



Executive
19 September 2011

**Report from the Director of
Adult Social Services**

Wards affected:
ALL

**A review of Fairer Contributions Policy for Adult Social
Services**

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 must comply with the Department of Health's 'Fairer Charging' guidance, issued in 2003.
- 1.2 In 2009 the Department of Health published a consultation paper on proposed procedures for Councils in England to use when determining what contribution, if any, a person receiving a personal budget should make towards it. Following the consultation, a new Fairer Contributions Guidance was published. This complements the 'Fairer Charging' Guidance. All Councils offering personal budgets are expected to implement the new guidance.
- 1.3 Following consultation with service users, this report recommends that Members agree to adopt a revised policy, namely the Brent Council's Fairer Contributions Policy [the 'policy'] which will ensure that practice in Brent is in line with Department of Health's Guidance.

2.0 Recommendations

- 2.1 To agree to adopt the Fairer Contributions Policy (attached at **Appendix A**). The main changes that will be introduced with the adoption of this policy are outlined in paragraph 5.1 below).
- 2.2 To agree that the new policy should begin to be implemented from 1st October 2011.

3.0 Detail

3.1 Background

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 required that, where Council choose to charge for non-residential care services, they did so subject to certain minimum levels. Local Authorities are specifically prohibited from charging for services provided under section 117 Mental Health Act 1983 or for charging for any services provided to those suffering from Creutzfeldt Jacob Disease. Furthermore charges cannot be applied for the provision of certain social care functions (such as the carrying out of assessments) and any charges which are applied must be subject to a means test to ensure that service users are afforded a minimum income.

- 3.2 In Brent, the last major review of charges for non-residential services was implemented in 2006. Increases in charges since then have been related to the rate of inflation and increases in state benefits.
- 3.3 The Audit Commission in its guidance on good practice in the design of charging policies expects authorities to consider how the use of public subsidy can be targeted to promote Council's broader social inclusion objectives.
- 3.4 In order to promote greater consistency and to reflect the move towards 'personalisation' of adult social care this report and the policy refers to 'contributions' rather than to charging for non-residential adult social care services.
- 3.5 Under the current scheme, income from the contributions of service users constitutes about 3.5% of the funding available for non-residential care services locally, the remaining 96.5% of care costs are being met from government grant and Council Tax. Service users' contribution to non-residential care costs, in 2010/11, was £2.5m. All contributions are subject to a means test (as set out within the policy) and as a result in 2010/11 26% of service users did not contribute to their care costs due to their low income), 4% contributed below £10 per week, 29% contributed between £10 and £49, 34% contributed between £50 and £99.99, 5% contributed between £100 and £199.99 and 2% at £200 or above per week. Only 19% paid the full cost of their care with 81% of service users receiving a subsidy towards the cost of their care. It should be noted that previously the overall service users contribution is dependent on both their income profile and the type of service delivered to them. The proposed changes aim to ensure that inequalities within the previous scheme are addressed and the significant contribution from public funds is directed at those most in need.
- 3.6 Guiding Principles - there are 5 principles that support the proposed policy, namely to make sure that the Council:
- a. 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.

- b. 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.
- c. provides an early notification to service users of their contribution to non-residential care costs.
- d. ensures that service users have an opportunity to maximise welfare benefits thus maximising their ability to contribute to their non-residential care costs.
- e. ensures administrative efficiency and convenience for service users (including netting of service user contributions at the point of resource allocation for personal budget).

3.7 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 as set out in Customer Journey. The transformation of the Customer Journey is aimed at improving the prevention work through information, advice and signposting; improving the ability of people who need immediate support to remain independent for longer in their own homes; to improve the safeguarding of adults who might be at risk or are being abused so that they can remain as independent as possible and risk free; and focus the resources for people who require long term support on those with the most complex needs, through a Personal Budget and a Personal Support Plan. One key plank of the Customer Journey project is to provide a focus on re-ablement, which assists service users to regain or maintain their independence thus minimising their long-term dependence on social care services. Re-ablement service is provided free of charge for a six week period. The implementation of this policy will ensure the success of the implementation of the Customer Journey and the development of appropriate processes and practices for implementing Self Directed Support (SDS).

4.0 The rationale for reviewing the current policy

4.1 The Council's current charging practice focuses on service users who receive home care. Current home care charges are based on the 'notional' cost rather than the 'actual' cost. Different notional rates are applied to home care in the community and to extra care sheltered housing. Home care provided in the community is charged at a 'notional' hourly rate of £17.48 whilst home care provided in Extra Care housing is currently charged at a 'notional' rate of £5.99 per day. This creates possible disincentives for service users to remain at home which is discouraged in the 2003 guidance. In some instances the 'notional cost' to service users may exceed the actual cost of providing this service to the council which is contrary to the 2003 Guidance. Brent Council does not charge service users for Day Centre provision at the present time.

- 4.2 Current practice is considered to be out of line with best practice and not 'fit for purpose'. It is based on a mixture of 'notional' costs, 'standard' rate charges which are not based on a person's ability to contribute, and some service users who receive equivalent services are not charged at all. Current practice would appear to be unfair. It is also not in line with the Personalisation agenda, in that, it applies charges only for some traditional services (e.g. Homecare) but not all, so does not afford the service user genuine flexibility and choice in how they seek to achieve the outcomes they have identified and which form the basis of the calculation for their personal budget to meet their social care needs.
- 4.3 The Council must implement the recommendations outlined within the Department of Health's published guidance for a Fairer Contributions policy as soon as possible.

5.0 Proposed Changes

- 5.1 The following changes are proposed to the current charging policy:

- a) Chargeable services** - it is proposed that service users are required, subject to the financial assessment, to contribute to all non-residential services that could form part of a Personal Budget.
- b) Extra care** – it is proposed that all contributions to home care provided in an extra care setting is calculated at the actual cost of the service in line with all other home care.
- c) Day Care** – it is proposed that people who attend Day Services should contribute towards these for the first time based on actual cost, depending on their ability to pay,.
- d) Cost of care** – rather than charges on the basis of 'notional' costs, it is proposed that any contribution is based on the actual costs of the services provided as agreed with the service user and set out in their support plan.
- e)** In recognition that some existing service users may be adversely affected by the proposed changes, it is proposed that increases in contributions for these service users be introduced on a tapering basis over a 12 month period.
- Full implementation of the policy will ensure that no individual service user will suffer excessive financial hardship because the maximum amount that can be contributed is set by the 2003 guidance and enables services users to retain an income 25% above income support levels [the 'basic living allowance']. The further measure of tapering of the implementation will also ensure that any increase is manageable by the service user.
- f) Reablement** – The current practice of not requiring any contribution towards the cost of a reablement package (which can run for up to six weeks) is proposed to continue. Reablement services include service provision to people who are returning home after a hospital admission, as such, may constitute a 'Qualifying Service' which are exempt from

charging in accordance with the Community Care (Delayed Discharges etc) Act (England) Regulations 2003 and LAC (2003)14. In addition, it is important to note that over the course of the six weeks the level of care often changes on a weekly basis and therefore the cost of undertaking financial reassessments outweighs the income that might be collected.

g) The implementation of this policy will be done by reassessing each service user. Each service user will be offered a face to face appointment under the new policy. It is anticipated that these reviews will be conducted between 1 October 2011 and 1 December 2011.

5.2 A summary of what the changes will mean to service users is provided as **Appendix B**.

6.0 Consultation

6.1 Consultation on the proposed changes to the contribution policy ran from 11 April to 4 July 2011. The purpose of the consultation was to seek views on changes to the charging policy, seek alternative options, how best to inform people of the changes and what transitional support ought to be put in place to help people whose contributions have increased.

6.2 A number of consultation activities took place. There were five consultation meetings on 6th & 23rd May and 3rd, 24th & 27th June at Partidar House. The meetings on 3rd & 27th June were specifically for people with learning difficulties. In addition the proposals were discussed within relevant forums such as the LINK and the Pensions Forum to ensure that relevant groups were aware of the consultation and how to respond. People who were unable to attend any of the consultation meetings were given the opportunity to give their views in different ways by completing a short questionnaire, send their views via email or completing an online survey. Information on the proposed changes, timetable and decision making process by the Council's Executive was given at each meeting. 95 people attended the meeting on 6th May, 35 people on 23rd May, 46 people on 3rd June, 15 people on 24th June and 20 people on 27th June. Translator and British Sign Language expertise were provided at the meetings. The question and answer session at each meeting provided opportunity for people to explore issues of concern to them including questions about implementation date if changes are agreed, monitoring and service standards, and what the changes will mean to people who use the services. The result of this consultation was published on the 30 August 2011 on the Council's website at www.brent.gov.uk/consultation. For people who may not be able to access the website, provision will be made for alternative means of communicating the result of the consultation to them.

6.3 The total number of responses to the survey was 162. An analysis of the survey is attached as **Appendix C**. The headlines are:

a) Respondents are split between disagreeing (40%) and having no view either way (39%) on the question – 'Brent Council should charge for all non-residential social services that could form a part of a

personal budget, instead of just charging for home care services'. 21% of respondents agree that service users should contribute towards all non-residential services.

b) Respondents are fairly evenly split between agreeing (30%) and disagreeing (31%) on the questions 'Brent Council should use the actual cost of providing non residential services to work out how much a service user should pay instead of the average cost' **and** 'Brent Council should put in place a transitional arrangement of equal monthly increments over a 12 month period' (agreeing – 33%, disagreeing – 32%). In both cases slightly larger proportions (39% and 35% respectively) don't have a view either way.

- 6.4 Some open text comments from respondent support the guiding principles as outlined in paragraph 3.6 above, in terms of 'fairness' and 'contributions policy based on ability to pay'. The principle of fairness was further tested in relation to people who have worked most of their lives, contributed into the state and saved their money who now have to further contribute to their care cost when other people who haven't made the effort are getting their care free for a lack of means. Other comments draw upon the current national economic climate and rising cost of living and how care should be taken to avoid financial hardship for vulnerable people. It was also suggested that social care should be free like it is in Scotland or should be seen as an extension of a NHS service and should be free at the point of delivery. Some respondent have used the opportunity to raise unrelated problems with the state, health & social care system and the Council. Useful suggestions were also received in relation to how best to communicate with service users.

7.0 Financial Implications

- 7.1 The proposed changes are expected to have a neutral financial effect on the Council as there will be an increase in contributions for some service users and a decrease for others. In particular there will be an adverse financial impact on service users who use Day Care and those in Extra Care Housing accommodation. Currently Day Care is not a chargeable service, and Extra Care Housing clients pay a fixed amount per day for home care services received. Under the new 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. Currently services are usually commissioned by the Council. The council is then responsible for recovery of the contribution for these from the service user and including, in some cases, having to incur legal costs to pursue individual service users for large debts.
- 7.2 For existing service users who may be adversely affected (those who may have their contributions increased) by the proposed changes, it is proposed that increases in contributions for these service users be tapered over 12 months. The financial impact of this transitional arrangement is expected to be self balancing.

7.3 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.

7.4 Service users' contribution to non-residential care costs, in 2010/11, was £2.5m. Under the current charging scheme, income from service users contributions constitutes about 3.5% of the funding available for non-residential care services locally, the remaining 96.5% of care costs are being met from government grant and Council Tax. Clearly this proportion will not change under the new proposals.

8.0 Legal Implications

8.1 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, s45(1) NHA, 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 and, ... 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."*

8.2 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 charging 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 and 2010 in respect of Fairer Contributions and the new policy takes this guidance into account.

8.3 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.

9.0 Diversity Implications

9.1 The proposed changes to the Fairer Charging 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 D** and your attention is drawn to this.

10.0 Staffing/Accommodation Implications (if appropriate)

10.1 There will be no staffing or accommodation implications resulting from this report.

Background Papers

- 1) Department of Health's Fairer Charging for Home Care and other non-residential Social Services Guidance - September 2003
- 2) Department of Health's Fairer Contributions Guidance - July 2009
- 3) Fairer Charging consultation survey
- 4) Brent Council Fairer Charging Policy

Contact Officers

John Agboola,

Interim Assistant Director - Strategic Finance
Business Partner Team (Adult Social Services)
Finance and Corporate Services
Mahatma Ghandi House
34 Wembley Hill Road, Wembley, Middlesex HA9 8AD
Tel: 020 8937 3147
Email: john.agboola@brent.gov.uk

Alison Elliott,

Director of Adult Social Services
Mahatma Gandhi House,
34 Wembley Hill Road, Wembley Middlesex
HA9 8AD
Telephone: 020 8937 4320
Email: Alison.Elliott@brent.gov.uk