
FAIRER CONTRIBUTIONS POLICY

**Responsible Cabinet Member - Councillor Veronica Copeland,
Adult Services Portfolio**

Responsible Director - Cliff Brown, Director of Community Services

SUMMARY REPORT

Purpose of the Report

1. This report seeks member approval of a new policy for determining how much a resident of Darlington can afford to contribute towards the cost of their social care, known as the “Fairer Contribution Policy”. The new policy arises from the implementation of the Department of Health policy of “Transforming Social Care”, that requires the Council to adopt personal budgets as the method to achieve the delivery on non-residential care services within Adult Social Care.
2. This report follows earlier reports to Health and Wellbeing Scrutiny, 24 May 2009, and 4 May 2010 on personalisation, self directed support and personal budgets in Adult Social Care.

Summary

3. In September 2003 the Department of Health issued fairer charging guidance to help local councils design reasonable and fair charging policies and to ensure greater consistency across those policies. In July 2009 the Department of Health issued supplementary guidance to all Local Authorities to take into account the increasing number of people receiving direct payments and the introduction of personal budgets.
4. In order to respond to the guidance and prepare for implementation Adult Social Care have:
 - (a) Reviewed the current policy
 - (b) Developed a proposed charging model that responds to the guidance within our local context
 - (c) Carried out a consultation exercise to inform the drafting of a new revised policy for consideration by Cabinet.
5. The review process has provided an opportunity to reconsider current practice, examine the resource implications for the Council and to ensure that equity and transparency is achieved for Darlington residents. Every effort has been made to ensure that the guidance has no detrimental impact on the financial resources available to Darlington Borough Council yet

at the same time ensuring that the most vulnerable citizens are protected in keeping with current policy.

6. Approval by Cabinet will result in a contribution policy being in place. These together enable the delivery of self directed support and personal budgets to meet social care needs as required by the Department of Health's policy for transforming social care. Thus Darlington residents will be able to benefit from the empowerment, equity and transparency inherent in this policy.

Recommendation

7. It is recommended that :-
 - (a) the response to the consultation on the draft contribution policy be noted;
 - (b) the Fairer Contribution Policy be approved and implemented from the 1st October 2010, as attached in **Appendix 1**.
 - (c) the proposal of a process for deferring the implementation of the Fairer Contribution Policy until April 2011 for those existing services users who will be affected, in order that a reassessment of their needs and circumstances can take place, is approved.

Reasons

8. The recommendations are supported by the following reasons :-
 - (a) The proposal will eliminate inequalities in the current charging policy from non – residential Adult Social Care Services, making it more fair and transparent in supporting services users accessing a personal budget
 - (b) The proposals have been amended as a result of consultation with service users, Carers, User led organisations and the completion of a Disability Equality Impact Assessment.

Cliff Brown
Director of Community Services

Background Papers

- (i) Department of Health; Fairer Contributions Guidance, published 14 July 2009
- (ii) Department of Health; Putting People First Guidance – Personal Budgets for Older People, Making it Happen, published January 2010-01
- (iii) Report to Health and Wellbeing Scrutiny; Personalisation within Adult Social Care, 24 May 2009
- (iv) Report to Health and Wellbeing Scrutiny; Personalisation within Adult Social Care, 4 May 2010
- (v) Darlington Borough Council Charging for Home Care and other non –residential social services 2009.
- (vi) Disability Equality Impact Assessment – Darlington Borough Council Charging for Home Care and other non-residential social services 2009.
- (vii) Disability Equality Impact Assessment – Fairer Contributions Policy.

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| S17 Crime and Disorder | Providing Social Care enables local vulnerable adults to remain safe and secure in their own homes despite changing needs over time |
| Health and Well Being | The provision of Adult Social Care optimises independent living for many local vulnerable people and reduces the incidence of hospital and care home admissions. Social Care can act as a catalyst to facilitate early discharge or prevent admission from/to hospital |
| Sustainability | The provision of Adult Social Care can contribute to continued and diverse sustainability of local communities by supporting vulnerable people in their neighbourhood |
| Diversity | Adult Social Care is targeted at a range of vulnerable local people from differing ethnic backgrounds with assessed care needs. |
| Wards Affected | All |
| Groups Affected | Predominantly older people and people with a physical and/or learning impairment. |
| Budget and Policy Framework | This will impact positively on the Adult Social Care Budget and is in line with national policy for contributions for non-residential care services. |
| Key Decision | This is a Key decision. |
| Urgent Decision | This not an urgent decision. |
| One Darlington: Perfectly Placed | Implementing the Fairer Contributions policy to support the roll out of personal budgets for non-residential care contributes to a number of key themes such as; Healthy, Aspiring, Safer and Prosperous Darlington. |
| Efficiency | The system will ensure administrative efficiency and convenience for service users |

MAIN REPORT

Information and Analysis – Background Information

9. Fairer Charging was originally introduced by government in April 2003. It gave guidance to councils on how to work out what adults could pay toward the cost of non residential care services that they receive. A separate Charging for Residential Accommodation Guide (CRAG) is also in place.
10. In January 2009 the Department of Health began a review of the fairer charging guidance. The aim of the review was to design a financial contribution framework for non residential care that supports personal budgets. The review concluded in new guidance being released by the Department of Health in July 2009.
11. The guidance provides councils with a model for calculating a person's contribution to their non residential care provision. The Guidance proposes that the principles set out in the original Fairer Charging Guidance (2003) should be maintained and to be applied to the first stage of the charging assessment. This effectively set out a means test determining an individual's income available to make a contribution after they have retained a minimum amount to cover living expenses. The concept of a fairer contributions policy is to financially assess someone's ability to pay towards the total actual cost of their non residential services. Currently services are charged at subsidised daily, hourly and flat rates. The types of support that individuals will be required to contribute towards are:
 - (a) Personal Care
 - (b) Domestic Care
 - (c) Sitting Services
 - (d) Direct Payments
 - (e) Sleepovers
 - (f) Day Care
 - (g) Transport as provided in conjunction with the provision of community care services
 - (h) Social Activities e.g. visiting a museum, bowling etc
 - (i) Assistive Technology i.e. Telecare
 - (j) Bathing Service
12. The principle of a contribution to the overall cost of care for an individual (the Personal Budget) removes the complexities and inequities which are inherent when charging for a range of services, each of which has a unique charging structure.
13. From October 2010 all existing service users who have their annual review of their needs and support, will also be offered a Personal Budget, following a self-assessment. Personal Budgets have been systematically introduced in Darlington since April 2010 in response to this national agenda, offering eligible service users an individual allocation of money with which they may choose to purchase and manage their own care. It is expected that by April 2011, 30% of service users will have exercised this choice using either a direct payment or services commissioned by the Council. People who do not wish to purchase their own care can elect to have their care managed by the Council on their behalf, as is the case currently.
14. The proposed new policy aims to ensure that the significant contribution from public funds is directed at those most in need. Where service users have the means and ability to contribute to their care costs it is considered reasonable to expect them to contribute.

Principles

15. There are a number of principles set out in the national guidance which will shape the proposed Fairer Charging policy, namely that local authorities:
 - (a) Set contributions for non-residential services based on service user's ability to pay. Regardless of whether a service user receives a direct service provision or personal budget equivalent, everyone is charged the same;
 - (b) Has a clear and transparent contributions policy which is easy to understand and challenge;
 - (c) Ensures an appropriate contribution is calculated fairly and collected for all service users (taking into account service users circumstances including their mental capacity);
 - (d) Provides an early notification of service users' contributions to care costs;
 - (e) Ensures that service users have an opportunity to maximise welfare benefits thus maximising their ability to contribute to their care costs and to reduce the burden of funding that may transfer to the Council;
 - (f) Ensures administrative efficiency and convenience for service users;
 - (g) Apply the new policy fairly and equitably with due consideration of potential and actual impact on the affected groups.

Financial Implications

16. It is proposed that the Fairer Contributions Policy will retain the key provisions of the current Fairer Charging Policy and the administrative processes for financial assessment. Service users with income below the minimum income allowance, equivalent to basic levels of Guaranteed Credit/Income Support plus 25%, will not be expected to make a contribution. Savings (capital) greater than £14,250 will be taken into account in assessing the contribution. Capital limits are changed annually and mirror those detailed in the Charging for Residential Accommodation Guidance (CRAG). Currently those who have savings above £23,250 will contribute to the full cost of their care needs. The processes ensure that during the financial assessment process, each individual receives a full benefits check and advice so that they access all benefits to which they are entitled.
17. Councils are expected to be able to show that the required charge or contribution is reasonable. However as this is a power rather than a requirement, a Council may decide not to charge for all or some of the services, or packages of care, that it provides. Currently some £6m is raised from charges to service users, and over £1m of this arises from charges for non residential care provision following a detailed financial assessment. Such a sum is a key component within the budget and should this sum be reduced then it would be necessary to identify equivalent service savings in order to balance the budget.
18. The change to the new contributions policy is not anticipated to significantly change the aggregate income contributed by service users towards their package of care. Whether an individual will pay more or pay for the first time under the new policy will depend upon their current financial assessment if they receive non residential care services, and upon the type and volumes of service they receive. Service users commence and leave services, their packages vary as their needs change, and their financial circumstances change. This then makes it difficult to analyse the exact impact of the new policy.

19. Service users who currently only attend day care will experience the greatest impact from the new policy. Currently, they may pay up to £10 per session depending on their maximum charge following financial assessment. Under the proposed fairer contributions policy they will pay the actual unit cost of the service up to their maximum charge. For some older people with savings above the annual limits, this could amount to approximately £39 per session. There is an estimated 63 such service users, 9 of whom are people with a learning disability and 54 are older people.
20. People with a learning disability impacted upon will be those living at home with family rather than those in supported living accommodation as the latter will already be contributing an assessed sum towards their care support in their home.
21. Our financial modelling shows that the vast majority of service users (95.5%) will see no change as a result of the fairer contributions changes:
 - (a) 95.5% will have no change to their contributions
 - (b) 4.5% will pay an increase in contributions averaging £28 per week
22. The introduction of personal budgets and direct payments gives service users greater involvement in arranging the support they receive. This can enable people to explore different ways of meeting their needs and could result in lower cost packages of care and hence reduced contributions.
23. The overriding principle for the introduction of the policy is that service users contributions are based on a financial assessment of their ability to contribute. In individual cases, Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 prevents the Council from charging a service-user more for a service “than it appears to them that it is reasonably practicable for him/her to pay” if the service user satisfies the Council that his/her means are insufficient.
24. The proposed process of deferring raised contributions for existing services users up until April 2011 will provide a period of flexibility in reassessing individual circumstances and needs. Close monitoring of the impact of the policy will enable a review at the appropriate time to address any shortfalls that may become apparent over time.
25. Further as alternative options to traditional day care become available to meet the implications arising from personal budgets, more choice will become available to all service users, which may well have significantly lower costs than current day care services.

Disability Equality Impact Assessment (DEIA)

26. The Council has a statutory duty to promote equality and must consider the impact that decisions it takes may have on certain groups, including disabled people. Equality Impact Self-Assessments have been carried out. The purpose of disability impact assessments is both to ensure that decisions and activities do not disadvantage disabled people, and also to identify where they might better promote equality of opportunity. In proposing the introduction of the Fairer Contributions policy Darlington Adult Social Care carried out a DEIA, supported through consultation, and examined the negative and positive impacts of introducing this new policy. The outcome of which is considered not to have an adverse impact on the groups identified as it has been constructed to treat all people equally. With the exception of an identified negative impact for some service users, particularly older

people, attending day care.

27. The DEIA has been undertaken in respect of the change from the current policy for which an in-depth DEIA was conducted, to the new policy. People who attend day services currently and who do not receive support pay a subsidised rate of £10 per session however people receiving a Direct Payment for social activities as an alternative to day care would pay an hourly rate. Thus the removal of this perceived inequality by the new policy, will remove the advantage that people attending day care currently enjoy. Thus the change to the new policy will have a negative impact on those service users attending day care. To mitigate against this impact it will be recommended that the proposal of a process for deferring the implementation of the fairer contribution policy until April 2011 is agreed for existing service users as outlined in paragraphs 31 and 32 below.
28. Concerns have also been expressed during the consultation process as to whether people have the capacity to organise and arrange activities and transport themselves. To mitigate against this and create a more positive impact, support will be provided through the care management process. The Fairer Contributions Policy supersedes the Fairer Charging Policy and as such does not represent a significant change in policy. It is more a change of approach to help with the introduction of personalisation. The disability impact on current users of traditional services may not reflect all the other potential negatives for when personal budgets are applied.
29. Other potential negative impacts identified through consultation and actions to mitigate them are as follows:-
 - Payment for transport as there is no transport charging policy currently. In mitigation a clear transport policy will be developed as a priority and a DEIA carried out in the development of it.
 - Short Breaks- people may receive two financial assessments if the short break is in a residential care home which is current practice. Where the person wants to exercise choice and receive a short break in a different setting or may change their minds after the financial assessment they could be paying the wrong contribution level. In mitigation Adult Social Care will ensure that care managers have the conversation as part of the support planning process and develop plain English information sheets to back it up. The finance department can revise a financial assessment as a desktop exercise without putting the person through a further assessment visit as is current practice.
 - Disability Related Expenditure - (DRE) past complaints have highlighted an inconsistent approach in practice and Darlington Borough Council does not currently have a policy. To mitigate against inconsistency a policy will be developed as a priority and a DEIA will be applied in its development.
 - Housing costs - in certain circumstances all housing costs may not be taken into account as DRE and this will have a negative impact on a small number of people. To mitigate and reduce the impact, care managers will be advised to ensure service users and carers have access to advocacy for help.
 - Application of 100% of cost to full fee payers - a negative impact will be that those affected will have to pay for the brokerage service which is a current anomaly. To

mitigate this, the brokerage service is to be reviewed and a DEIA will be integral to assess the impact of this issue.

30. When considering mitigation it should also be noted that as a part of each financial assessment a “Disability Related Expenditure” (DRE) assessment is carried out to ascertain how much expenditure a service user generally incurs above that assumed within income support levels. This is fully taken into account when calculating how much a service user can afford to contribute towards their care.
31. EIA legislation and Department of Health guidance require the Council to consider whether it is appropriate to mitigate the effect of this negative impact. In this respect there are three options available. Firstly the view could be taken that as the new policy is considered fair then no mitigation is appropriate. Secondly, the impact of the change could be phased in over a period of time. Or thirdly, providing a period of flexibility in not charging to allow for reassessments of existing service users user needs and circumstances to mitigate against the negative impact could be considered.
32. The first of these options could give rise to a legal challenge, as there clearly is a negative impact on some people of the introduction of the new policy. The second option would be administratively cumbersome and confusing for service users as this will introduce yet another variable into the calculation of their contribution. Therefore it is proposed that the third option be considered and agreed.

Statutory Framework

33. Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 gives local authorities discretionary powers to charge adults in receipt of non-residential services.
34. To ensure fairness, the Department of Health issued statutory guidance in 2003 entitled ‘Fairer Charging Policies for Home Care and other Non-Residential Services’, using powers under Section 7 of the Local Authorities Social Services Act (LASSA) 1970.
35. In July 2009 supplementary statutory guidance was issued entitled ‘Fairer Contributions Guidance: Calculating an Individual’s Contribution to their Personal Budget’.
36. Following the statutory guidance the council has consulted before implementing the changes to its existing charging framework.

Consultation

37. The draft policy was reviewed in light of the new Department of Health guidance issued in July 2009 and consultation commenced in April 2010. The consultation ran from 1 April 2010 to the 31 July 2010 (**Appendix 2**). Current users of non-residential care services and their carers, staff and partner organisations including voluntary organisations, Age UK, Groups, MIND and DAD were given the opportunity to comment on the proposed policy. Details were also included in the local press and key areas of the Council’s website.
38. Most people responded by asking for individual meetings and officers were very flexible on the number of meetings they attended to ensure people fully understood the issues and opportunities for feedback were maximised. Whilst carers from Age UK and carers from

MIND for example felt only one meeting was appropriate, two meetings were held with Age UK and four meetings have been held with DAD in addition to a detailed written response. A number of changes to the wording of the policy have been made for clarification to reflect feedback from DAD.

39. The draft consultation policy was based upon the current Financial Assessment Policy that has been in place since 2009. A small number of respondents commented that they were happy with the current policy and did not want a change. The majority of responses indicated agreement to the proposed approach. There was also a small cohort of people who disagreed that the proposed policy was fair. A significant number did not offer an opinion; one organisation requested clarification, reassurances and contributed to making amendments to the Fairer Contributions Policy.
40. DAD also made a significant contribution to the Disability Impact Assessment and actions to mitigate these impacts are described in paragraphs 27 to 30. DAD continue to express concerns regarding the depth and breadth of the consultation and the level of understanding of service users and carers. However there was a considerable period of consultation and this was extended from the initial 12 week period to 16 weeks to ensure the process was as inclusive as possible,. The Officers undertaking the consultation were experienced in managing a variety of different audiences and in encouraging and supporting people to express their views. They also fully involved user-led organisations in the process.
41. The Fairer Contributions Policy was considered by Health and Well Being Scrutiny on the 24th August 2010 and a representative from DAD was also in attendance. Reference was made by DAD at the meeting to a further meeting which had been arranged with appropriate Council Officers to clarify some of the wording in the policy document. Members were supportive of the proposals pending the outcome of the meeting and it was acknowledged that significant consultation had taken place. The subsequent meeting with DAD on the 26th of August was very positive and DAD made some helpful suggestions where wording could be further changed. These have now been incorporated into the attached policy document at **Appendix 1**.

Conclusion

42. With individual budgets people have the choice to choose the services they wish to use. Putting day care on a non-subsidised basis means these services are treated in the same way as other services for example, personal and domestic care. This also avoids distorting the market; where users choosing council commissioned day care currently provided either in-house or by independent providers receive an advantage over users of other forms of day care. Analysis of the current 144 registered users of day care shows that of those assessed for charges only 63 service users would be affected. A period of reassessment and reviewing the impact this has for those service users will be conducted in a manner that will take account of their individual circumstances and need, and therefore supporting those affected with the transition to the new policy.
43. The Fairer Contributions Policy will mean that the Council will be able to offer individual budgets for all new service users from October 2010 applying a fairer system to work out how much someone contributes to their care and support. As well as improving choice and control for Darlington residents in need of care this will also enable the Council to meet the targets set for achieving individual budgets.