

Section 4

Equality

Analysis Toolkit

Non Residential Care Charging Policy v2

For Decision Making Items

August 2017

What is the Purpose of the Equality Decision-Making Analysis?

The Analysis is designed to be used where a decision is being made at Cabinet Member or Overview and Scrutiny level or if a decision is being made primarily for budget reasons. The Analysis should be referred to on the decision making template (e.g. E6 form).

When fully followed this process will assist in ensuring that the decision-makers meet the requirement of section 149 of the Equality Act 2010 to have due regard to the need: to eliminate discrimination, harassment, victimisation or other unlawful conduct under the Act; to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard means analysing, at each step of formulating, deciding upon and implementing policy, what the effect of that policy is or may be upon groups who share these protected characteristics defined by the Equality Act. The protected characteristics are: age, disability, gender reassignment, race, sex, religion or belief, sexual orientation or pregnancy and maternity – and in some circumstances marriage and civil partnership status.

It is important to bear in mind that "due regard" means the level of scrutiny and evaluation that is reasonable and proportionate in the particular context. That means that different proposals, and different stages of policy development, may require more or less intense analysis. Discretion and common sense are required in the use of this tool.

It is also important to remember that what the law requires is that the duty is fulfilled in substance – not that a particular form is completed in a particular way. It is important to use common sense and to pay attention to the context in using and adapting these tools.

This process should be completed with reference to the most recent, updated version of the Equality Analysis Step by Step Guidance (to be distributed) or EHRC guidance at

<http://www.equalityhumanrights.com/private-and-public-sector-guidance/public-sector-providers/public-sector-equality-duty>

This toolkit is designed to ensure that the section 149 analysis is properly carried out, and that there is a clear record to this effect. The Analysis should be completed in a timely, thorough way and should inform the whole of the decision-making process. It must be considered by the person making the final decision and must be made available with other documents relating to the decision.

The documents should also be retained following any decision as they may be requested as part of enquiries from the Equality and Human Rights Commission or Freedom of Information requests.

Specific advice on completing the Equality Analysis and advice, support and training on the Equality Duty and its implications is available from the County Equality and Cohesion Team by contacting

Jeanette Binns (Equality and Cohesion Manager) at

Jeanette.binns@lancashire.gov.uk

Name/Nature of the Decision

To revise the County Council's policy on how to calculate the charge of a contribution for non-residential adult social care services following a financial assessment. This is permitted under the Care Act 2014.

Specifically the revised Policy includes a suggested change of individuals being asked to contribute 100% of their Net Disposable Income (NDI) or the actual cost of the service provided, whichever is the lower. Previously contributions were based on 85% of NDI.

At this stage, approval is being requested for a public and stakeholder consultation on the proposed changes.

What in summary is the proposal being considered?

The proposal being considered is to change the non-residential care charging policy applied by the County Council. Non-residential care includes:

- *home care (care provided in a person's own home);
- *day care;
- *direct payments/personal budgets;
- *Supported Living;
- *Outreach Services;
- *Shared Lives.

The Policy's aim is to provide a fair and consistent charging framework in accordance with guidelines set out by central government. The key principles are:

- *The full cost of services is recovered from individuals where they have the ability to pay, subject to a financial assessment;
- *Contributions will be calculated by an individual financial assessment;

*Individual financial assessments will ensure an individual contributes based on their ability to pay;

*The appropriate contribution will be calculated fairly and promptly.

*The financial assessment will ensure that an individual will retain their basic Income Support or Pension Credit Guarantee level plus an additional 25% as a minimum. No contribution for services within the financial assessment process will apply where income is equal or lower than this level.

*Individuals will receive a benefits check as part of the financial assessment to maximise their full benefit entitlement;

*Any contribution will not exceed the cost of providing the service;

*Individuals have a right to decline a financial assessment and may instead choose to pay the actual cost of the service;

*Where contributions are not made, debt recovery will be pursued for all outstanding contributions which may be through legal action or the use of external agents;

*In all cases, irrespective of setting, employed and self-employed earnings are fully disregarded;

*Where disability benefits are taken into account as income, allowances will be made for disability related expenses;

*Individuals have a right to appeal if they feel the financial assessment has been completed incorrectly;

*All personal information will be treated in confidence in accordance with data protection legislation.

In calculating an individual's contribution the financial assessment process used will be based on the definitions in the Care Act 2014:

Capital – an individual's capital includes for example: money in bank and building society accounts, some types of Investment Bonds, stocks and shares (less 10% selling cost), Premium Bonds; National Savings Certificates or Capital from certain criminal injury compensation awards or trust funds, etc. Where an individual's capital

is below £14,250 it will be disregarded for financial assessment purposes. Where an individual's capital is between £14,250 and £23,250 it will be taken into account within the financial assessment. Where an individual's capital (excluding the value of their main home) exceeds the upper capital limit of £23,250 as specified within the Care Act 2014, they will be required to pay the maximum charge for services. The maximum charge for services is:

*for home care and supported living services, the actual cost of services paid by Lancashire County Council;

*for day care services, the actual cost of the day care service paid by Lancashire County Council;

*for individuals in receipt of a personal budget/direct payments, the value of their personal budget is the maximum amount they would contribute.

Income – types of income that are taken into account in assessing income include for example – Income Support, State Retirement Pension, Occupational and Private Pensions, Job Seekers Allowance, Attendance Allowance, Bereavement Allowance, Carers Allowance, Disability Living Allowance (Care Component), Employment and Support Allowance or the benefits this replaced such as Severe Disablement Allowance and Incapacity Benefit, Industrial Injuries Disablement Benefit, Maternity Allowance, Pension Credit, Personal Independence Payment (Daily Living Component), Universal Credit, Working Tax Credit, etc.

The types of income that are not taken into account include for example Employment earnings, Child Benefit or Child Support Payments, Child Tax Credit, Disability Living Allowance (Mobility Component), Armed Forces Independence Payments and Mobility Supplement, Christmas Bonus, Discretionary Trusts, Gallantry Awards, Guardians Allowance, Income in Kind, Income frozen abroad, Housing and Council Tax Benefits, War Widows and Widowers Special Payments, Savings Credit disregards, Resettlement Benefit, Personal Injury Trust, Victoria or George Cross payments, Training expenses, etc.

The financial assessment will ensure that the individual retains a basic level of income equivalent to the Income Support or Pension Credit Guarantee Level rates plus an additional 25%, which is disregarded within the assessment calculations.

Household Costs/Bills include Council Tax (less any rebate of benefit entitlement), House Insurance (buildings and contents), Mortgage Payments (less any housing benefit), Rent (less any housing benefit), Water Rates or other water charges or Chemical Waste Removal charges.

Disability Related Expenses reflect the reasonable additional costs a person incurs as a result of an illness or disability. If a person is in receipt of disability benefits, and unless the individual states otherwise, a standard allowance of £10 per week will be made.

The financial assessment calculation's basic principle is:

Individual income

Less

Income Support or Pension Credit Level + 25% buffer

Less

Housing Costs and Expenses

Less

Disability Related Expenses

Equals

Net Disposable Income (available income for contribution)

It is proposed that the individual will be asked to contribute 100% of the Net Disposable Income although the actual contribution requested will be the lower of either the individual's 100% of NDI or the actual cost of the service provided.

Is the decision likely to affect people across the county in a similar way or are specific areas likely to be affected – e.g. are a set number of branches/sites to be affected? If so you will need to consider whether there are equality related issues associated with the locations selected – e.g. greater percentage of BME residents in a particular area where a closure is proposed as opposed to an area where a facility is remaining open.

The proposal will apply to all people across Lancashire who are currently receiving chargeable non-residential care and those who receive it in the future.

At present there are 11,857 service users receiving non-residential care; of which 6161 are either assessed as nil charge, funded by the NHS under continuing healthcare or are exempt under S117 of Mental Health Act. The proposal will not affect these service users. Of the remaining 5,696 service users, 857 have been assessed as full cost and 4,839 have been assessed to make a contribution currently based on 85% of their NDI.

Could the decision have a particular impact on any group of individuals sharing protected characteristics under the Equality Act 2010, namely:

- Age
- Disability including Deaf people
- Gender reassignment
- Pregnancy and maternity
- Race/ethnicity/nationality
- Religion or belief
- Sex/gender
- Sexual orientation
- Marriage or Civil Partnership Status

In considering this question you should identify and record any particular impact on people in a sub-group of any of the above –

e.g. people with a particular disability or from a particular religious or ethnic group.

It is particularly important to consider whether any decision is likely to impact adversely on any group of people sharing protected characteristics to a disproportionate extent. Any such disproportionate impact will need to be objectively justified.

Non-residential care is available to all who require it in Lancashire and is provided to members of any community. It will be applied to all adults and young people over 18 who receive non-residential care services through Lancashire Adult Services.

It is anticipated that disabled people may be more highly represented amongst recipients of non-residential care services particularly as to meet the eligibility criteria for access to day services or direct payments/personal budgets, a person would need to have been assessed as having a substantial level of disability/care need.

It is also anticipated that older people may also be disproportionately over-represented amongst recipients of home care services arising from increasing difficulties in functionality arising from age – e.g. reduced mobility, dexterity, sensory loss. They may also be more likely to live alone and not have informal support options available that can assist with tasks carried out as part of home care services on a regular/daily or several times daily basis.

If you have answered "Yes" to this question in relation to any of the above characteristics, – please go to Question 1.

If you have answered "No" in relation to all the protected characteristics, please briefly document your reasons below and attach this to the decision-making papers. (It goes without saying that if the lack of impact is obvious, it need only be very briefly noted.)

Question 1 – Background Evidence

What information do you have about the different groups of people who may be affected by this decision – e.g. employees or service users (you could use monitoring data, survey data, etc to compile this). As indicated above, the relevant protected characteristics are:

- Age
- Disability including Deaf people
- Gender reassignment/gender identity
- Pregnancy and maternity
- Race/Ethnicity/Nationality
- Religion or belief
- Sex/gender
- Sexual orientation
- Marriage or Civil Partnership status (in respect of which the s. 149 requires only that due regard be paid to the need to eliminate discrimination, harassment or victimisation or other conduct which is prohibited by the Act).

In considering this question you should again consider whether the decision under consideration could impact upon specific sub-groups e.g. people of a specific religion or people with a particular disability. You should also consider how the decision is likely to affect those who share two or more of the protected characteristics – for example, older women, disabled, elderly people, and so on.

Non-residential care is available to all who require it in Lancashire and is provided to members of any community. It will be applied to all adults and young people over 18 who receive non-residential care services through Lancashire Adult Services.

It is anticipated that disabled people may be more highly represented amongst recipients of non-residential care services particularly as to meet the eligibility criteria for access to day services or direct payments/personal budgets, a person would need to have been assessed as having a substantial level of disability.

It is also anticipated that older people may also be disproportionately over-represented amongst recipients of home care services arising from increasing difficulties in functionality arising from age – e.g. reduced mobility, dexterity, sensory loss. They may also be more likely to live alone and not have informal support options available that can assist with tasks carried out as part of home care services on a regular/daily or several times daily basis.

Question 2 – Engagement/Consultation

How have you tried to involve people/groups that are potentially affected by your decision? Please describe what engagement has taken place, with whom and when.

(Please ensure that you retain evidence of the consultation in case of any further enquiries. This includes the results of consultation or data gathering at any stage of the process)

At this stage approval is being sought for a public and stakeholder consultation on the proposed changes to inform the final policy decision.

Consideration is also being given to the practicalities of including a specific, targeted consultation with current service users or their families/carers as another part of the consultation process.

Question 3 – Analysing Impact

Could your proposal potentially disadvantage particular groups sharing any of the protected characteristics and if so which groups and in what way?

It is particularly important in considering this question to get to grips with the actual practical impact on those affected. The decision-makers need to know in clear and specific terms what the impact may be and how serious, or perhaps minor, it may be – will people need to walk a few

metres further to catch a bus, or to attend school? Will they be cut off altogether from vital services? The answers to such questions must be fully and frankly documented, for better or for worse, so that they can be properly evaluated when the decision is made.

Could your proposal potentially impact on individuals sharing the protected characteristics in any of the following ways:

- Could it discriminate unlawfully against individuals sharing any of the protected characteristics, whether directly or indirectly; if so, it must be amended. Bear in mind that this may involve taking steps to meet the specific needs of disabled people arising from their disabilities
- Could it advance equality of opportunity for those who share a particular protected characteristic? If not could it be developed or modified in order to do so?
- Does it encourage persons who share a relevant protected characteristic to participate in public life or in any activity in which participation by such persons is disproportionately low? If not could it be developed or modified in order to do so?
- Will the proposal contribute to fostering good relations between those who share a relevant protected characteristic and those who do not, for example by tackling prejudice and promoting understanding? If not could it be developed or modified in order to do so? Please identify any findings and how they might be addressed.

This will be informed by comments received as part of the proposed consultation process.

Currently the availability of non-residential care services gives service users an opportunity to remain in their own home with support which provides an opportunity to maintain contact with family, friends and others more easily and to remain in surroundings with which they are familiar. For some service users visits from home care staff may also

help to combat loneliness and isolation.

Access to day services for those who meet the eligibility criteria, provides an opportunity for service users to go to a different environment, participate in activities organised by the day service and meet other people. This can also provide some respite for families/carers, and in some circumstances is integral to families/carers being able to remain in work or education.

The use of direct payments/personal budgets has allowed eligible disabled people to have greater control over their own lives and activities. This has meant that people are able to remain in or take up employment, educational, leisure or other opportunities or other elements of participation in public life as they are able to ensure that care is delivered at a time and in a way which they require.

The factors included within the financial assessment calculation will ensure that individuals maintain a reasonable level of income.

The Policy states clearly that where individuals require "reasonable adjustments" to help them understand or participate in the eligibility and financial assessment processes, these will be made.

Question 4 –Combined/Cumulative Effect

Could the effects of your decision combine with other factors or decisions taken at local or national level to exacerbate the impact on any groups?

For example - if the proposal is to impose charges for adult social care, its impact on disabled people might be increased by other decisions within the County Council (e.g. increases in the fares charged for Community Transport and reductions in respite care) and national proposals (e.g. the availability of some benefits) . Whilst LCC cannot control some of these decisions, they could increase the adverse effect of the proposal. The LCC has a legal duty to consider this aspect, and to evaluate the decision, including mitigation, accordingly.

If Yes – please identify these.

At a national level, any changes in benefit levels or eligibility for benefits criteria could impact on this Policy both in terms of effects on individuals and more broadly in terms of the factors used to make the financial assessment calculations.

For those attending day centres/day services there are charges made for meals provided to individuals and this will be additional to any charges levied under the non-residential charging policy. Furthermore charges for any other refreshments provided and any other activities arranged as part of an individual's attendance at day care are also in addition to the assessed non-residential care charge.

Meals provided to an individual in their own home will be charged the full cost of the meal and the individual will pay the meal provider directly.

Proposals to introduce fees for the provision of Appointeeship Services are also under consideration. This relates to individuals unable to manage their own financial affairs by reason of mental incapacity.

Question 5 – Identifying Initial Results of Your Analysis

As a result of your analysis have you changed/amended your original proposal?

Please identify how –

For example:

Adjusted the original proposal – briefly outline the adjustments

Continuing with the Original Proposal – briefly explain why

Stopped the Proposal and Revised it - briefly explain

The proposal will be reviewed in the light of feedback received from the consultation proposed.

Question 6 - Mitigation

Please set out any steps you will take to mitigate/reduce any potential adverse effects of your decision on those sharing any particular protected characteristic. It is important here to do a genuine and realistic evaluation of the effectiveness of the mitigation contemplated. Over-optimistic and over-generalised assessments are likely to fall short of the “due regard” requirement.

Also consider if any mitigation might adversely affect any other groups and how this might be managed.

A financial assessment is an integral part of the policy and includes the facility of a benefits check for all individuals who undergo the financial assessment. Where it is identified that an individual is not currently in receipt of benefits which they may be entitled to, financial assessors can in some circumstances make direct contact with DWP and receive a decision over the phone or can arrange for DWP to send out a claim form and if appropriate the DWP Visiting Officer's staff are able to visit and assist with completing the form.

The County Council does not charge for the following services:

- Crisis Care for the first 3 days;
- Intermediate care such as reablement which must be provided free of charge for up to six weeks;
- Day care where it forms part of an individual's residential care contract;
- Community Equipment (aids and minor adaptations)
- Care and support provided to people with CJD;
- Aftercare services provided under section 117 of the Mental Health Act 1983;
- Any service or part of a service which the NHS is under a duty to provide;
- More broadly any services which a local authority is under a duty to provide through other legislation may not be charged for under the Care Act 2014;
- Assessment of needs and care planning may also not be charged for, since these processes do not constitute "meeting needs";

- Prisoners care.

The availability of a specific Disability Related Expenses criteria as part of the financial assessment process – and the opportunity to provide specific information if an individual believes the standard assessment of £10.00 per week does not adequately reflect their disability related costs – are an element which will assist many individuals undergoing the financial assessment calculations.

Specific arrangements can be made where a person undergoing a financial assessment is considered to be part of a couple. This includes where they have a spouse or partner so ensuring those who are married or in civil partnerships are included in this provision. The "couple's assessment" will financially assess the couple's combined income, savings and investments to ensure the couple's minimum level of income is protected.

Individuals having an assessed Net Disposable Income of less than £5,00 will not have to contribute to the cost of the service.

Provision is in place for financial reassessment to ensure an individual's circumstances have not changed significantly.

An individual can choose to pay the full cost of their non-residential care rather than go through the financial assessment process, should they wish.

Light touch financial assessments may also be completed if:

- Where a person has significant financial resources, and does not wish to undergo a full financial assessment for personal reasons, but wishes nonetheless to access local authority support in meeting their needs;
- Where the charge for a particular service is a small or nominal amount (for example for subsidised services) which a person is clearly able to meet and would clearly leave them with the relevant minimum income, and carrying out a financial assessment would be disproportionate;
- When an individual is in receipt of benefits which demonstrate that they would not be able to contribute towards their care and

support costs. This might include income from Jobseekers Allowance.

An appeals process is in place where people believe the financial assessment has been calculated incorrectly.

If a person's care ceases prior to a financial assessment being completed the following will apply:

*within one week of the care start date the individual will not be charged;

*after one week but within 4 weeks a light touch assessment will be completed to calculate the contribution due using benefit/pension information as verified by DWP.

The preferred payment method is Direct Debit but arrangements are in place to facilitate the invoicing of individuals on a 4-weekly basis for the cost of their care. This may be a "reasonable adjustment" for some disabled people or be of value where a person's need for home care is expected to be short term.

Question 7 – Balancing the Proposal/Countervailing Factors

At this point you need to weigh up the reasons for the proposal – e.g. need for budget savings; damaging effects of not taking forward the proposal at this time – against the findings of your analysis. Please describe this assessment. It is important here to ensure that the assessment of any negative effects upon those sharing protected characteristics is full and frank. The full extent of actual adverse impacts must be acknowledged and taken into account, or the assessment will be inadequate. What is required is an honest evaluation, and not a marketing exercise. Conversely, while adverse effects should be frankly acknowledged, they need not be overstated or exaggerated. Where effects are not serious, this too should be made clear.

The proposals in this Policy represent the implementation of a

previous budget decision, following which increased income of £1.9m was included in the authority's budget. Given the current financial position of the authority, and an estimated funding gap by 2021/22 of £167.132m, the requirement to achieve budget savings previously agreed is critical, along with the need for further budget savings.

Question 8 – Final Proposal

In summary, what is your final proposal and which groups may be affected and how?

To revise the County Council's policy on how to charge a contribution for non-residential adult social care services following a financial assessment. This is permitted under the Care Act 2014.

Specifically the revised Policy includes a suggested change of individuals being asked to contribute 100% of their Net Disposable Income (NDI) or the actual cost of the service provided, whichever is the lower. Previously contributions were based on 85% of NDI.

At this stage, approval is being requested for a public and stakeholder consultation on the proposed changes.

Question 9 – Review and Monitoring Arrangements

Describe what arrangements you will put in place to review and monitor the effects of your proposal.

Regular monitoring of the number of individuals receiving non-residential care and numbers of appeals may assist in reviewing the implementation of any policy change. Feedback from potential participants, their families/carers (via financial assessors or social workers or directly) and from Elected Members may also provide anecdotal material to assist in these reviews.

Equality Analysis Prepared By Kieran Curran and Jeanette Binns

Position/Role

Equality Analysis Endorsed by Line Manager and/or Service Head

Decision Signed Off By

Cabinet Member or Director

Please remember to ensure the Equality Decision Making Analysis is submitted with the decision-making report and a copy is retained with other papers relating to the decision.

For further information please contact

Jeanette Binns – Equality & Cohesion Manager

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Thank you