

	<p>ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER</p> <p>28 February 2017</p>
<p style="text-align: right;">Title</p>	<p>Changes to the Council’s Fairer Contributions Policy</p>
<p style="text-align: right;">Report of</p>	<p>Commissioning Director for Adults and Health</p>
<p style="text-align: right;">Wards</p>	<p>All</p>
<p style="text-align: right;">Status</p>	<p>Public</p>
<p style="text-align: right;">Enclosures</p>	<p>A - Revised Fairer Contributions Policy B - Equalities Impact Analysis C - Consultation Findings Report</p>
<p style="text-align: right;">Officer Contact Details</p>	<p>Alan Mordue – Senior Project Manager alan.mordue@barnet.gov.uk 020 8359 2596</p>

<p>Summary</p>
<p>This report seeks approval for the following changes to the Council’s Fairer Contributions Policy:</p> <ol style="list-style-type: none"> 1) Raising the maximum charge rate for home care services from £13.84 per hour to the lowest hourly rate the Council pays to its strategic home care providers (currently £15.28 per hour). This will start on 3 April 2017 and be reviewed annually. 2) Raising the maximum charge for day care to reflect the actual amounts the Council pays to its day care providers for an individual’s day care. This will start on 3 April 2017 and be reviewed annually. 3) Including the full amount of higher rate care component of the Disability Living Allowance and higher rate of Attendance Allowance as income when determining how much someone can afford to contribute towards the cost of their care. This

would start on 3 April 2017.

- 4) Treating Personal Independence Payments daily living component (standard and enhanced rate) in full as income. This would start on 3 April 2017.
- 5) Aligning the Council's guaranteed minimum income within our Fairer Contributions Policy to the Department of Health's guaranteed minimum income or the current level as set out in the Fairer Contributions Policy (2016/17) whichever is the highest.

Decisions

- 1. That the proposal to change the Council's Fairer Contributions Policy as described in this document be approved.**
- 2. That the revised Fairer Contributions Policy attached as Appendix A takes effect from 3 April 2017.**
- 3. That increases in contributions for individuals adversely affected by these changes will be capped at £20 per week for the first nine weeks following the increase to provide transitional support.**

1. WHY THIS REPORT IS NEEDED

1.1 Changes to the Fairer Contributions Policy

- 1.1.1 Residents in receipt of social care are assessed to determine the financial contribution that they should make to the cost of their care. For community based services, there is national legislation (Care Act 2014, Care and Support (Charging and Assessment of Resources) Regulations 2014) and statutory guidance that provides a framework within which local authorities must determine their local policies.
- 1.1.2 Barnet's Fairer Contributions Policy has largely remained unchanged since 2011. In the last five years there have been a number of changes which directly or indirectly impact on contribution policies including changes to welfare benefits, new social care legislation and the increased costs of provision of care services.
- 1.1.3 The proposed changes affect fees and charges for community based (non-residential) care services, which include: home care; day care; supported living; extra-care housing; direct payments and all other services that are financially assessed under the Fairer Contributions Policy.
- 1.1.4 To support people who would be adversely affected by these changes it is proposed that the increases in contributions for an individual would be capped to £20 per week for the first nine weeks following the increase.

- 1.1.5 The [Adults and Safeguarding Committee, at its meeting on 10th November 2016](#), resolved to delegate authority to the Adults and Health Commissioning Director to progress the plans for the proposed changes to the Council's Fairer Contributions Policy, and in consultation with the Chairman of the Committee agree the Policy taking into account the feedback from the public consultation and the Equalities Impact Assessment.
- 1.1.6 A public consultation was open for 12 weeks, from 14 November 2016 to 6 February 2017. A total of 229 questionnaires and responses have been completed by the general public and interested groups. Drop-in sessions were attended by 27 people and the one meeting with a community and voluntary sector organisation that the Council was invited to attend had 8 people present. The feedback from the public consultation is largely in disagreement with the proposals.
- 1.1.7 The negative feedback received in the consultation has been given due consideration. Whilst there is a proposal in the Council's Medium Term Financial Strategy to not increase Council Tax in 2017/18, it also proposes applying the Social Care Precept at the maximum of 3%¹. This has been taken into account in assessing the Council's financial resources available for adult social care. Taking all this into account, it is considered that alternative savings proposals (for example further cuts to preventative services) would have a greater adverse impact than implementing these proposals.
- 1.1.8 Consideration to increases in Council Tax had already been made in compiling the Medium Term Financial Strategy. There are contingencies within the budget so that if an unacceptable equalities impact is found then decision makers may make an alternative decision but it is felt that the changes to the Fairer Contributions Policy is the right balance .

1.2 **Raising the current maximum rates for home care**

- 1.2.1 Currently, the maximum amount someone using home care services will pay as their assessed contribution is £13.84 per hour. In 2011 this amount reflected the average cost of providing home care services.
- 1.2.2 The proposed change is to raise the maximum rate for home care services from £13.84 per hour to the lowest hourly rate the Council pays to its new providers (currently £15.28 per hour). In 2016/17, the amount that someone who pays the maximum contribution and uses home care services will pay would increase by £1.44 for every hour of home care they actually receive. This will take effect from 3 April 2017 and be reviewed annually to ensure that the rates used in future continue to reflect what the Council actually pays

¹ A recommendation on the proposals for Council Tax and the Social Care Precept will be made to Full Council Committee on 7 March 2017.

home care providers. It is estimated that an increase would be paid by approximately 188 individuals.

1.2.3 The quantitative responses to the public consultation showed that opinion was fairly evenly split on this proposal. The qualitative responses showed that people who agreed thought that it was fair and people who disagreed thought that it would result in financial hardship. However, the qualitative responses also showed that some people who agreed thought that the proposal would better reward carers and improve the quality of care. It should be noted that the proposals when implemented would bring the rate charged to service users in line with the rates paid to providers. The qualitative responses may indicate that some respondents considered the proposals to be about provider payment rates rather than service user contribution rates. If this is the case, then it is possible that the majority of respondents would disagree with the proposal.

1.3 **Raising the current maximum rates for day care**

1.3.1 The proposed change is to raise the maximum charge for day care services to reflect the actual amounts that the Council pays the individual's care provider for their day care.

1.3.2 Currently, the maximum contribution that someone using day care from most of the council's providers would pay is £37 per day. This amount has not changed since 2011. However, some individuals are currently asked to contribute up to £95 per day for services meeting complex needs.

1.3.3 Unlike the proposed change to the home care maximum charge, the day care maximum charge would be different for different people depending on their provider and the day care service provided. Most people's day care costs are about £49 per day; however, there is range from £20 to £200 per day.

1.3.4 It is estimated that an increase would be paid by approximately 33 individuals. This will take effect from 3 April 2017 and be reviewed annually to ensure that the rates used in future continue to reflect what the Council actually pays day care providers.

1.3.5 The quantitative responses to the public consultation showed that slightly more respondents disagreed than agreed. The qualitative responses showed that people who agreed thought that it was fair and people who disagreed thought that it would result in financial hardship. The qualitative responses showed that some people who agreed considered that the proposal would lead to better pay for staff and that this would in turn improve the quality of care and this has been taken into account in considering the views of those consulted.

1.4 Removing a partial disregard on disability benefits

- 1.4.1 The Fairer Charging (England and Wales) Statutory Guidance², required councils to apply a partial disregard to some disability benefits paid to people with care needs. This disregard applied to Attendance Allowance (AA) and Disability Living Allowance (DLA). Both of these benefits are paid when someone has been assessed as needing care by the Department for Work and Pensions (DWP). This guidance was superseded by the Care Act 2014 and the Care and Support Statutory Guidance. Until now, the Council has been applying the Fairer Charging Statutory Guidance and has consulted on adopting policies following Care Act 2014 and Care and Support statutory Guidance.
- 1.4.2 The amount of the disregard for both benefits is currently £27.20 per week (2016/17 rates). For people aged 65 or over, the disregard of £27.20 is the difference between the lower rate (£55.10 per week) and higher rate (£82.30 per week) component of AA. For people aged under 65, the disregard of £27.20 is the difference between the middle (£55.10) and higher rate care (£82.30) component of DLA.
- 1.4.3 Personal Independence Payments (PIP) are currently being introduced as a benefit to replace DLA. PIP is paid at a standard rate (£55.10) and an enhanced rate (£82.30). The rate paid depends on the individual's ability to undertake activities related to daily living. The Government's aim is for everyone in receipt of DLA to have moved to PIP by 30 September 2017.
- 1.4.4 The difference between the higher and lower rate generally comprises the amount that is paid in respect of night-time care. Therefore any night-time care not being provided/commissioned by the Council should be claimed by the service user as a disability related expenditure which if eligible will be taken into account as allowable expenditure.
- 1.4.5 The Care Act 2014 and the Care and Support Statutory Guidance superseded the Fairer Charging (England and Wales) Statutory Guidance and stated that councils may take into account all benefits as income with certain specific exceptions. It is no longer required that councils automatically apply the partial disregard of DLA (care component) and AA where the Council is not providing or arranging care for those with assessed night-time care needs. There continues to be a power to apply this disregard but the new guidance allows councils to count in full the daily living component of PIP as income when

²Statutory guidance issued under section 7 of the Local Authority Social Services Act 1970: Fairer charging policies for home care and other non-residential social services: guidance for Councils with Social Services Responsibilities (September 2003)
(http://webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh_4117930)

assessing contributions. In effect there is no longer a requirement to apply the partial disregard of £27.20 (2016/17 rates).

1.4.6 The proposed change is to remove the partial disregard of £27.20 (2016/17 rates) for both the higher rate attendance allowance and the higher rate care component of DLA regardless of whether or not the Council provides or arranges the night-time care services for those with assessed eligible care needs. Removing this disregard means that the Council would treat in full AA and DLA (care component) as income when financially assessing contributions towards care. The Council would also treat PIP (standard and enhanced daily living component) in full as income.

1.4.7 It is not possible at this stage to estimate exactly how many people this change would affect because of the range of factors that have to be taken into account for each individual. There are currently³ approximately 870 people who may be affected:

- 530 people who make contributions and receive the higher rate of DLA or AA
- 350 people who do not currently make any contributions and receive the higher rate of DLA or AA.

1.4.8 This will take effect from 3 April 2017 and be reviewed annually to ensure that the rates used in future continue to reflect what the Council actually pays day care providers.

1.4.9 Public consultation showed that many more respondents disagreed than agreed. People who agreed thought that it was reasonable and people who disagreed thought that it was unfair, not affordable and would impact on disabled people's quality of life.

1.5 **Changing the policy on guaranteed minimum income**

1.5.1 Under the Council's Fairer Contributions Policy, the amount someone contributes towards their care is based on their income and outgoings. The lowest level of income that someone is expected to live on to meet everyday living costs is called the guaranteed minimum income. This is used to protect how much disposable income people have after contributing towards the cost of their care. Under the Council's current Fairer Contributions Policy the guaranteed minimum income is set at the existing benefits rates plus an additional 25%.

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- 1.5.2 Every year the Council's guaranteed minimum income is normally increased in accordance with Department of Health guidance. In 2016, for the first time, the Department of Health maintained its guaranteed minimum income at 2015/16 levels even though some benefits increased. Under its Fairer Contributions Policy the Council assessed contributions using the new benefits rates plus an additional 25%. This resulted in a gap between the Department of Health's guaranteed minimum income and the Council's guaranteed minimum income. This led to the Council receiving lower contributions of around £100,000 in 2016/17 than if it had followed Department of Health guidance.
- 1.5.3 It is proposed to align the Council's guaranteed minimum income within its Fairer Contributions Policy to the Department of Health's guaranteed minimum income (which is set in April every year) or the Council's current level of £194.50 whichever is the highest. This will take effect from 3 April 2017 and be kept in line with the Department of Health's guidance which is usually updated annually in January or February to take effect in the following April.
- 1.5.4 The Department of Health confirmed in early February 2017 that their guaranteed minimum income threshold would be frozen again at the 2015/16 rate.
- 1.5.5 Public consultation showed that many more respondents disagreed than agreed. People who agreed thought that it was fair and people who disagreed thought that it was unfair and would cause financial hardship.

2. REASONS FOR DECISIONS

- 2.1 The current Fairer Contributions Policy does not reflect changes to welfare benefits, new adult social care legislation, market changes and increased charges to the Council from the care sector. The proposed changes update the Fairer Contribution Policy:
- in line with welfare benefits changes and guidance provided by the Department of Health
 - in line with changes in legislation
 - in line with increases in costs of care provision.
- 2.2 It is agreed that the proposed increased charges for home and day care are capped at £20 per week for nine weeks to allow those people most affected time to make changes to their financial plans.

2.3 The decision to proceed with the proposal considers the adverse impact and mitigations on the groups affected, as set out in Section 5.5, against the need for the Council to manage significant budget reductions and adult social care financial pressure of £7.4m (including existing overspend and future projected demographic growth). Whilst there is a proposal in the Council's Medium Term Financial Strategy to not increase council tax in 2017/18, it also proposes applying the social care precept at the maximum of 3%. This has been taken into account in assessing the Council's financial resources available for adult social care. Consideration to increases in Council Tax had already been made in compiling the Medium Term Financial Strategy. There are contingencies within the budget so that if an unacceptable equalities impact is found then decision makers may make an alternative decision but it is felt that the changes to the Fairer Contributions Policy is the right balance.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 3.1 One alternative option is not to update the Fairer Contributions Policy at all. This would require alternative and equivalent savings proposals to be found in order to deliver a balanced budget. This would adversely impact the Council's ability to continue providing other services that residents value and rely on.
- 3.2 Another alternative option would be to apply a smaller selection of the proposed changes to the Fairer Contributions Policy. This is not advised for the same reasons as outlined above.
- 3.3 The Council has undertaken a full public consultation on the 2017/18 budget proposals which include proposals for Council Tax and the Social Care Precept. A recommendation on the proposals for Council Tax and the Social Care Precept will be made to Full Council Committee on 7 March 2017.

4. POST DECISION IMPLEMENTATION

- 4.1 When this decision has been approved, the revised Fairer Contributions Policy attached as Appendix A will be applied from 3 April 2017. Implementation will involve:
- writing to all individuals financially assessed under the policy with the changes to the policy and the impact for them through their annual financial contribution review
 - communicating information with other stakeholders and people affected by the decision
 - updating publications and the Council's web site
 - making changes to the care management IT system
 - applying the changes.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 The 2015 – 2020 Corporate Plan's has the principles of fairness, responsibility and opportunity at the heart of the Council's approach.

5.1.2 This change supports the principle of fairness in that it sets out a fair approach to assessing financial contributions.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 Modelling on the current financial assessment data indicates that the increased income from this change will be approximately £290,000 in 2017/18.

5.2.2 The increased income is reflected in the proposed 2017/18 MTFS as line '12 - Update the Council's Fairer Contributions policy'.

5.3 Legal and Constitutional References

5.3.1 The [Care Act 2014, Care and Support \(Charging and Assessment of Resources\) Regulations 2014](#) provides the overall framework within which local authorities must determine their local policies.

5.3.2 [The Care Act 2014 Care and Support Statutory Guidance \(Updated 9 December 2016\)](#) Annex C: Treatment of Income states that local authorities may take most of the benefits people receive into account. It states that the mobility component of Disability Living Allowance and the mobility component of Personal Independence Payments must be fully disregarded. A partial disregard of Disability Living Allowance (care component) and Attendance Allowance is no longer a requirement in the new Statutory Guidance. The new Statutory Guidance allows councils to count in full Personal Independence Payments as income when assessing contributions.

5.3.3 The Terms of Reference of the Adults and Safeguarding Committee are set out in the [Council's Constitution, Part 15, Responsibility for Functions](#).

5.3.4 Under paragraph 4.3.9 of the [Council's Financial Regulations](#), changes to fees and charges are approved by the Theme Committees.

5.3.5 [Responsibility for Functions, Appendix B \(Scheme of Delegated Authority to Officers\)](#), states that the Commissioning Director, Adults and Health, has authority for exercising the functions of the council with regard to the delivery of those functions in respect of adults.

5.3.6 Authority to implement this decision was given by the [Adults and Safeguarding Committee at its meeting on 10th November 2016](#), where it resolved:

That the Adults and Safeguarding Committee agreed to delegate authority to the Adults and Health Commissioning Director to progress the plans for the proposed changes to the Council's Fairer Contributions Policy, and in consultation with the Chairman of the Committee agree the Policy taking into account the feedback from the public consultation and the Equalities Impact Assessment.

5.4 Risk Management

5.4.1 The main risks identified are:

- If people choose to reduce or cancel care and support as a result of the proposal being implemented then this may have an adverse impact on their health and wellbeing.
- If people decide to stop receiving care and support as a result of the proposal being implemented because they do not wish to pay more for it then this could impact on their carer(s), family members and/or friends who may have to give additional care and support

5.4.2 The following mitigating actions might be expected to provide individual support in such circumstances:

- as part of the implementation, everyone directly affected will be financially reviewed and this will include a benefits check and an opportunity to ensure all of their allowable disability related expenditure is taken into account. Increases will be capped at £20 per week for the first 9 weeks to allow people to plan and reorganise their finances.
- people who do not intend to continue using a service as a result of the changes will be offered a strengths-based assessment which may identify less expensive community-based options which contribute towards their independence. In addition, their carers would be offered a carer's assessment – currently carers support services are not charged for in Barnet
- a review and appeals procedure is in place for cases where people disagree with their financial assessment
- there is a discretion to waive or reduce the amount of the assessed contribution. This is exercised on a case by case basis and is subject to local service procedures.

5.4.3 If this proposal is negatively received then it may negatively affect the Council's reputation. The financial challenges facing the Council are well

known and this proposal is in line with an increasing numbers of councils who have made or who are consulting on similar changes.

5.5 Equalities and Diversity

5.5.1 The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies **to have due regard** to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- advance equality of opportunity between people from different groups
- foster good relations between people from different groups.

5.5.2 The protected characteristics are:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation.

5.5.3 The broad purpose of this duty is to integrate considerations of equality into day business and keep them under review in decision making, the design of policies and the delivery of services.

5.5.4 An initial Equalities Impact Analysis (EIA) on the impact of the proposed changes to the Council's Fairer Contributions Policy was undertaken on 13 October 2016. The EIA was updated following the public consultation. It is attached as Appendix B.

5.5.5 The EIA has been considered in full. The major equality aspects are as follows:

- Increases in charges for home care will disproportionately affect older adults, those living with disability, females and people who are single, widowed or a surviving civil partner. When compared to the Barnet population as a whole, these groups are over represented as users of home care services.
- Increases in charges for day care will disproportionately affect older adults, those living with disability, females and people who are single, widowed or a surviving civil partner. When compared to the Barnet population as a whole, these groups are over represented as users of day care services.
- Removing the partial disregard on disability benefits will disproportionately impact older adults, those living with disability, females and people who are single, widowed or a surviving civil partner. These groups are over represented as people who use services and are in receipt of disability benefits when compared to the Barnet Population as a whole

The effect on all these groups is that, depending on their personal circumstances, they will have to make higher contributions, as will everyone affected by the proposals. The overall assessment in the EIA is that there will be minimal adverse impact.

5.5.6 The following will help to mitigate against the adverse effects of this change:

- everyone directly affected will be financially reviewed and this will include a benefits check and an opportunity to ensure all of their allowable disability related expenditure is taken into account
- a reviews and appeals procedure is in place in cases where people disagree with their financial assessment
- any increases to contributions will be capped at £20 per week for nine weeks to allow people to plan and reorganise their finances.
- if the person does not intend to continue using a service as a result of the changes then they will be offered a strengths-based assessment
- there is a discretion to waive or reduce the amount of the assessed contribution. This is exercised on a case by case basis and is subject to local service procedures.

5.6 Consultation and Engagement

5.6.1 The formal public consultation on the proposed changes to the Council's Fairer Contributions Policy was open for 12 weeks from 14 November 2016 to 6 February 2016. The consultation was open to all Barnet residents, anybody using adult social care services in Barnet, their carers and families and those that work with adults in the borough.

5.6.2 A consultation pack was sent to approximately 3,000 people who use the Council's community care services and letters sent to approximately 300 carers. Respondent's views were gathered via an online survey and returned paper questionnaires. A total of 229 questionnaires and responses were received by the Council when the consultation closed.

5.6.3 The full consultation findings are attached as Appendix C.

6. BACKGROUND PAPERS

6.1 [Adults and Safeguarding Committee, 10 November 2016: Business Planning Report](#). The following was resolved:

- That the Adults and Safeguarding Committee agreed to the commencement of formal public consultation on the proposed changes to the Council's Fairer Contributions Policy to start in November 2016.
- That the Adults and Safeguarding Committee agreed to delegate authority to the Adults and Health Commissioning Director to progress the plans for the proposed changes to the Council's Fairer

Contributions Policy, and in consultation with the Chairman of the Committee agree the Policy taking into account the feedback from the public consultation and the Equalities Impact Assessment.

7. DECISION TAKER'S STATEMENT

7.1 *I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations.*

8. OFFICER'S DECISION

I authorise the following action

1. That Council's Fairer Contributions Policy is changed as described in this document.
2. That the Fairer Contributions Policy attached as Appendix A takes effect from 3 April 2017.
3. That increases in contributions for individuals adversely affected by these changes will be capped at £20 per week for the first nine weeks following the increase to provide transitional support.

Signed **Dawn Wakeling**
Adults and Health Commissioning Director

Date **28 February 2017**
