

	<p style="text-align: center;">Executive 11 February 2013</p> <p style="text-align: center;">Report from the Director of Adult Social Services</p>
<p style="text-align: right;">Wards affected: ALL</p>	
<p style="text-align: center;">A review of the Fairer Contributions Policy for Adult Social Services and related frameworks</p>	

Not for publication

Appendix 1 is not for publication as it relates to the following category of exempt information as specified in Paragraph 5 of Part 1 of Schedule 12A to the Local Government Act 1972:

“Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.”

1.0 Summary

- 1.1 Local authorities have discretionary powers to charge adult recipients of non-residential services. The decision as to whether or not to charge and how to charge are matters for local choice subject to public law principles and should comply with the Department of Health’s “Fairer Charging” and “Fairer Contributions” guidance.
- 1.2 This guidance was updated and issued by the Department of Health on the 29th October 2012 to take effect immediately.
- 1.3 Based on this revision, the department took the opportunity to review its current charging policy and related practice frameworks.
- 1.4 Following on from this review, this report recommends that Members agree to adopt a revised policy, namely the Brent Council’s Fairer Contributions Policy (the ‘policy’) and related practice frameworks to ensure that practice in Brent is in line with the Department of Health’s Guidance and is consistently applied across all residents of Brent.

2.0 Recommendations

- 2.1 To agree to adopt the Fairer Contributions Policy (attached at appendix 2). The main changes which will be introduced with the adoption of this policy are outlined in paragraph 3.3.
- 2.2 To agree the revised practice frameworks included within the policy in relation to:
- Appeals Procedure
 - Arrangement of Funerals
 - Protection of property
 - Debt collection protocol
- 2.3 To agree to adopt the Deferred Payment policy
- 2.4 To agree that payments to Carer's are continued to be outside the scope of the Fairer Contributions Policy, as outlined in paragraph 3.3.14.
- 2.5 To agree to temporary respite care of up to 8 weeks in some circumstances being financially assessed using the Fairer Contributions Policy rather than CRAG.
- 2.6 To agree that the Executive delegate authority to the Director for Adult Social Services to nominate named officers to apply to the Probate Registry on behalf of the Council for grants of probate and letters of administration when recovering debts owed in relation to adult social care provision.
- 2.7 To agree an implementation date of 1st March 2013

3.0 Detail

3.1 Background

- 3.1.1 In order to achieve greater consistency in the charging policies of local authorities, the Department of Health published "Fairer Charging for Home Care and other non-residential Social Services" - Guidance in September 2003. This was updated and re-issued in October 2012. This guidance required that, where Council's choose to charge for non-residential care services, they did so subject to a broad framework to ensure they are fair and operate consistently with the council's overall social care objective.
- 3.1.2 In Brent, the last major review of charges for non-residential services was implemented in October 2011. Increases in charges since then have been related to the rate of inflation and increases in state benefits.
- 3.1.3 Under the current policy, income from the contributions of service users constitutes about 18% of the funding available for non-residential care services locally, the remaining 72% of care costs are being met from government grant and Council Tax. Service users' contribution to non residential care costs, in 2011/12, was £3.0m (12/13 forecast £3.0m). All contributions are subject to a means test (as set out within the policy) and as a result in 2011/12 34% (12/13 forecast 37%) of service users did not

contribute to their care costs due to their low income, 5% (12/13 forecast 6%) contributed below £10 per week, 29% (12/13 forecast 27%) contributed between £10 and £49, 27% (12/13 forecast 23%) contributed between £50 and £99.99, 5% (12/13 forecast 6%) contributed between £100 and £199.99 and 1% (12/13 forecast 1%) at £200 or above per week. Only 18% (12/13 forecast 19%) paid the full cost of their care, with 82% of service users receiving a subsidy towards the cost of their care.

3.1.4 Guiding Principles - there are 5 principles that support the council current and proposed amended policy, namely to make sure that the Council:

- i. Recovers contributions from service users for non residential services based on the service user's ability to pay. It is intended that no one would be put in a position of financial hardship as a result of this charging policy as a maximum contribution will be set at either the full cost of the services provided or at a level that affords the service user a basic living allowance whichever is the lowest.
- ii. Has a clear and transparent contributions policy which is easy to understand and is consistently applied to all service users, taking into account their individual circumstance and needs.
- iii. Provides an early notification to service users of their contribution to non-residential care costs.
- iv. Ensures that service users have an opportunity to maximise welfare benefits thus maximising their ability to contribute to their non-residential care costs.
- v. Ensures administrative efficiency and convenience for service users (including netting of service user contributions at the point of resource allocation for personal budgets).

3.1.5 It is intended for this policy to assist with delivering the Council's vision to promote service users' independence, choice and control over the support they may receive from the Council.

3.2 The rationale for reviewing the current policy

3.2.1 The Department of Health revised and reissued the "fairer charging policies for home care and other non-residential Social Services" guidance for councils.

3.2.2 Furthermore, Adult Social Services have been reviewing all their procedures and practices and have written practice frameworks to lay the foundations of roles and functions, namely

Appeals Procedure
Arrangement of Funerals

Protection of property
Debt collection protocol
Deferred Payment Policy

- 3.2.3 These practice frameworks ensure that policies and procedures are in line with the statutory responsibilities of the council and to ensure consistent approach is taken by all staff.

3.3 Proposed Changes

- 3.3.1 The following changes are proposed to the current contributions policy:

- 3.3.2 **Respite Care** - it is proposed that service users are required, subject to the financial assessment under this policy, to contribute towards any respite services. Currently the charging regime is under CRAG. This change will be fairer as the associated costs of living permanently in the community will be taken into account. It will also result in more efficient practices as it will eliminate the need to reassess the services user each time they receive temporary respite provision.

- 3.3.3 Respite care is often defined as a service for the carer. In fact the service is provided directly to the disabled person and, as it often involves the provision of personal care to the disabled person, it should be noted that it can not lawfully be provided to meet the needs of the carer. As such it is advisable to amend care management practice to ensure that the need for respite care is documented within the service users' needs assessment as a need to provide their carer with regular respite (if it is a sitting service within the person's home this can be provided under s29 National Assistance Act 1948 and s2 CSDPA, if it is a short break in residential care then it is provided under s21 NAA). The need for a carer to receive respite could then be recorded within the carer's assessment as a met need because of the community care package provided to the disabled person. This will give greater clarity to both the carer and the disabled person as it explains why it is the disabled person's resources that are relevant for the purposes of assessing contributions towards the cost of the provision.

- 3.3.4 This is important if we intend, as we do, to charge for such services our contributions policy is clear that Services provided directly to carers (under section 2 Carers and Disabled Children's Act 2000) to support them in their caring role will not be charged for. [4.2.a of the Contributions Policy.] However, the impact of this change in practice would still allow for some discretion. Where the care manager is satisfied that the provision of a sitting service in the home would not require any provision of personal care to the disabled person, they could record this as a service for the carer and therefore excluded from any charge. This would have to be very carefully set out within the carer's support plan and reviewed if the sitting service reported that they had to regularly provide personal care whilst performing this service.

- 3.3.5 In addition, because it is intended to collect a contribution from the service user towards the cost of respite it should be clear within the needs

assessment that this is not considered a package of intermediate care. As any intermediate care must be provided free for any period up to 6 weeks [Community Care (Delayed Discharges etc) Act (Qualifying Services)(England) Regulations 2003].

3.3.6 Funerals- it is proposed that where other parties have funding to pay for a funeral but are unable to arrange, the council will arrange and raise an invoice for the below amounts and collect payment in advance of the funeral being arranged.

- Cremation: £1,400.00
- Burial (Shared Grave): £1,700.00
- Burial (Private Grave): £3,325.00

3.3.7 Protection of Property – it is proposed that where Parties are unable to arrange the protection of property and boarding of pets but service users have the funds to pay for the service, the council will raise an invoice for the below amounts:

Protection of Property (not movable property) Attending the property on a monthly basis or more frequently if required.	£300.00 per month
Storage costs for movable items	Full cost charged to the Council
Ad hoc direct expenses such as lock smiths etc	Full cost charged to the council.
Kennel Costs	Full cost charged to the Council.

3.3.8 Earned Income – It is proposed that the Council will adopt a consistent policy for assessing earned income across those in receipt of social care be it residential or domiciliary care. At present the Guidance offered by the Department of Health seems inconsistent between these two services. It is proposed that earned income will be assessed irrespective of the nature of the service provided, but that careful consideration of an individual's circumstances will be considered to ensure that this does not cause hardship or create disincentives to work. As such it is proposed to adopt the calculation methodology as advised by the Charging for Residential Accommodation for domiciliary services. This means people with an earned income will have this taken into account when being financially assessed for services provided under this policy.

3.3.9 Debt Recovery Protocol – it is proposed that the council adopts a debt recovery protocol which is slightly amended from the Corporate policy to take into account of the vulnerability, age and or frailty of those in receipt of residential and non-residential services. The protocol has been devised to

ensure that specific consideration is given throughout the process to the additional vulnerabilities of this specific client group

3.3.10 Work undertaken by the ASC Business Support Unit and Legal Service on the historical debts owed by those in receipt of social care services has identified a small number, but a significant debt where the Council are unable to presently recover the monies owed because the service user has died and there is no-one available or willing to act as executor and obtain a grant of probate. Whilst there is scope for a creditor to apply for a grant of probate to the Probate Registry to enable to carry out the administration of the estate in order to recover debt monies owed, the Probate Registry requires a resolution nominating a named officer to apply for the Grant of Probate or letters of administration on behalf of the Council. Without this the Council would be unable to recover these debts and would have to write off any debt where these circumstances arise. This is why Members are requested to approve the recommendation set out in paragraph 2.6 above. As authority to nominate an officer to apply for the grant of probate / letters of administration will be delegated to the Director of Adult Social Services, it will not be necessary to seek the Executive's approval every time it is necessary to nominate an officer in the event that it is necessary to recover debt monies from the estate of a deceased service user.

3.3.11 **Appeals Procedure** – it is proposed that the council adopts the revised appeals procedure as all service users of Adult Social Services who are required to contribute towards their care have a right to ask for a review of their contributions if they, or someone acting on their behalf believe that:

- The contribution is too high
- Information given may have been misrepresented
- Some information may have been missed
- A change in a service users circumstances
- A mistake may have been made in applying the contributions policy, or
- If the service user is unhappy with how the policy has been applied.
- Calculation is inaccurate and unfair

3.3.12 This replaces the old appeals and waiver procedure and sets out a two stage process:

- Informal Stage
- Contributions Review Panel – this panel will consist of one member of finance and two non finance officers and will hear appeals following the informal review by officers.

3.3.13 It is envisaged that this appeals process will reduce the amounts of formal complaints raised for the department, as a majority of current finance complaints are resolved following a review of the case by an officer and explanation or face to face meeting with a senior officer.

3.3.14 **Carers** – it is proposed that although the Department of Health guidance states that the authority can request Carers contribute towards their support, the department feels this will be counterintuitive as carers provide a vital service to those they care for, often at significant social or financial disadvantage. Furthermore, where this support withdrawn it would likely have a significant impact on the demands for formal social care made to the Council and associated increased costs.

3.3.15 **Income Disregard** – it is proposed that the following income streams are disregarded

- all Guaranteed Income Payments (GIPs) made under the Armed Forces Compensation Scheme (AFCS);
- the part of Attendance Allowance (AA), Disability Living Allowance (care component) (DLA), Constant Attendance Allowance (CAA) and Exceptional Severe Disability Allowance (ESDA) that covers care at night where the council purchases no element of night care

3.3.16 In addition to the above, if a service user's expenditure related to night care exceeds the level of the night care element of AA, DLA, CCA or ESDA, any such excess amount must be taken into account when assessing the service user's Disability Related Expenditure.

3.3.17 **Deferred Payment protocol** – It is advised that the Council adopt the appended Deferred Payment Protocol so that the Council has a clear policy as to when Deferred Payments will be made available and how individuals can apply. This should ensure consistent practice and improved management of debts owed to the Council by those in receipt of residential care. As attached at appendix 3.

4.0 Financial Implications

4.1 The proposed changes are expected to have a limited financial effect on the Council. However the changes introduced by the 2012 Department of Health's amendments to the guidance, namely that Local Authorities no longer include Guaranteed Income Payments (GIPs) made under the Armed Forces Compensation Scheme (AFCS) may have a very limited impact as a result of lost income. In recognition of this the Department of Health has made available additional funding until 2014/2015. It is proposed that Brent will receive an additional £2,363 to minimise any financial implications of adopting this requirement.

4.2 As per the old policy all services users will be expected to contribute to the cost of these services just like any other Community Care Services, and the amount payable will be determined by the service user's ability to pay. Importantly however the implementation of this policy will ensure more effective collection of the service user's contribution as their personal budget will be provided net of their contribution.

- 4.3 The council may still be required to ensure recovery of a contribution from the service users and including, in some cases, having to incur legal costs to pursue individual service users for large debts.
- 4.4 Contributions to non-residential care costs are subject to the income profile of service users and may therefore fluctuate over time as a result of changes in national and personal financial and economic situations. The policy will therefore be subject to an annual review and update.

5.0 Legal Implications

- 5.1 Under s.17 of the Health and Social Services and Social Security Adjudications Act 1983 [HASSASSAA] a local authority has a power to charge for non-residential services provided under s29 NAA, s2 CSDPA 1970, s45(1) NHSA, s8 Residential Homes Act 1980 and s2 Carer and Disabled Children Act 2000 where the charge is reasonable and the service user has means to pay. Any charges must comply with Section 47(4) of the Community Care Assessment Directions 2004 which requires that *"the local authority must consult the would be service user ... take all reasonable steps to reach agreement with the person on the Community Care Services ...and must provide information ...about the amount of the payment (if any) which the person will be liable to make in respect of the Community Care Services which they are considering providing to him."*
- 5.2 The 'Fairer Charging Policies for Home Care and Other Non-residential Social Services' Guidance issued by the Department of Health in 2003 allowed local authorities discretion as to the design of their contribution policies but did stress that an authority should have regard to the effect of any charge on a user's net income, which should not be reduced below the level of Income Support plus 25%. Further Guidance was issued in 2009, 2010 and 2012 in respect of Fairer Contributions and the new policy takes this guidance into account.
- 5.3 The Contributions policy if implemented would accord with the obligations as set out above and promote greater equality of service for those in receipt of non-residential services.

6.0 Diversity Implications

- 6.1 The Equality Act 2010 section 149 requires the Council, when exercising its functions to have 'due regard' to the need to eliminate discrimination, harassment and victimization and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' and those who do not share that protected characteristic. Under the legislation there are eight protected characteristics including age, gender, disability and race. This policy will primarily impact on those with the protected characteristics of age and

disability. A full Equalities Impact Assessment has been undertaken and information resulting from the consultation undertaken in 2011 has been used in this analysis.

- 6.2 The proposed changes to the Fairer Contributions Policy will promote Service Users' independence, choice and control over the support they may receive from the Council. The resulting service users' contribution, using the new policy, will also take into account service users' means and ability to contribute to their care costs and promote social inclusion for all. The new policy will be applied consistently across all recipients of non-residential care services. Whilst it is not believed that it will have any adverse impact it is likely that the implementation of the policy will impact on those within the protected characteristics of age and disability. A full Equality Impact Assessment is attached to this report as Appendix 4 and Members are respectfully asked to consider this document and its conclusions so that they are in a position to pay due regard to their duty under s149 Equality Act 2010 when reaching a decision on this policy.

Background Papers

- 1) Department of Health's Fairer Charging for Home Care and other non residential Social Services Guidance – October 2012
- 2) Brent Council Fairer Contributions Policy October 2011

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