Policy are estimated to reduce fee income by £203k annually, which would have to be found from other budgets.
	Failure to revise the Charging Policy lays the Council open to potential legal challenge or settlement	2	4	Norfolk are believed to have spent £11m on rectifying their policy. Whilst TMBC's position is very different, the potential exposure from backdating payments is still substantial if unlikely at present.

9. FUTURE POLICY IMPLICATIONS

9.1 The Government has a new long-term vision for reforming adult social care in England to make sure that it is fit for the future and fairer for everyone. So that everyone receives the care they need, when they need it, to live the life they want to.

9.2 People at the Heart of Care: The Adult Social Care Reform white paper was published on 1 December 2021. The Government will be investing over £5.4bn over the next three years, starting from April 2022 to support the reforms.

9.3 What is changing regarding the way that people's charges will be calculated?

The Government will introduce a cap on personal care costs of £86,000 to protect people against unpredictable and potentially unlimited care costs, and a more generous means test so more people receive financial support with their care costs. From October 2023:

- No one will have to pay more than £86,000 for their personal care costs. Currently there is no limit on how much you might pay.
- Individuals with less than £100,000 in savings and assets are likely to be eligible for help from their local council with their care costs. Currently only those with less than £23,250 are eligible for state support.

- More people will be able to ask their local council to arrange their care for them to give them a choice of better value care.

9.4 The way in which the Council charges for adult social care services will need to be reviewed to take into account the above changes in the future.

10. CONCLUSION

10.1 Every effort was made to ensure people that could potentially be impacted by these proposals were made aware of the consultation and opportunity to feed back. People in receipt of non-residential services were written to signposting to the Big Conversation as well as offers to post a hard-copy for those who did not have access to, or were not comfortable completing the consultation online.

10.2 An easy read version of the consultation questions was developed to make it more accessible to the wider audience who need it. It should be noted that the technical aspect of topic was challenging to break down.

10.3 It is estimated that the proposed changes following the consultation exercise (outlined in section 6) will impact on the Council's budget by up to £200k annually. However, it would ensure our proposed Non-Residential Charging Policy recognises that more severely disabled people may have a higher level of spend to meet their enhanced needs, and therefore the additional benefit they receive would be disregarded in recognition of this.

10.4 The added financial pressure may be offset marginally by the introduction of an arrangement and annual fee for self-funders.

10.5 If agreed, the new Non-Residential Charging Policy would be implemented at the start of April 2022.

10.6 The Residential Charging Policy will be drafted and presented at a future Executive Cabinet for approval. Consultation may be required on the self-funder's charging element of this Policy. Aside from this, there would be no further changes being proposed to the assessment or charging process in the revised policy – it is an exercise to separate the residential and non-residential elements of the current policy.

10.7 The government has now set out its new plan for adult social care reform in England. This includes a lifetime cap on the amount anyone in England will need to spend on their personal care, alongside a more generous means-test for local authority financial support. It is intended that the regulations and final guidance will be published in spring 2022. It is imperative to keep abreast of national guidance relating to social care charges and initiate planning as soon as possible to monitor impacts and mitigations, ensuring clear communication with local people who may be impacted by proposed national changes. Reviews of all Charging Policies will be required before implementation of the proposed 'Cap on Care', currently proposed for October 2023.

11. RECOMMENDATIONS

11.1 As set out at the front of the report.

APPENDIX A

Two Focus Groups were conducted in relation to this consultation:

1. People First Tameside on 30 November 2021.

This consisted of people with learning disabilities and their support staff. There were approximately 20 people who took part.

2. 'User Led' Focus Group on 3 December 2021.

This consisted of people with learning disabilities in a supported accommodation scheme at Carlton Springs, along with their support staff. There were approximately 10 people who took part.

Because of the rapid spread of the omicron Covid variant, and planned activities for the festive period, it was not possible to undertake further focus groups, to ensure people were kept safe and to minimise non-essential contact.

Both the focus groups found the technical aspects of the consultation difficult to understand. However, being able to discuss together as a group helped some people to make the connections and consider the impact it may have on themselves and others. Generally speaking, both the groups:

- Were unanimous on maintaining the current Minimum Income Guarantee levels which is more generous than government rates
- Understood the importance of people with severe disabilities having more money because they have more enhanced needs
- Understood that retaining the minimum income guarantee and income disregard proposals would not negatively impact anybody

There was some debate about the introduction of the arrangement and annual fee for self-funders, however they understood that Councils were under significant financial pressure and want to ensure high quality services are available for everyone. They felt it was agreeable to set a small arrangement fee and annual charge only for those that could afford to do so and required the council's help to set up their care. They stressed the importance of having an affordable charge.

APPENDIX B

Minimum Income Guarantee

OPTION 1: Q2: To continue the current practice of applying a higher rate of MIG			OPTION 2: Q4: Reduce the MIG to the rate set by the DHSC		
Please indicate how far you agree or disagree with this option. (Please tick one box only)	Numbers	Percentage	Please indicate how far you agree or disagree with this option. (Please tick one box only)	Numbers	Percentage
Strongly Agree	14	50.0%	Strongly Agree	3	10.7%
Agree	5	17.9%	Agree	3	10.7%
Neither Agree or Disagree	6	21.4%	Neither Agree or Disagree	6	21.4%
Disagree	0	0.0%	Disagree	4	14.3%
Strongly Disagree	3	10.7%	Strongly Disagree	12	42.9%
	28	100.0%		28	100.0%

Focus Groups were both significantly in favour of Option 1 to retain the current council practice of applying a higher rate of MIG.

Income to be disregarded

OPTION 1: Q6: Retain the current practice of disregarding the difference between the higher rate of DLA care component and middle rate where the client does not receive night care.			OPTION 2: Q8: For those clients who receive the higher rate of DLA care component – to disregard the difference in income between the higher rate (currently £89.60 per week) and the middle rate (currently £60.00 per week) For those clients who receive the enhanced rate of PIP daily living component – to disregard the difference in income between the enhanced rate (currently £89.60 per week) and the standard rate (currently £60.00 per week).		
Please indicate how far you agree or disagree with this option. (Please tick one box only)	Numbers	Percentage	Please indicate how far you agree or disagree with this option. (Please tick one box only)	Numbers	Percentage
Strongly Agree	7	33.3%	Strongly Agree	6	28.6%
Agree	5	23.8%	Agree	4	19.0%
Neither Agree or Disagree	6	28.6%	Neither Agree or Disagree	8	38.1%
Disagree	2	9.5%	Disagree	2	9.5%
Strongly Disagree	1	4.8%	Strongly Disagree	1	4.8%
	21	100.0%		21	100.0%

Focus Groups were both significantly in favour of Option 2 to disregard the difference between DLA care higher and middle rate and PIP daily living allowance enhanced and standard rate.

Self-funders arrangement and annual fee

ONLY OPTION:		
Q10: How much you agree or disagree with the proposal to introduce an arrangement fee of between £50 and £150 for setting up care for self-funders, and an annual fee of the same for administering the care.		
Please indicate how far you agree or disagree with this option. (Please tick one box only)	Numbers	Percentage
Strongly Agree	2	8.3%
Agree	2	8.3%
Neither Agree or Disagree	5	20.8%
Disagree	3	12.5%
Strongly Disagree	12	50.0%
	24	100.0%

Both Focus Groups debated this topic. They understood that Councils were under financial pressure and felt it was agreeable to set a small arrangement fee and annual charge only for those that could afford to do so and required the council's help to set up their care. They stressed the importance of having an affordable charge.

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Subject / Title	Adult Social Care Non-Residential Charging Policy	
Team	Department	Directorate
Transformation	Adults	Adults
Start Date	Completion Date	
28 October 2021	2 February 2022	
Project Lead Officer	Reyhana Khan – Programme Manager	
Contract / Commissioning Manager	Trevor Tench – Head of Commissioning	
Head of Service	Mark Whitehead – Strategic Operations	
Assistant Director/ Director	Stephanie Butterworth – Director, Adults	
EIA Group (lead contact first)	Job title	Service
Reyhana Khan	Programme Manager	Adults
Karen Milner	Service Unit Manager	Exchequer
Ilys Cookson	Assistant Director	Exchequer
Tom Quayle	Finance Manager	Corporate Finance

PART 1 – INITIAL SCREENING

An Equality Impact Assessment (EIA) is required for all formal decisions that involve changes to service delivery and/or provision. Note: all other changes – whether a formal decision or not – require consideration for an EIA.

The Initial screening is a quick and easy process which aims to identify:

- *those projects, proposals and service or contract changes which require a full EIA by looking at the potential impact on, or relevance to, any of the equality groups*
- *prioritise if and when a full EIA should be completed*
- *explain and record the reasons why it is deemed a full EIA is not required*

A full EIA should always be undertaken if the project, proposal and service / contract change is likely to have an impact upon, or relevance to, people with a protected characteristic. This should be undertaken irrespective of whether the impact or relevancy is major or minor, or on a large or small group of people. If the initial screening concludes a full EIA is not required, please fully explain the reasons for this at 1e and ensure this form is signed off by the relevant Contract / Commissioning Manager and the Assistant Director / Director.

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<p>1a.</p>	<p>What is the project, proposal or service / contract change?</p>	<p>The previous Charging Policy was approved on 25 March 2015, following the implementation of the Care Act 2014.</p> <p>The residential and non-residential arrangements for financial assessment and charging have now been separated out to make it easier for the public to access the information relevant to them. This EIA is in relation to the Non-Residential Charging Policy.</p> <p>The changes to non-residential charges are outlined below:</p> <ol style="list-style-type: none"> 1. The Council <u>continue</u> to provide a Minimum Interest Guarantee MIG over that provided by the statutory MIG, which means it is a more generous amount and supports the most vulnerable. It uses the MIG as set by The Care and Support (Charging and Assessment of Resources) Regulations 2014 with the following <i>increased amounts</i>: <ul style="list-style-type: none"> • The amount for working age people to include the Disability Premium • Higher amounts to be allowed for the following elements <ol style="list-style-type: none"> a) Enhanced Disability Premium b) Carer Premium 2. The way income is disregarded. From April 2022 onwards the following will apply: <ul style="list-style-type: none"> • For those clients who receive the higher rate of DLA care component – to disregard the difference in income between the higher rate (currently £89.60 per week) and the middle rate (currently £60.00 per week) • For those clients who receive the enhanced rate of PIP daily living component – to disregard the difference in income between the enhanced rate (currently £89.60 per week) and the standard rate (currently £60.00 per week). 3. The introduction of an annual fee of £95 is charged for the management of a self-funder's package of care. This would be applied to new self-funders from this date forward.
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1b.	<p>What are the main aims of the project, proposal or service / contract change?</p>	<p>The aim of this policy is to provide a consistent and fair framework for charging people who receive care and support, following an assessment of their individual needs and financial circumstances.</p> <p>The Care Act 2014 is the national legislation that sets out how councils charge adults for the care and support they receive to meet their needs. These needs are sometimes referred to as 'identified, assessed or eligible needs'.</p> <p>The Adult Social Care Non Residential Charging Policy ensures that Tameside Council is following the charging principles set out in the Care Act:</p> <ul style="list-style-type: none"> • The amount a person pays towards the cost of their care will be determined by looking at the cost of the service, their capital, expenditure and the income they receive. • An individual financial assessment will be undertaken to ensure people are charged what they can reasonably afford to pay. • Contributions towards the cost of care will be transparent and fair. • A person will not be charged more than the amount the service has cost the Council. • A person has sufficient money to meet their housing costs and any other disability related expenditure. • After a person has paid their contribution, they will retain a basic minimum income, this is known as the Minimum Income Guarantee (MIG).
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1c. Will the project, proposal or service / contract change have either a direct or indirect impact on, or relevance to, any groups of people with protected equality characteristics? Where there is a direct or indirect impact on, or relevance to, a group of people with protected equality characteristics as a result of the project, proposal or service / contract change please explain why and how that group of people will be affected.				
Protected Characteristic	Direct Impact / Relevance	Indirect Impact / Relevance	Little / No Impact / Relevance	Explanation
Age	x			<p>23.5% of the Tameside population is aged over 60, however, 64.6% of the adult social care client base is aged over 60. Therefore, significantly more older people are in receipt of non-residential social care services.</p> <p>Furthermore, 88.8% of over 60's are currently full cost clients (self-funders) for non-residential services. For some of these people, there may be a negative impact through the introduction of a self-funders arrangement and annual fee. However, the impact will only be for those people who choose to ask the Council to set up</p>

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				their care – not all will be impacted by this. For those self-funders who choose to arrange their own care, there will be no impact. People have this choice and the Council signpost to independent financial advice and information about care providers and services to help people arrange their own care if they wish to do so.
Disability	x			20.9% of Tameside's overall population have a disability, in comparison with 48.8% of people in receipt of non-residential social care services. Therefore, there are more than double the number of disabled people in receipt of non-residential services. Furthermore, there is a positive impact on those disabled people who are assessed by the DWP as receiving the higher rate of DLA care component, and those clients who receive the enhanced rate of PIP daily living component. They will have more income as a result of the proposals. (Numbers are held by the DWP are not available).
Ethnicity			x	90.9% of Tameside's population are White, compared to 93.9% of people in receipt of non-residential social care services. There are comparable figures for BAME/other and therefore there is no impact on this group.
Sex / gender			x	50.7% of Tameside's population are female, and 56.2% of people in receipt of non-residential social care services are female, therefore there is not a significant difference and there will be no impact on gender.
Religion or Belief			x	64% of Tameside's population are Christians, with 69.1% of people in receipt of non-residential care services are Christians. 4.4% of Tameside's population are Muslim, compared to 5.6% of people in receipt of non-residential care services. 31.5% of Tameside's population have no religion / religion not stated / other compared to 25.3% of the non-residential services client base. Therefore there is no significant impact on this group.
Sexual Orientation			x	94.7% of Tameside's population are heterosexual/straight. In contrast, 75.2% of the client base are heterosexual/straight. However, a further 24.1% chose not to disclose their sexual orientation and numbers were very low for the other sexual orientation categories. It is not felt that there will be any impact on the sexual orientation of people.
Gender Reassignment			x	There is no information about Gender Reassignment and Pregnancy and Maternity available for people in receipt of non-residential care services. However, the Non-Residential Charging Policy is applied equally to

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				all people who are assessed as needing services and it is not anticipated that there will be an impact on this group.
Pregnancy & Maternity			x	There is no information about Gender Reassignment and Pregnancy and Maternity available for people in receipt of non-residential care services. However, the Non-Residential Charging Policy is applied equally to all people who are assessed as needing services and it is not anticipated that there will be an impact on this group.
Marriage & Civil Partnership			x	Although there are differences in this cohort, it is not felt that the changes to the Non-Residential Charging Policy would impact this group. 47.2% of the client base of those in receipt of non-residential social care services are single, which is a greater proportion to the Tameside population overall (35.3%). 21.2% of the client base are married, compared to the Tameside population overall (43.5%). 9.5% of the client base are separated or divorced, compares to the Tameside population overall (13.4%) 22.1% of the client base is widowed. This is significantly higher than the Tameside population overall (7.6%)
Other protected groups determined locally by Tameside and Glossop Strategic Commission?				
Group (please state)	Direct Impact / Relevance	Indirect Impact / Relevance	Little / No Impact / Relevance	Explanation
Carers			x	The non-residential charging policy applies to people in receipt of non-residential care services. However, every effort is made to include Carers if people choose to involve them in their assessments as part of the Care Act.
Are there any other groups who you feel may be impacted by the project, proposal or service/contract change or which it may have relevance to? (e.g. vulnerable residents, isolated residents, those who are homeless)				
Group (please state)	Direct Impact / Relevance	Indirect Impact / Relevance	Little / No Impact / Relevance	Explanation
Low or no income groups			x	People in receipt of social care services are means tested and fairer charged; so people will only be charged what they could afford to pay. If people were financially assessed as not being able to afford to pay for their care - but had a Care Act

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				assessed and eligible need - then the council would pay for their care.
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*“Low or no income groups” should be included as a key consideration when assessing the impact of your project, proposal, policy or service/contract change.
Wherever a direct or indirect impact or relevance has been identified you should consider undertaking a full EIA or be able to adequately explain your reasoning for not doing so. Where little / no impact or relevance is anticipated, this can be explored in more detail when undertaking a full EIA.*

1d.	Does the project, proposal or service / contract change require a full EIA?	Yes	No
1e.	What are your reasons for the decision made at 1d?	x	<p>There will be a direct impact on a number of protected characteristics.</p> <p>There are significantly more older people aged over 60 in receipt of non-residential care services than the overall population of over 60s in Tameside.</p> <p>Also, there are significantly more older people who are self-funders and financially assessed as being able to afford the full cost of their care.</p> <p>There are over double the number of people who are disabled and in receipt of non-residential care services than the overall over 60s population of Tameside.</p> <p>In addition, there is a positive impact on those disabled people who are assessed by the DWP as receiving the higher rate of DLA care component, and those people who receive the enhanced rate of PIP daily living component. They will have more income as a result of the proposals. (Numbers are held by the DWP and not available). These are people who are likely to be more severely disabled.</p>

If a full EIA is required please progress to Part 2.

PART 2 – FULL EQUALITY IMPACT ASSESSMENT

2a. Summary
<p>This EIA focusses on the Council’s proposals on the new Non-Residential Charging Policy for Adult Social Care as a result of a review on the current policy.</p> <p>The demand for services is set to increase significantly over the coming years due to our ageing population, as is the number of people with complex needs. Therefore we need to ensure that everyone pays the appropriate amount for the care and support that they receive, based on their needs and their ability to pay, to help ensure the long-term sustainability of care and support services provided by the Council</p> <p>Due to this, the Council reviewed its Adult Social Care Charging Policy (2015) to ensure that it is</p>

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still

- relevant,
- fit for purpose
- equitable.
- clear and easy to understand
- and provides all the necessary guidance and processes that have been followed

The recent [Norfolk judgment](#) (Jan 2021) has also provided some key aspects to consider as part of this timely review.

Following the review and comparison of policies from other councils, it was deemed the clearest way to achieve the above was to separate out the current charging policy, into:

- non-residential charging policy
- residential charging policy

It is the proposed non-residential charging policy where a series of proposals have been recommended to make changes to the way in which people are financially assessed. The proposed changes to non-residential charges are outlined below:

1. Continue to apply Tameside’s rates to calculate the Minimum Income Guarantee (which is in excess of the DHSC Statutory limits and a more generous amount for individuals)
2. The way income is disregarded. From April 2022 onwards the following will apply:
 - For those clients who receive the higher rate of DLA care component – to disregard the difference in income between the higher rate (currently £89.60 per week) and the middle rate (currently £60.00 per week)
 - For those clients who receive the enhanced rate of PIP daily living component – to disregard the difference in income between the enhanced rate (currently £89.60 per week) and the standard rate (currently £60.00 per week).
3. The introduction of an annual fee of £95 is charged for the management of a self-funder’s package of care. This would be applied to new self-funders from this 1 April 2022 forward where the Council is asked to set up the care.

A consultation exercise in respect of the proposals on the non-residential charging policy took place between 28th October and 23rd December 2021. The response to the consultation survey was disappointing in that only 52 people responded, the breakdown of which was as follows (for those who responded to this question):

I am currently in receipt of non-residential care and support services	19.6%	10
I am a carer of someone who is in receipt of non-residential care and support services	23.5%	12
I am a relative or friend of someone who is in receipt of non-residential care and support services	35.3%	18
I am a member of the public	11.8%	6
I am a Tameside Council or Tameside & Glossop CCG employee	9.8%%	5
TOTAL		51

However, building in the two focus groups which were undertaken following strict Covid-19 Guidelines meant that more views were captured:

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Response Method	Completions
Big Conversation online survey	48
Postal paper survey	4
Total Focus Group Participants	~30
Total number of consultees	~82

2b. Issues to Consider

Consultation considerations

The consultation approach included an online questionnaire by means of the Council's Big Conversation as it was appropriate to engage with service users and residents in this way – at the time of undertaking this consultation, the nation is in the midst of a global Covid-19 pandemic. This also meant that consultees could access the exercise in their own time and at their own leisure.

Despite potential barriers to engagement due to the online questionnaire and the fact that many service users do not use the internet, as well as the depth and complexity of the information presented, significant efforts were made to ensure that barriers were removed or alleviated where possible. Over 2,000 letters were sent to people who are currently in receipt of non-residential social care services and are already subject to the Council's current Charging Policy letting them know about the consultation and signposting them to the Big Conversation. The letter sent to people also offered help and support for people wanting to respond but who didn't feel able to use the internet, by means of a phone number and email address. The Council responded to a number of requests for paper copies of the policies to send out, paper copies of the consultation questions - including in easy read format - and offered to complete the questions over the phone with individuals if they wished to do so.

The TMBC social media handles on twitter and facebook scheduled in reminders twice a week for the duration of the consultation.

In addition, targeted focus groups were undertaken with People First Tameside and a 'user-led' group of learning disabled adults in a supported accommodation scheme. Full safety measures adhering to guidance were put in place to meet with people, however, due to the covid-19 pandemic and the emergence of the omicron variant, face-to-face focus groups had to be limited.

The below table details the demographic profile of the overall population of the borough in comparison to the current client base of those in receipt of chargeable non-residential adult social care services, that of respondents to the Big Conversation and those clients who are finally assessed and charged for paying the full cost of their care;

Demographic Group	Tameside Population (%)	Client Base (%)	Respondents to Big Conversation (%)	Full cost clients (%)
Gender / sex				
Male	49.3	43.8	19	37.8
Female	50.7	56.2	81	62.2
Age				
Under 30	36.5	11.6	0	4.6
30 – 44	19.4	10	11.1	2.9

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45 – 59	20.9	13.7	22.2	3.7
60 – 79	19.2	29.7	44.4	27.1
80+	4.3	34.9	22.2	61.7
Ethnicity				
White	90.9	93.9	95	97.3
BAME / other	9.1	6.0	5	2.7
Disability				
Yes	20.9	48.8	(see below section)	39
No	79.1	51.2		60.9
Marriage and Civil Partnership				
Single	35.3	47.2	26.7	42.3
Married	43.5	21.2	40	23.7
In a registered same-sex civil partnership	0.2	-	0	-
Separated	3.0	2.2	-	
Divorced	10.4	7.3	20	6.8
Widowed	7.6	22.1	13.3	27.1
Religion and Belief				
Christian	64.0	69.1	68.4	72.2
Muslim	4.4	5.6	0	
Other	2.0	10.7	10.6	12.2
No religion	23.6	7.6	21	7.8
Religion not stated	5.9	7.0	0	7.8
Sexual Orientation				
Heterosexual or straight	94.7	75.2	88.9	60.6
Gay or lesbian	1.1	*	0	
Bisexual	0.7	*	0	
Other	0.2	*	0	
Don't know or refuse to say	3.3	24.1	11.1	39.4

*Numbers too small to report

- Numbers not available

For the adult social care clients, data is provided for those where the information has been collected and recorded. No information about Gender Reassignment and Pregnancy and Maternity.

The Ageing Population

Tameside's population is currently estimated at 227,100 residents. There has been a growth particularly in the number of people over 65 years by 4% since 2015 and this is projected to continue to increase by another 16.7% by 2030. Older people often have an increasing need for health and social care as they grow older.

It is estimated that in 2020 there were 2,637 people over the age of 65 with dementia in Tameside. By the year 2030 this total is expected to rise by 21.4% to reach 3,200 people.

Disabilities

The consultation did not explicitly ask for people to disclose their disabilities, but did enquire about limitations on day to day activities due to a health problem or disability.

50% of respondents said they were limited a lot in their day to day activities, 16.7% said they were limited a little, and 33.3% said they were not limited in their day to day activities.

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Caring

The consultation also asked whether people look after, or give any help or support to family members, friends, neighbours or others because of either long term physical or mental ill-health /disability or problems related to old age?

50% of respondents said they did not, 16.7% said they provided between 1-19 hours of support per week, 16.7% said they provided between 10-49 hours of support per week, and 16.7% said they provided in excess of 50 hours of support per week.

The conclusions drawn from the evidence and analysis of the effects on equality on the protected characteristic groups are detailed in the below table:

Protected Characteristic	Demographic Analysis
Gender	43.8% of the client base are male and 56.2% female. The gender profile of the client base shows a slightly greater proportion of females compared to the Tameside population overall.
Age	Over 60s: Tameside has a caseload of 1,340 adults in receipt of non-residential social care services who have been financially assessed. Furthermore, 88.8% of over 60's are currently full cost clients (self-funders) Under 60s: 732 service users (35% of the total) are under the age of 60.
Ethnicity	94% of the client base of those in receipt of non-residential chargeable social care services for adults are white and 6% BAME. This is largely in line with the ethnicity profile of Tameside overall (91% white and 9% BAME).
Disability	The disability profile of the client base of those in receipt of chargeable care services shows that 1005 service users (48.5 % of the total) are disabled. There is a greater proportion of disabled people who are service users compared to the Tameside population overall (21%).
Marriage and Civil Partnership	47.2% of the client base of those in receipt of non-residential social care services are single, which is a greater proportion to the Tameside population overall (35.3%). 21.2% of the client base are married, compared to the Tameside population overall (43.5%). 9.5% of the client base are separated or divorced, compares to the Tameside population overall (13.4%) 22.1% of the client base is widowed. This is significantly higher than the Tameside population overall (7.6%)
Religion and Belief	69.1% of the client base is Christian which is in line with the Tameside overall of 64%. There is a greater difference where people identify as having 'other' religion; for the client base this is 10.7% and for the Tameside population overall, this is only 2%. Furthermore, 7.6% of the client base have 'no religion' which is significantly lower than the Tameside overall population (23.6%)
Sexual Orientation	75.2% of the client base are heterosexual or straight compared to 94.7% of the overall Tameside population. However, 24.1% of the client base has chosen not to disclose their sexual orientation, in comparison to 3.3% of the overall Tameside population.

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	This pattern follows for full cost clients; 60.6% were heterosexual or straight, but 39.4% has chosen not to disclose their sexual orientation.
Gender Re-Assignment, Pregnancy and Maternity	Specific data is not available on these protected characteristics for those in receipt of chargeable social care services for adults. However no evidence of any disproportionate impact was discovered.

For the adult social care clients for non-residential services, data is provided for those where the information has been collected and recorded.

Further considerations

The Charging Policy was in need of a full review since the Care Act was implemented in 2015. In terms of the elements of the Care Act that are to do with charging for services, the Department of Health published regulations that embody the statutory requirements of the Act as well as indicating the discretionary elements that are open to local interpretation and decisions.

The key regulation is:

- The Care and Support (Charging and Assessment of Resources) Regulations 2014

Furthermore, in December 2020, there was a high court ruling where the judge, Mr Justice Griffiths, ruled against Norfolk County Council that its Charging Policy discriminated, albeit inadvertently, against ‘severely disabled’ people contrary to Article 14 of the European Convention on Human Rights.

Mr Justice Griffiths noted that Norfolk had “exercised its discretion to charge the claimant the maximum permissible (disregarding only those elements it is required to disregard by law), and, at the same time, has lowered the overall cap on her charges by reducing the council’s minimum income guarantee”. The way the Charging Policy was constructed means that, because her needs as a severely disabled person are higher than the needs of a less severely disabled person, the assessable proportion of her income is higher than theirs. The court found that the new policy discriminated against “severely disabled” people under the European Convention on Human Rights because the council would be charging those with the highest support needs proportionately more than those with lower support needs.

Adult Services, Exchequer, Finance and Legal teams have worked together to review the current Charging Policy and to develop a stand-alone Non-Residential Charging Policy that reflects the local position and is compliant with the Care Act and relevant Regulations.

While ensuring that the Policy is equitable, the Council must also take into account the long term financial sustainability of the Council, so must consider to charge, what it can afford while acting in a lawful and equitable way.

2c. Impact/Relevance

Proposal 1: Minimum Income Guarantee

Impact/Relevance: **No impact, remains the same** and continue to apply Tameside’s discretionary rates.

The Government acknowledges the minimum amount of money a person or couple require to pay for the cost of essential living. When carrying out an assessment of what someone can pay towards their care cost it is crucial that the person is left with this minimum amount and it is also

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acknowledged that due to their disability or condition that they may require a little more than the minimum, hence Tameside Council's rates are more generous, and will continue in this manner.

To continue to maintain this current policy will also mean that those with the lowest level of income will still be able to have more income left over once their charges have been taken into account.

Proposal 2: Level of income disregarded

Impact/Relevance: **Positive Impact** for some disabled people

There is a positive impact on those disabled people who are assessed by the DWP as receiving the higher rate of DLA care component, and those clients who receive the enhanced rate of PIP daily living component. They will have more income as a result of the proposals. (Numbers are held by the DWP and not available).

The reason for the positive impact is a change in the way some of their income is to be disregarded as part of their financial assessment.

- For those clients who receive the higher rate of DLA care component – to disregard the difference in income between the higher rate (currently £89.60 per week) and the middle rate (currently £60.00 per week)
- For those clients who receive the enhanced rate of PIP daily living component – to disregard the difference in income between the enhanced rate (currently £89.60 per week) and the standard rate (currently £60.00 per week).

This proposal recognises that more severely disabled people may have a higher level of spend to meet their enhanced needs, therefore it is proposed that the additional benefit they receive (higher and enhanced rates) is disregarded in recognition of this.

Proposal 3: Introduction of self-funders arrangement and annual fee

Impact/Relevance: Could negatively Impact some future/new non-residential social care service clients, and only those who are financially assessed as being able to afford the full cost of their care (self-funders), and then only those who choose to ask the Council to support them in setting up their care. Also, 88.8% of over 60's are currently full cost clients (self-funders) for non-residential services.

Although there are currently 410 non-residential clients who are assessed as being able to afford the full cost of their care, the proposal is to implement the arrangement and annual fee from 1 April 2022 for **new clients**.

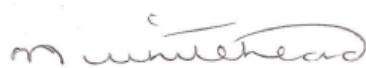
The Care Act does give the Council the power to charge an administration fee for arranging care for self-funders. The proposed charges reflects the time and resource taken by the Council to support an individual to establish the care they require to meet their identified needs and will only cover the cost of the administration of arranging care for self-funders. Many other local authorities do charge for this service and the proposed fees are comparable/lower than the charges in other authorities.

It is proposed that an annual fee of £95 is charged for the management of a self-funder's package of care. This would be applied to new self-funders for non-residential services from 1st April 2022, and would be intended to cover the cost of setting up the original care arrangements and managing the package on an ongoing basis.

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2d. Mitigations (Where you have identified an impact/relevance, what can be done to reduce or mitigate it?)	
<p><i>Impact/Relevance 1 –</i> <i>The way income is disregarded</i></p>	<p>Update the guidance about the Financial Assessment process and information pack that goes out to individuals will contain information about the new calculation and what benefits are disregarded as part of the financial assessment process fully explaining the calculation.</p>
<p><i>Impact/Relevance 2 –</i> <i>Introduction of arrangement fee and annual fee for self-funders</i></p>	<p>Update the guidance about the Financial Assessment process and information pack that goes out to individuals will contain information about the new arrangement and annual fee to engage with people at the start of the assessment process.</p> <p>People have this choice and the Council signpost to independent financial advice and information about care providers and services to help people arrange their own care if they wish to do so.</p> <p>Some of the key benefits of requesting that the Council contracts on behalf of a person (who would normally contract directly with the provider) is the additional oversight and protection from the Council's contractual relationship, i.e.:</p> <ul style="list-style-type: none"> • The Council has regular oversight of the providers (over and above the Care Quality Commission) to endeavour to ensure the service is of a good standard. Where improvements are required the Council will support the provider to make those improvements. • Should the person have an issue, which cannot be resolved by the provider, the person can access the Council's complaints process • The Council will facilitate payment of the fees to the provider and check they are invoicing for the correct amount (albeit the full fees will be recoverable from the service user) <p>Furthermore, there is no change to the rates used to calculate the Minimum Income Guarantee. The Council has recommended to maintain the same rates, which allow people to have more income on a weekly basis than if the Government rates would be used. The Government rates are lower and although the Council is able to use these rates, have chosen to be more generous and maintain this.</p>
<p><i>Impact/Relevance 3 (Describe)</i> <i>Accessible materials</i></p>	<p>The Non-Residential Charging Policy is a lengthy and technical document (by nature of the content).</p> <p>More accessible version can be developed and reviewed to make it easier for people in different ways focusing on an easy read version to support those with disabilities.</p>
2e. Evidence Sources	
<p>LAS – Case Management system for Adult Social Care 'Big Conversation' analytics – online questionnaire medium Mid-year Population Estimates 2013 (ONS) Census 2011 (ONS) Abacus system reports – financial system Norfolk Judgment - Letter from the Centre for Adults' Social Care, Advice, Information and Dispute resolution Local Government Association</p>	

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2f. Monitoring progress		
Issue / Action	Lead officer	Timescale
Updated information pack on financial assessment process – to include self-arrangement and annual fee, as well as new calculation on income disregarded	Karen Milner	End of March 2022
Development of Easy Read version of policy	Reyhana Khan	End of March 2022
Signature of Contract / Commissioning Manager		Date
TBC		
Signature of Assistant Director / Director		Date
TBC		
Signature of Head of Service		Date
		27/01/22