

Report subject	<b>Adult Social Care Charging Policy Additions</b>
Meeting date	17 July 2024
Status	Public Report
Executive summary	<p>Bournemouth, Christchurch and Poole (BCP) Council have recently been the subject of a legal challenge around the content of its Adult Social Care (ASC) Charging Policy, as have other local authorities.</p> <p>In addition to this, ASC has received a recommendation from the Local Government Ombudsman (LGO) to make an inclusion in the Charging Policy, following a complaint.</p> <p>Therefore, changes and improvements have been made to the Policy, which are set out in this report alongside the reasons and implications.</p>
Recommendations	<p><b>It is RECOMMENDED that:</b></p> <p><b>Cabinet approves the amendments to the existing Adult Social Care Charging Policy, as outlined in this report.</b></p>
Reason for recommendations	<p>Section 14 of the Care Act 2014 gives local authorities the power to charge for meeting needs under Sections 18-20 of the Care Act 2014. Section 17 of the Care Act 2014 specifies the duty to carry out an assessment of the adult's financial resources in order to determine the adult's contribution towards the cost of the care and support they require. The Charging Policy sets out how BCP Council will approach this.</p> <p>It is important, therefore, that Cabinet approves the Policy changes as set out in this report.</p>
Portfolio Holder(s):	Councillor David Brown
Corporate Director	Jillian Kay – Corporate Director of Wellbeing
Report Authors	<p>Betty Butlin – Director of Adult Social Care</p> <p>Phil Horsby – Director of Commissioning</p>

Wards	Council wide
Classification	For information

## Background

1. It is important that people engaging with Adult Social Care (ASC) understand that they can be charged for the care and support they receive. Services provided through Adult Social Care are not free at point of contact, as may be the case with the National Health Service (NHS).
2. BCP Council's Charging Policy explains what care and support services a person may be charged for and how we calculate what is reasonable for a person to pay. We call this calculation a financial assessment.
3. BCP Council's Charging Policy complies with the Care Act 2014. Our aim is to provide a consistent and fair framework for charging and financial assessment for all individuals who receive care and support services.
4. Adult Social Care (ASC) has recently been the subject of a
5. legal challenge around the content of its Charging Policy. Additionally, ASC has received a recommendation from the Local Government and Social Care Ombudsman (LGSCO) to make an inclusion in the Charging Policy, following a complaint.
6. Therefore, changes and improvements have been made to the Policy, which are set out in this report.
7. Nationally, complaints and legal challenges around charging for ASC services have risen and it is expected that, as these challenges and changes arise, further amendments to the Charging Policy maybe required.

## Summary of changes and improvements

1. A challenge around BCP Council's ASC Charging Policy was received from a solicitor (Lawstop) who specialise in community care law. A number of legal challenges around case law in relation to Disability Related Expenditure (DRE) have been well publicised. Lawstop cited the case of [RW v Royal Borough of Windsor and Maidenhead \[2023\] EWHC 1449 \(Admin\)](#), and the successful challenge of Norfolk's charging policy on Article 14 grounds in [R\(SH\) v Norfolk County Council & SSHC \[2020\] EWHC 3436 \(Admin\)](#). It was therefore considered that we would obtain advice from Counsel to support this case and to ensure that we prevent further possible disputes about DRE.
2. The Council was challenged on the criteria for DRE, what should and should not be considered and how this was laid out within the Charging Policy. The case of [RW v Royal Borough of Windsor and Maidenhead \[2023\] EWHC 1449 \(Admin\)](#) concluded that Councils could be too prescriptive in their interpretation of DRE.
3. Counsel was asked to review the section on DRE within the Charging Policy and advise on associated changes deemed necessary.

4. Therefore, the deletions and additions to the Policy (see pages 20 and 21 - Appendix One) ensure that the Policy clearly emphasises that, whilst National Association of Financial Assessment Officers' (NAFAO) Guide to Disability Related Expenditure is used during a Financial Assessment to consider DRE, it is guidance only and discretion will be used for individual cases.
5. It is also now clear that consideration will be given to the reasonableness of disregarding DRE in relation to a person's circumstances.
6. The LGSCO investigated a complaint and decided that the financial assessment did not properly consider contributions and DRE. They recommended that a further addition to the Charging Policy was made, to include the link to the Care Act 2014 [Care and Support Statutory Guidance](#) (Annex C paragraphs 39 - 41,) to clarify how the Council will consider evidence for DRE. This guidance link has also been added to public information.
7. Under Counsel advice, for transparency, BCP Council's Minimum Income Guarantee (MIG) rates were also added to the Council's website and a link provided in the Policy.
8. The final addition to the Charging Policy is clearer in advising that a person can make a complaint if they are not satisfied with their Financial Assessment.

### **Summary of financial implications**

It is not expected that there will be significant financial implications as a result of the recommended changes put forward by Counsel.

### **Summary of legal implications**

#### **Statutory Powers:**

Section 14 of the Care Act 2014 gives local authorities the power to charge for meeting needs under sections 18-20 of the Care Act 2014, and section 17 of the Care Act 2014 specifies the duty to carry out an assessment of the adult's financial resources in order to determine the adult's contribution towards the cost of the care and support they require.

Where a local authority decides to charge, as BCP Council has, it must follow the Care and Support (Charging and Assessment of Resources) Regulations 2014 (as amended), which sets out how the financial assessment should be undertaken, how different types of income and capital should be treated and the minimum amount of income an adult must be left with after charging.

Chapter 8 of the Care and Support Statutory Guidance, read in conjunction with the associated Annexes, provides guidance on Sections 14 and 17 of the Care Act 2014 and the Care and Support (Charging and Assessment of Resources) Regulations 2014. Local Authorities are required to follow the Care and Support Statutory Guidance unless there is good reason to depart from these.

#### **Other Legal Implications:**

The public sector equality duty imposed by S.149 of the Equality Act 2010 is a duty imposed on public authorities to consider how their policies or decisions affect people who are protected

under the Equality Act. In taking any decision to adopt the policy, public authorities, when exercising their functions, are obliged to have 'due regard' to the need to:

- Eliminate discrimination, harassment and victimisation and other conduct which the Act prohibits;
- Advance equality of opportunity; and
- Foster good relations between people who share relevant protected characteristics and those who do not.

The relevant protected characteristics under the Equality Act are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Article 14 of the ECHR provides for the prohibition of discrimination on any grounds including sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

### **Summary of human resources implications**

There are no human resources implications within this report.

### **Summary of sustainability impact**

There are no sustainability implications within this report.

### **Summary of public health implications**

There are no public health implications within the report

### **Summary of equality implications**

Full EIA documentation was completed and reviewed at panel at the point of Charging Policy development, however, as these changes are simple amendments or additions, it has not been necessary to repeat this exercise.

### **Summary of risk assessment**

The risk from not amending the existing Charging Policy is that of legal challenge and Judicial Review being brought against BCP Council.

To manage and mitigate legal challenge Counsel advice was sought.

### **Appendices**

Appendix One – ASC Charging Policy Changes

Appendix Two – Charging Policy V1.5 – v2 April 2024