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Report of: John Macilwraith
Report to: Cllr George Lindars- Hammond
Date of Decision: 3rd August 2021
Subject: Fairer Contributions Policy – maximum charge

Is this a Key Decision? If Yes, reason Key Decision:- Yes No
- Expenditure and/or savings over £500,000
- Affects 2 or more Wards

Which Executive Member Portfolio does this relate to? Health and Social Care

Which Scrutiny and Policy Development Committee does this relate to? Healthier Communities and Adult Social Care Scrutiny and Policy Development Committee

Has an Equality Impact Assessment (EIA) been undertaken? Yes No

If YES, what EIA reference number has it been given? 885

Does the report contain confidential or exempt information? Yes No

If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-

*“The (**report/appendix**) is not for publication because it contains exempt information under Paragraph (**insert relevant paragraph number**) of Schedule 12A of the Local Government Act 1972 (as amended).”*

Purpose of Report:

To uplift the maximum charge for non- residential care and to put in place arrangements that will see the maximum charge uplifted each year to take account of inflation and the rising cost of care.

Recommendations:

To set the maximum charge for non-residential care in Sheffield at £424/ week from September 2021. This is 80% of £530/ week, the current standard residential charge in Sheffield.

To uplift the maximum charge for non-residential care each year so that, as the standard residential rate is uplifted to take account of inflation and the rising cost of care, the maximum charge is maintained at 80% the standard residential rate.

Background Papers: None

| Lead Officer to complete:- | |
|---|--|
| 1 | I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required. |
| | Finance: <i>Liz Gough</i> |
| | Legal: <i>Steve Eccleston</i> |
| | Equalities: <i>Ed Sexton</i> |
| <i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i> | |
| 2 | EMT member who approved submission: John MacIlwraith |
| 3 | Executive Member consulted: Cllr George Lindars-Hammond |
| 4 | I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1. |
| | Lead Officer Name: Liam Duggan |
| | Job Title: Head of Service, Strategy and Commissioning |
| Date: 28 th July 2021 | |

1. PROPOSAL

- 1.1 Guidance for Local Authorities on charging for Care and Support is set out in the Care Act, regulations and statutory guidance.
- 1.2 The Care Act statutory guidance states that when charging for care and support not in residential care homes local authorities should consider whether it is appropriate to set a maximum charge, for example as a maximum percentage of care home charges in a local area. It states that this is because it could help ensure that people are encouraged to remain in their own homes, promoting individual wellbeing and independence.
- 1.3 A maximum charge is a ceiling on the amount the Local Authority charges people for the cost of their care. People affected by a maximum charge are by definition those people who have both a high level of care, and therefore a high cost of care; and high levels of capital/ savings and who are therefore assessed as having the means to pay the higher charge.
- 1.4 In an informal survey of local authority charges in 2021 it has been determined that the majority of local authorities do *not* set a maximum contribution. There is no clear pattern to how the remaining LA's set their cap with individual decisions made by each Authority. Birmingham, Bristol, Liverpool, Manchester, Nottingham, and York all have no maximum charge whereas Leeds has a maximum charge set to 80% the cost of residential care and Newcastle has set a maximum of £400 per week.
- 1.5 Sheffield does set a maximum charge for care and support not in residential care homes and this charge has historically been linked to the standard residential care home rate i.e. the basic care home rate for older people.
- 1.6 The maximum charge for non -residential care in Sheffield is currently £375/ week. This rate has not been uplifted for a number of years and as a result is now significantly lower than the standard residential rate of £530/ week.
- 1.7 The proposal is to re-set the level of the non- residential charging cap in 2021 and to put in place arrangements that will see the cap uplifted each subsequent year to take account of inflation and the rising cost of care.
- 1.8 Although the Statutory Guidance indicates that Local Authorities should consider a maximum charge for non-residential care linked to care home charges in the local area there are a number of difficulties in trying to make a direct comparison between charges for residential care and non-residential care. These are as follows:

1. People in residential care homes have **lower living costs** than

people living in their own home. It may therefore not seem reasonable to expect people living at home to have to pay the same amount towards the cost of their care as people living in residential care

2. There are significant **differences in the type of service** in these two environments regardless of cost especially in relation to contact time and access to care making comparisons between the two difficult
3. The **national funding rules** regulating the charging of people in residential care are different to those impacting people in their own home. For example
 - a. People in care homes are not entitled to a maximum charge and are required to pay whatever the placement costs (subject to them having the means to pay it as determined through a financial assessment). This also means they are entitled to fund more expensive placements if they choose.
 - b. When undertaking a financial assessment for someone in a residential care home the Local Authority is required to take into account the value of a person's home. This is not the case for non-residential care.

1.9 It is proposed that the maximum contribution in Sheffield is set at £424 / week from September 2021. This is 80% of £530/ week, the current standard residential charge in Sheffield.

1.10 It is proposed that when the standard residential rate is uplifted each year to take account of inflation and the rising cost of care the maximum charge is also uplifted in order to maintain the 80% ratio.

2. HOW DOES THIS DECISION CONTRIBUTE ?

2.1 The people affected by this proposal are people in receipt of non-residential care with capital/ savings exceeding the £23,250 threshold and with a cost of care exceeding £375/ week. There are currently 146 people affected by the current maximum contribution.

2.2 Raising the maximum contribution to £424/ week will mean that people in receipt of non-residential care with significant capital / savings and a high cost of care will make more of a contribution towards the cost of their care and one which is more comparable with (but not the same as) the charge made to the residents of care homes.

2.3 Under this proposal the people affected would pay up to a maximum of £424/ week (compared with £375/ week now) depending on the cost of their care. Residents of care homes with capital/ savings exceeding the £23,250 threshold always pay the full cost of their care which is at least the standard residential rate of £530/ week.

2.4 Maintaining a maximum charge for non-residential care linked to the residential care charge ensures there continues to be no financial incentive for people to choose to go into residential care as opposed to

remaining in their own home. It also ensures continued full compliance with the statutory guidance.

- 2.5 Setting the maximum charge at a percentage of the standard residential rate ensures that, whilst the link to the residential care rate is maintained, there exists a significant discount to that rate which takes into account the differences in living costs between residential and non-residential care.
- 2.6 The use of a percentage discount to determine the maximum charge, as opposed to a specific cost deflator, ensures that the calculation is kept simple, predictable and transparent whilst also acknowledging that the inherent differences between residential care and non-residential care make any more precise or 'scientific' calculation hard to justify.
- 2.7 An 80% rate is recommended on the basis that this relates broadly to the residential care rate excluding accommodation costs. When the annual fee rate increases for care homes and home care providers are calculated an additional 14% non-staffing cost is assumed for care homes. This includes the hotelling costs of the care placement. An allowance of 20% gives a reasonable amount of additional allowance for expenses. An 80% rate is also used by a neighbouring Core City for this purpose.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 A public consultation was carried out between 21.01.21 and 16.02.21 with a specific focus on the 105 individuals identified at that time as being potentially impacted by the proposal.
- 3.2 The consultation asked for feedback on a proposal to increase the maximum contribution payable from £375 to £505 per week, in-line with the then standard residential rate (2020/21) from July 2021.
- 3.3 The consultation letters to people potentially affected by the proposals included a tailored illustration of what the impact of the proposal would mean for them personally. Letters provided contact information for people who were concerned about the impacts of these proposals on their ability to pay and/ or who wanted to talk to someone about their care and support needs. All letters were then followed up with a telephone call to ensure that the resulting consultation feedback was as comprehensive as possible.
- 3.4 The feedback from the consultation exercise strongly challenged the proposal to raise the maximum contribution for people living at home and receiving homecare (non-residential) to the same level as is payable by care home residents. There was some qualified acceptance of an increase in principle but not as large an increase as proposed.

- 3.5 The consultation feedback was fully taken into account and used to inform a change to the proposal. The key feedback from the consultation focused on two areas:
1. Increasing charges by such a large increment in one step felt unacceptable
 2. Setting the cap at the same rate for residential as for non-residential did not take into account the difference in costs of living in the community as opposed to those in care homes.
- 3.6 Care was taken in the consultation to ensure the people affected by the proposal – or their representatives – were given the time and means to discuss and feedback on the proposal. The exercise aimed to fulfil the four legal consultation *Gunning* principles (1985), in that:
1. It was carried out at a time when proposals were still at a formative stage – it was made clear to respondents that the proposal being consulted on was draft and subject to feedback;
 2. It gave sufficient reasons for the proposal to permit intelligent consideration and response – the letters and, in particular the phone conversations, enabled the proposal to be explained and for people to check their understanding, challenge the reasoning and provide feedback;
 3. It gave adequate time for consideration and response – a four-week period enabled intensive consultation activity through letters, conversations, email and on-line responses;
 4. The product of consultation was conscientiously taken into account when finalising the decision – as a result of consultation feedback, the proposal was changed.
- 3.7 Following the consultation all consultees were written to again to thank them for their views and to let them know that as a result of the feedback the Council would change how the maximum contribution would be increased and that the implementation date would be delayed in order to allow time to change proposals.
- 3.8 People were advised to expect a further letter in the late summer to inform them of the new change to the maximum contribution and when it will come in.
- 3.9 As a result of the consultation the approach for the increase has been reviewed. The revised proposals take into account the requests that allowance be made for a higher cost of living in the community and also to reduce the level of the first year increase.

4 RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Opportunity Implications

- 4.1.1 An Equality Impact Assessment (EIA) has been undertaken to

understand the implications of this proposal for different people. 88% of the current cohort are older people, the remainder are working age adults. 57% are female the remaining 43% are male. 95% are White (British), 1% are Black & Minority Ethnic and 4% are unknown.

- 4.1.2 The maximum charge applies only to people with high care costs and with capital/savings in excess of £23,250. It therefore has no impact on people in poverty. At the point at which capital/ savings reduce below that level, people become eligible for a financial review and assessment purely based on their income, which would in turn reduce their contribution.
- 4.1.3 The right to request a review/ reassessment in these circumstances was included several times in the letters, as well as in the phone conversations and consultation survey. Reductions in capital/ savings would also potentially have a positive impact on entitlement to benefit income.
- 4.1.4 However, it is noted that consultation feedback indicated respondents' concerns about the affordability of the initial proposal and, for some people, its effect on being able to continue to receive the same level and provision of care at home. This feedback informed the revised proposal to introduce a smaller increase to the maximum contribution.
- 4.1.5 Because the maximum charge impacts people with a higher cost of care, the nature of the proposal to increase the maximum contribution will disproportionately impact people with higher levels of need – for example more disabled people, extremely frail people. This is mitigated by the fact that there has not been an increase in several years; the proposed increase was lowered following consultation feedback; implementation of the proposal has been delayed.

4.2 Financial and Commercial Implications

- 4.2.1 In the 2021/22 budget provision for £344k additional income was made on the basis that the maximum contribution would be uplifted in 2021/22 subject to consultation. Budget provision was made on a range of assumptions including that the maximum charge would be set at the standard residential rate from 1st April 2021.
- 4.2.2 Raising the maximum charge from £375/ week to £424/ week from September 2021 is estimated to generate around £105k additional income to the Council in 2021/22, a further £121k in 2022/23 and no further impact thereafter. This is less than the budgeted sum because the proposal has been amended and delayed following consultation.
- 4.2.3 The actual financial impact of these changes cannot be accurately forecast as the level of capital/ savings above the £23,250 threshold held by each individual affected now and in the future is not known.

4.2.4 Increasing the maximum charge each year in line with the standard residential rate will ensure that costs take account of inflation and the rising cost of care.

4.3 Legal Implications

4.3.1 The legal framework for charging in adult social care is set out in Sections 14 and 17 of the Care Act. When choosing to charge, a local authority must not charge more than the cost that it incurs in meeting the assessed needs of the person. It also cannot recover any administration fee relating to arranging that care and support. The Local Authority must also take account of and comply with Statutory Guidance which has been issued.

4.3.2 This report sets out how the Local Authority will meet those legal obligations in respect of charging for care and support outside of residential care homes. The report also sets out how the Local Authority will meet its obligations under the Public Sector Equality Duty set out in S149 Equality Act 2010 through the Equality Impact Assessment.

5. **ALTERNATIVE OPTIONS CONSIDERED**

5.1 A number of approaches could be used for determining the maximum charge as follows:

5.2 a. Standard residential rate

- This option was proposed in the consultation but was challenged on the basis that it didn't take account the cost of living in non-residential care and it would see an increase which was felt to be unacceptable.

5.3 b. Care Home rate less a cost-of-living deflator

- This takes the benefits of option 1 while including a mitigation to cover the different costs of living between the two environments
- One issue with this is identifying what value to adopt as the deflator. Cost of living figures set by government for other purposes have significant variability depending on circumstances
- A specific deflator would also be subject to challenge as it would not take into account the other tangible and intangible differences between residential and non-residential care

5.4 c. A flat figure

- This option would fully remove any link between the maximum charge and the residential care rate which would also eradicate the risk of challenge from comparing different forms of care
- This option would create a cap with no link to care costs and which would therefore feel arbitrary and which would move the Council away from the statutory guidance.

6. REASONS FOR RECOMMENDATIONS

- 6.1 Setting a maximum charge as maximum percentage of care home charges in the local area is directly in line with Care Act statutory guidance
- 6.2 This approach ensures that whilst a link exists between the maximum charge for non-residential care and the standard residential care rate, the link is loose enough to reflect the fundamental differences between residential care and non-residential care...
- 6.3 This approach takes account of the consultation feedback this year which was a significant increase to the maximum charge as proposed at the time would not be acceptable and that a future maximum charge should take account the additional cost of living for people not in residential care
- 6.4 Calculating the maximum charge in this way is simple, predictable and transparent.