

Report to: **Adult Social Care Scrutiny Committee**

Date: **3 September 2010**

By: **Director of Adult Social Care**

Title of report: **Review of Fairer Contributions and charges for services**

Purpose of report: **To bring to the attention of the Scrutiny Committee the intended review of the Fairer Contribution Policy and the services that are charged for in the light of Personal Budgets and allow Scrutiny to comment on the proposals before public consultation is begun**

RECOMMENDATION

The Adult Social Care Scrutiny Committee are recommended to provide their views to the department on each of the proposals that they are going out to consultation on as laid out in section 3.1.

1 Financial Appraisal

1.1 The current cost of administering the Financial Assessments of service users in both residential care and helped to live at home is some £580,000. At present income levels are £22m for residential care and £5.4m for helped to live at home.

1.2 The number of financial assessments undertaken for Fairer Contributions in 2009/10 was around 11000, the joint team benefit take up work achieved an increase to service users income of £11m in 2009/10. As the demand for services increases the demand for financial assessments will increase and this review aims to make recommendations that will enable the increased demand to be dealt with at no increase or reduced costs, ensure Visiting Officers maximise service user income from benefit take up and to ensure the department makes best use of the Fairer Contribution guidance to increase the level of income received.

2 Background and Supporting Information

2.1 In July 2009 the Department of Health (DH) updated the guidance to reflect the implementation of Putting People First: "Fairer Contribution guidance" In April 2010 East Sussex implemented Self Directed Support, providing services to meet user's needs against Personal Budgets. Fairer Charging transferred to Fairer Contributions, which sought the implementation of contributions against service users' Personal Budgets rather than a charge for service activity.

2.2 The Council anticipates a very difficult funding settlement for the next four years. From 2011/12 the department is expecting a reduction in resources over the current budget of £171m. This means that increased demand will have to be met from existing resources and that any increase in costs will reduce the amount available for care services. The service offer will need to be adjusted to reflect available resources.

2.3 Whilst this is not the only consideration in considering reviewing charging for services it is a substantial one. The recession is also impacting on service users and it is all the more important to ensure the maximisation of welfare benefit take up that would be part of any financial assessment.

2.4 The implementation of Personal Budgets and the move to Fairer Contribution from April 2010 has highlighted a range of issues with the way the Council has established its Charging Policy. In the light of Personal Budgets and Fairer Contribution it is now timely to review the Policy.

2.5 The Fairer Contribution guidance provides for services supplied to help people to live in their own homes. This review has therefore encompassed these services as provided in a range of ways including for example Home Care, Day care, Telecare and Direct Payments.

2.6 The DH guidance affords for all service users to have a base level of income that is disregarded before any assessment of their contribution towards their care is made. For service users with disabilities, the guidance provides for related expenditure due to their disability to be allowed (Disability Related Expenditure).

2.7 The review will look at the opportunities to integrate charges, maximise business IT solutions, reduce administrative costs and apply charging criteria in line with current legislation.

3 Policy review items recommendations

3.1 It is recommended that Scrutiny consider and comment on the proposals below before public consultation commences:

3.1.1 Services provided under Carer's Services (Appendix A): Carer's respite services are integrated to the Departments Fairer Contribution Policy.

3.1.2 Grants paid to Carers (Appendix B): Carers' grants are integrated to a simplified form of the Departments Fairer Contribution Policy and carers are subject to consideration of their means to contribute to services.

3.1.3 Independent Living Fund recipients (Appendix C): ILF recipients are no longer waived from charges and are assessed under the Fairer Contribution Policy.

3.1.4 Disability Related Expenditure (DRE's) (Appendix D): The low and high rates of Attendance Allowance and Disability Living Allowance (Care) are consistently taken into account in relation to DRE's with an automatic DRE bandings allowance being made.

4 Conclusion and Reasons for Recommendations

4.1 In the light of the projected increase in demand for support, coupled with the reduction in resources over the next few years, the Department is to undertake a review of fairer charging to ensure that it has sufficient resources to provide services to the vulnerable members of the local community who are in need, and to ensure that funds provided by central Government for disability-related expenditure are used appropriately.

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BACKGROUND DOCUMENTS None

Services Provided under Carer's Services

The department currently provides services free of contribution for any care provisions which are recorded as a "carer's service". Increasingly in other Authorities all services classified as respite/breaks are chargeable.

Legislation

- **Carers & Disabled Children Act 2000** (reference data 1)
- **Health & Social Service Social Security Adjudications Act 1983 (HASSASSA)** (reference data 2)
- **Community Care Act**

Carers are entitled to an assessment where the cared for is **eligible** for community care services regardless of whether they have accepted or refused an assessment/provision of services or are self-funding.

Clarification is needed where the carer's identified need is a break provided through a community care service to the cared for person; including home, day or residential services.

The following is an extract from **Carers and Their Rights, Luke Clements, 2009:-**

'5.7 It follows from the above analysis, that respite care services are services provided to a disabled person which enable the carer to take a break from his or her caring responsibilities. In other words, respite care support is legally a community care service not a service provided under the Carers and Disabled Children Act 2000. This state of affairs has been explained by the Department of Health in a 'Questions and Answers' note that accompanied the enactment of the 2000 Act. It posed the question 'are short term breaks (respite care) a service for carers or cared for people?' and then answered this in the following terms:

People who care may be assessed as needing a break from their caring role. This need will be clearly recorded on their own assessment documentation. The person they care for will then be assessed for the additional support that they will need to allow their usual carer to take a break. This need will be recorded on their assessment documentation. The additional service remains a community care service delivered to the cared for person, not a carer service under this Act.'

It then follows that if respite care services are community care services rather than services provided under the Carers Acts, the local authority is legally obliged to provide services to meet this need and the service recipient will be liable to contribute to the cost of the service.

This is in line with the way the department uses its Resource Allocation System (RAS). It takes into account the amount of support provided by family and friends in working out the value of the personal budget. So for example two people called 'a' and 'b' have exactly the same needs but 'a' has a lot of family support and 'b' does not then 'b' will have a greater personal budget than 'a' would have per week. It therefore follows that if the family of 'a' need a break then the personal budget for 'a' would increase to accommodate this. The contribution that they are required to make is against the personal budget.

Recording and Performance Indicators

Some confusion has arisen concerning the recording of respite / short breaks care for auditing purposes. Although as a matter of law the service given to the cared for person that enables their carer to have a 'break' is a community care service – for auditing purposes the 'break' itself may be recorded as a 'service' in its own right for the carer. This is indeed the approach adopted by the Care Quality Commission in England, which requires authorities to record the number of 'breaks services' that they have provided for carers.

The following is an extract from **Carers and Their Rights, Luke Clements, 2009:- '5.8** Although respite care will be recorded as a service on the disabled person's care plan (e.g. 'a sitting service') there is nothing wrong with the 'break' that the carer enjoys as a consequence being recorded as a 'service to the carer': i.e. the carer's care plan recording that s/he has been given a 'break.'

Debbie Charman, Strategic Commissioning Manager – Carers, ESCC, lead a public consultation in 2009 on "Improving Support for Carers 2010 -2015" which approached the question of contributing towards services: (reference data 3)

Conclusion

- The service provided under the departments "Carer's respite services" are given directly to the cared for person. These services can be charged for under the Community Care Act.
- The department would not see any reduction in the performance indicators a service would be recorded under the service users for Community care services and the break recorded to the carer as a carer service.

Grants paid to Carers

The Carers and Disabled Children Act 2000 gives Local Authorities the power to charge carers for the services they receive as carers in their own right:

Section 8: Charging 38. This enables local authorities to charge carers for the services they receive. This is achieved by means of an amendment to section 17 of the Health and Social Services and Social Security Adjudications Act 1983.

The current financial assessment / welfare benefit service has between 17/5/10 to 2/7/10 claimed 19 Carer Allowances for partners/ carers of people who have been referred for a financial assessment for care services under the current policy.

Whilst many Carers may be aware that they can claim this benefit (Age Concerns user friendly fact sheet can be found on reference data 4) even if this is not a benefit the Department of Works & Pensions physically pay, a claim can be made for “underlying” entitlement which then passports Carers to other awards i.e. Carers premium, Pension credit, Housing benefit and council tax benefit.

Debbie Charman, Strategic Commissioning Manager – Carers, ESCC, lead a public consultation in 2009 on “Improving Support for Carers 2010 -2015” which approached the question of contributing towards services: (Reference data 3)

Carers’ grants could be integrated to a simplified form of the Departments Fairer Contribution Policy. This will be less intrusive and could be achieved by a reduced assessment minimising the administration for both ESCC and the Carer.

- Assessment based on Capital limits
- Carers in receipt of a qualifying benefit of income support or pension credit are not chargeable.
- Carers not receiving a qualifying benefit are assessed under the Fairer Contribution Policy.

Information about carers support and services is available to all as a ‘universal’ service regardless of financial circumstances and the ‘Support with Confidence’ Project is another way that this will be widely available to people.

Conclusion

- A simple financial assessment can be undertaken to determine if grants are given to Carers under the Carers and Disabled Children’s Act.
- Benefit maximisation will support applications for additional benefits for Carers.

Independent Living Fund recipients (ILF)

The ILF policy originally did not take any account of charges that the local authority made for services when it established the contribution that the service user would make to the ILF for their contribution. Service users were therefore worse off if local authorities charged and we therefore did not charge for cases where people received ILF.

This has changed and the ILF financial assessment now allow for the local authority charges to be taken into account.

Conclusion

- Service Users will no longer be at a disadvantage
- Consistency would be applied for all service users

Disability Related Expenditure (DRE)

One of the key responsibilities of the staff who undertake the financial assessments is to ensure that people have access to all the relevant benefits that they are entitled to. Our staff work with staff from the Department of Work and Pensions to provide these services as efficiently as possible.

The guidance states that if you take into account benefits that are paid in relation to disabilities as part of the financial assessment, you should also provide for additional expenditure that the individual incurs in relation to their disability.

It therefore follows that if the service user is not eligible for Attendance Allowance, Disability Living Allowance or Severe Disability Allowance no allowance needs to be given for DRE.

DRE's are additional allowances added to the protected income (Income support or Guaranteed Credit +25%) before any contribution can be calculated.

Depending on the available information and detail that is needed for the financial assessment, a Visiting Officer could spend an additional hour to an hour and a quarter identifying a service users DRE's. This often involves very sensitive and personal information. Where postal assessments are received service users do not receive the same consistent approach as receipts or information is often omitted from the form.

Reference data 5 shows the current allowances given under DRE. Reference data 6 shows the current DRE's information and analyses of a banding option similar to that applied by other local authorities. An approach that uses bandings rather than requiring each item to be listed and evidenced would appear to be much simpler to operate and be less intrusive for the service users.

Reference data 6 provides comparisons with the current DRE allowance (taken as the weekly total allowed to each service user and a sample of current service users to that of set bandings. Both banding allocations show a reduction in administration costs. Those service users who feel that their DRE's are in excess of the band would still have the opportunity to have a full DRE assessment. Consideration needs to be given to the ethos of fairer contribution, it is not to charge those able to contribute more but to ensure a Fair contribution to all.

With the introduction of Personal Budgets the service user gains more choice and control over how their budget is used to meet their identified needs. Both Attendance Allowance and Disability Living Allowance (Care) are paid at either a high or low rate. The high rate Attendance Allowance and Disability Living Allowance (Care) are taken into account in full when services are provided at night.

The use of Personal Budgets means that service users have greater flexibility as to how their needs are met. It is therefore not necessarily administratively possible or desirable for the department to have detailed information about this.

Conclusion

- The use of bandings would ensure all DRE's are approached with consistency, simplify the assessment process for both service user and visiting officer, and allow additional capacity for financial assessment visits.
- A full consultation to gain public feedback to a change in policy will provide a wider understanding of the concerns.

Carers and Disabled Children Act 2000**Section 4: Assessments and services for both carer and person cared for**

24. Subsection (1) amends section 1 of the 1995 Act and enables the local authority, insofar as it considers it to be material, to take into account for the purposes of an assessment under section 1(1) or (2) of that Act a carer's assessment carried out under section 1(1) of the Carers and Disabled Children Act or an assessment of a person with parental responsibility for a disabled child carried out under section 6(1) of the Carers and Disabled Children Act. This would be helpful where a person cared for changed their mind and agreed to have an assessment of their needs and the carer no longer wished to have services in their own right.

25. Subsections (2) and (3) set out various situations where the local authority has identified a need for services that could either be provided to the carer as carers' services under the Act or to the person cared for as community care services. Subsection (2) covers the situation where the local authority is either providing carers' services to the carer or is providing community care services to the person cared for and proposes to provide another service to the person who is not receiving a service, and the existing or the new service are ones which could be provided as carers' services under the Act or by way of community care services.

26. Subsection (3) covers two further situations. In the first of these neither the carer nor the person cared for has previously been receiving services, but the local authority proposes to provide services to each of them, any of which could be provided as carers' services under the Act or as community care services. The other situation arises where the local authority is providing services to the carer and community care services to the person cared for and proposes to provide to either of them a new service and the new service is one which could be provided under the Act or by way of community care services.

27. In each of these situations the local authority must decide whether the services are to be provided as carers' services under the Act or by way of community care services (subsection (4)). Under subsection (5) the local authority's decision is to be made without regard to the means of the carer or of the person cared for. This will ensure that the decision is based on assessed need. The recipient of the service is the person who will be liable for any charges and who may complain in relation to the service in question.

Health and Social Services and Social Security Adjudications Act 1983 (HASSASSA) – s 17

Section 17: Charges for local authority services in England and Wales

(1) Subject to subsection (3) below, an authority providing a service to which this section applies may recover such charge (if any) for it as they consider reasonable.

(2) This section applies to services provided under the following enactments:-

(a) section 29 of the National Assistance Act 1948 (welfare arrangements for blind, deaf, dumb and crippled persons etc);

(b) section 45(1) of the Health Services and Public Health Act 1968 (welfare of old people);

(c) Schedule 8 to the National Health Service Act 1977 (care of mothers and young children, prevention of illness and care and after-care and home help and laundry facilities);

(d) section 8 of the Residential Homes Act 1980 (meals and recreation for old people);

(e) paragraph 1 of Part II of Schedule 9 to this Act other than the provision of services for which payment may be required under section 22 or 26 of the National Assistance Act 1948

(f) section 2 of the Carers and Disabled Children Act 2000

(3) If a person:-

(a) avails himself of a service to which this section applies, and

(b) satisfies the authority providing the service that his means are insufficient for it to be reasonably practicable for him to pay for the service the amount which he would otherwise be obliged to pay for it,

The authority shall not require him to pay more for it than it appears to them that it is reasonably practicable for him to pay.

(4) Any charge under this section may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

Public consultation in 2009 on “Improving Support for Carers 2010 -2015” extract from questionnaire.**A. Improving access to breaks and respite**

1. We will develop a variety of home-based care services to allow carers to get out of the house, knowing their loved-one will be well cared for in their own home, including outside normal working hours, with the offer of specialist support if needed.
2. Any carer who needs a break can be assessed by the Council and may be entitled to free support depending on their financial circumstances.
3. We will continue to use a system of individual Carer Support Grants to meet carers’ individual needs and to help keep them well.
4. We will set up a simple way to get emergency respite care, quickly, when you need it. We will look at how to fund this, and may need to make a small annual charge for the service.

Q1. What do you think of these plans to improve access to breaks and respite?

<i>Please mark one 'x' for each statement</i>	<i>strongly agree</i>	<i>agree</i>	<i>neither agree nor disagree</i>	<i>disagree</i>	<i>strongly disagree</i>	<i>don't know</i>
a. I understand the plans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. I think the plans will help carers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments from consultation summer 09 – see survey document sent out (specifically Questions 1a numbers 2 and 4) 195 responses received.

- How do you intend to inform those of us who do not seem to qualify for help because of financial circumstances?
- Q4 is not clear as to whether you are only going to make an annual charge if you need to use the service. Wouldn't it be more suitable to make a charge each time needed
- We need to have actual and practical help not 'plans'. There is government money available so there is no need to make any charge.
- Means tested?
- Needs to be free. Regular respite in our home then it will be help.
- Should be free to all
- Not too happy about the financial assessment as at the moment there are vol. orgs that offer a free service
- Free short breaks are very important.
- Please give more support to carers. Respite for carers should be free, carers save the NHS millions. It is an insult to be assessed for support.
- A small annual charge may be a deterrent to use for some carers with limited finances
- Need to be consulted on charging means tests charging if implemented
- No detail of how this would work is given here. Self financers would have to pay respite costs so an annual charge would be a penalty.
- All these plans are very good but we have to question cost. Attendance allowance available to vast majority so free support must be seriously assessed.

Age Concerns fact sheet extract

What is Carer's Allowance?

Carer's Allowance is a benefit paid to people who care for someone receiving Attendance Allowance, Disability Living Allowance care component (at the highest or middle rate) or Constant Attendance Allowance (paid with Industrial Injuries Disablement Benefit or a War Pension).

You do not need to have paid any national insurance contributions to qualify for Carer's Allowance and you will be credited with Class 1 national insurance contributions while receiving it.

The Carer's Allowance (CA) rate for 2010/11 is £53.90 per week.

Qualifying conditions

In order to receive Carer's Allowance you must:

- be 16 years old or over and
- be regularly and substantially engaged in caring for a severely disabled person for at least 35 hours a week and
- not be in full-time education and
- not be gainfully employed and
- be normally living in the UK and or have lived in the UK for at least 26 out of the last 52 weeks if claiming from abroad.

Fairer Contributions 2010/11 Current DRE's and Evidence based requirements

Disability Related Expenditure	Amount	Evidence
Additional Clothing: Max per week - receipts required	£10.32	Support Plan outlines
Bedding: Max per week - receipts required	£10.32	Support Plan outlines
Carpets / Repairs - receipts required	£10.32	Support Plan outlines
Cleaning Materials - receipts required	£10.32	Support Plan outlines
Chiropody:		
Home Visit	£4.02	Receipts. If available free via NHS - no allowance
Surgery	£2.95	Receipts. If available free via NHS - no allowance
Community Alarm - Lifeline	£3.50	Copy of bill - only allowable if paying private
Domestic Help/Private carers	£19.98	Allowable where ASC not meeting need: noted in support plan. Copy of invoice/bill
Gardening	£6.72	At cost to max if service user is unable to complete task due to disability
Hair Washing	£7.99	At cost to max if service user is unable to complete task due to disability
Health Aids - Receipts and link to Disability needed	£5.67	Cost to max where aid is not covered by free prescription and is to support disability
Insurance for DRE equipment	actual	Insurance certificate for item
Internet	£3.64	Allowable where cost is over telephone line rental. Proof paying and is main form of communication or social interaction
Laundry: per additional load (over 2pw single / 3pw couple)	£5.82	Support Plan outlines
Laundry: dry cleaners - receipts needed	£10.28	Support Plan outlines
Medication - at cost receipts needed	£14.72	Cost to max where medication is not covered by free prescription (note: MEDICATION)
Personal Pads	£3.63	Receipts and Support plan for amount paid over NHS monies/goods given
Personal hygiene costs - additional	£3.70	Support Plan identifies: Additional cost due disability
Special Dietary Needs Max per week	£11.31	Support Plan - costs over benefit's where actually incurred due to disability, doctor diagnosed - cross ref if MOW
Transport Costs		
<i>Additional DRE costs over and above Mobility allowance paid.</i>	£41.90	Allowable when not covered by ASC and are due to disability: does not cover payments to family
Mobile Phones	£3.50	Not in receipt of lifeline, no telephone allowance and in use for disability
Therapeutic Treatment: related to Disability	£18.93	Support Plan outlines and ASC not paying
Window Cleaning	£1.79	At cost to max if service user is unable to complete task due to disability

Disability Related Expenditure	Amount	Evidence
Wheelchair		
per week manual	£3.19	rental agreement
per week powered	£7.77	rental agreement

Analyses of cost of administration of DRE's

The following information looks at the administrative and DRE average costs for financial assessments:

- a) The total number of current service users receiving a service and assessed under Fairer Charging: is 4561. Of these 2822 have requested allowance for DRE's
- b) The validation of a service users DRE's ranges from thirty minutes to 1 1/2 hours.
- c) If we were to take 45 minutes as an example this equates to an average of 2116 hrs per year administration on DRE's. This is in excess of a full time equivalent post (FTE).

A	
Total Service users	4561
Service users with no DRE's	1739
Service users claiming DRE's	2822

B	
Average time to assess DRE	
1/2 to 1 1/2 hrs	
Average .45 minutes	2116 hrs

C	
Equivalent FTE	1.10

Analyses of DRE's

Of the current 2822 service users claiming DRE's the total weekly allowance is £76,625.81.

This equates to an average DRE per person of £27.15 (£76,625.81 divided by 2822)

The trend in DRE costs is relative to the additional benefits claimed and assessed for under the Department of Works and Pension or Job Centre Plus criteria. These are namely Attendance Allowance (AA) and Disability Living Allowance (Care) (DLA)

Service Users on the low rate of these benefits tend to have lower DRE's.

The difference in the higher rate paid and the low rate (£23.60) for both these benefits is currently disregarded unless the department is providing night care.

Those on the higher rate who have this disregard claim above average DRE's.

In light of the Personal Budgets service choice will not necessarily identify the time of service delivery or method by which needs will be met.

The following data looks at allocating an automatic DRE band based on the award level of AA or DLA.

In increasing the band for those on the high rate the data looks at also taking full account of the high rate paid.

If a service user has to contribute to costs i.e. Rent, Mortgage and utilities that are not within the income support + 25% these will continue to be allowed separately from DRE's.

Service users who feel that their DRE are in excess of the band will have the opportunity to a full DRE assessment.

Total value
of current
DRE's £76,625.81

Average
DRE £27.15

Calculation
based on
Banding:

Average DRE breakdown:	No. Service users	AA or DLA	DRE banding	Total	Time saving
£0.00	1739				
£1 - £5.99	466	Low	15	£6,990.00	349.50 hrs
£6 -£9.99	448	Low	15	£6,720.00	336hrs
£10 - £14.99	398	Low	15	£5,970.00	298.50hrs
£15 - £19.99	237	Low	15	£3,555.00	177.75hrs
£20 - £24.99	218	mixed	17.5	£3,815.00	163.50hrs
£25 - £29.99	230	High	30	£6,900.00	172.5hrs
£30 - £39.99	507	High	30	£15,210.00	380.25hrs
£40 +	318	High		£26,000.00	
	4561			£75,160.00	1878 hrs