

# North Tyneside Council

## Report to Cabinet

### Date: 11<sup>th</sup> March 2013

#### ITEM 7(i)

Title: Amendments to  
Fairer Contributions  
Policy

Portfolio(s): Public Health and Adult  
Social Care

Cabinet Member(s): Councillor Les  
Miller

Report from Directorate: Community Services

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Wards affected: All

#### PART 1

##### 1.1 Purpose:

The purpose of the report is to obtain Cabinet's approval to a number of minor amendments to the Council's existing Fairer Contributions Policy. These amendments follow a recent High Court judgment in Judicial Review proceedings brought against the Council. Amendment of the existing Policy is proposed pursuant to advice received from Counsel who represented the Council in the proceedings.

##### 1.2 Recommendation(s):

It is recommended that Cabinet:

- (1) Approve the amendments as highlighted in the revised policy attached as Appendix 1 to this report, for the reasons set out in paragraph 1.5.3 of this report.

##### 1.3 Forward Plan:

Twenty eight days' notice of this report has been given and it first appeared on the Forward Plan that was published on 2<sup>nd</sup> January 2013.

##### 1.4 Council Plan and Policy Framework

This report relates to amending an existing Policy and has no direct connection to the Council Strategic Plan or to the Sustainable Community Strategy 2010-13.

## **1.5 Information:**

### **1.5.1 Background**

#### Charging for non-residential social care services

The power to charge for Local Authority Services including non-residential social care services is contained in section 17 of the Health and Social Services and Social Security Adjudications Act 1983 (HASSASSA).

This power is discretionary. However, where a Local Authority decides to charge for services they must do so in accordance with guidance issued under section 7 of the Local Authority Social Services Act 1970 (LASSA).

Cabinet approved the Council's current Fairer Contributions Policy in October 2010. This policy was developed in line with statutory guidance issued by the Department of Health in July 2009, 'Fairer Contributions: calculating an individual's contribution to their personal budget'. This policy has been in operation since 3<sup>rd</sup> January 2011.

The contribution payable by a social care (community care) service user is calculated by completing a financial assessment of the service user.

### **1.5.2 Judicial Review**

Judicial Review proceedings were issued against the Council on behalf of claimant A in November 2011.

At the beginning of the proceedings there were three grounds for Judicial Review claimed on behalf of claimant A, however during the course of the proceedings and specifically following the hearing on 18<sup>th</sup> July 2012, when the Judge directed further submissions to be filed, the grounds of challenge changed and were significantly reduced. At the point when the Judgment was delivered the challenge was against the Council's alleged policy of never considering giving an allowance to community care service users who live with a parent or parents, where those parents are not entitled to Housing Benefit. The Judge considered the challenge on two grounds, one broad and one narrow.

#### Broad ground of the claim

The Council succeeded in defending claimant A's claim on what the Judge described as the "broad ground". This supported the Council's practice of making an allowance for accommodation costs limited to "mortgage/rent" and council tax, in the financial assessment of a community care service, and not to make an allowance for "board and lodgings", nor to make an allowance where there is no evidence of a payment being made by the service user.

#### Narrow ground of the claim

Claimant A succeeded on this "narrow ground" related to what the Judge found to be the Council's policy of taking a different approach in the financial assessment of community care service users living with parents in receipt of Housing Benefit, as compared to the approach adopted in relation to those who did not receive Housing Benefit.

The Judge found that it appeared to be the Council's policy to allow a disregard against income in the service user's financial assessment, equivalent to the amount by which his

or her parent(s) Housing and Council Tax Benefit was reduced by a statutory non-dependant reduction for an adult living in the household; but the Council did not allow a similar disregard where the service user's parent(s) were not in receipt of such Benefit.

While it might make sense to follow the needs entitlement to Housing Benefit the Judge found it to be irrational in legal terms for the Council to have a policy under which it considers making an allowance for housing costs where the informal carer of a service user is subject to non-dependant deduction for that user, but has an inflexible rule that such an allowance is not considered in circumstances in which the relevant carer is not entitled to Housing Benefit.

### 1.5.3 Implications arising from the judgment

In light of the judgment the Council was advised to amend its existing policy to remove any ambiguity about the treatment of housing costs in financial assessments for community care services. The Court found that the Council appeared to have a policy which treated Housing Benefit recipients more favourably than those living in privately owned accommodation, or others who did not receive Housing Benefit.

The amended policy should confirm that the Council does not fetter its lawful discretion in financial assessments and will take into account all properly evidenced housing costs. The specific circumstances of claimant A's case were unusual and had not arisen previously and therefore had not been contemplated when the existing Policy was written.

The amendments to the Council's Fairer Contributions Policy highlighted in Appendix 1 to this report are proposed as a result of the judgment and to address the issues raised in respect of the 'narrow ground' of the claim.

## 1.6 **Decision options:**

The following decision options are available for consideration by Cabinet:

### Option 1

Agree the recommendation as set out in 1.2 of the report.

### Option 2

Not agree the recommendation as set out in 1.2 of the report.

Option 1 is the recommended option.

## 1.7 **Reasons for recommended option:**

Option 1 is recommended for the following reasons:

Cabinet is recommended to agree to Option 1. This will:

- Ensure that the Council's Fairer Contributions Policy is amended to address the issues raised in the 'narrow ground' of the Judicial Review claim.

## 1.8 Appendices:

Appendix 1: 'North Tyneside Council, Adult Social Care, Fairer Contributions Policy for Non-Residential Care Services. Revised - March 2013.

## 1.9 Contact officers:

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## 1.10 Background information:

The following background papers/information has been used in the compilation of this report and are available at the office of the author:

[Cabinet Report 11 October 2010 Fairer Contributions Policy](#)

## PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

### 2.1 Finance and other resources

Whilst charging for non-residential social care services is discretionary, there is an expectation from Central Government that Local Authorities will charge for services and Local Authority Circular LAC (94) (1) states:

“Any authority, which recovers less revenue than its discretionary powers allow, is placing an extra burden on its population or is foregoing resources which could be used to the benefit of the service.”

The financial impact on income from this judgement is minimal and can be managed within existing budgets.

### 2.2 Legal

Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 permits a Local Authority providing specified services to recover such charge from the recipient of the services as the Local Authority considers reasonable. The Local Authority cannot require payment for more than the recipient has shown that it is reasonably practicable for him/her to pay.

Section 7 of the Local Authority Social Services Act 1970 requires Local Authorities to act under the general guidance of the Secretary of State (Department of Health) when

exercising social services functions. Such guidance was issued by the DoH in “Fairer contributions guidance: calculating an individual's contribution to their personal budget”.

North Tyneside’s Fairer Contributions Policy has been developed taking account of this guidance.

The amendments to the policy, as detailed in this report, seek to provide clarity in respect of a number of areas of the policy, rather than to change its provisions.

## **2.3 Consultation/community engagement**

### **2.3.1 Internal Consultation**

Consultation on the amendments to the policy has been undertaken with Legal Services.

### **2.3.2 External Consultation/Engagement**

No external consultation has been undertaken in respect of the proposed amendments. The amendments do not seek to change the provisions of the policy but are to provide clarity in terms of the treatment of housing costs contained within the existing policy, following the outcome of the Judicial Review case.

## **2.4 Human rights**

The proposals and actions contained in this Cabinet Report support the following Human Rights Articles:

Article 5: Right to liberty and security

Article 8: Right to respect for private and family life

Article 9: Freedom of thought, conscience and religion

Article 10: Freedom of expression.

Article 14: Prohibition of discrimination

## **2.5 Equalities and diversity**

An Equality Impact Assessment on the Fairer Contributions Policy was undertaken in August 2010 (reference 864). This will be reviewed however it is unlikely that the EIA will need updating as a result of the proposed amendments.

## **2.6 Risk management**

The proposed amendments set out in this report and highlighted within the Appendix will provide clarity in respect of the treatment of housing costs, as set out in the ‘narrow ground’ of the judgment and will reduce the risk of further challenge to the Council in this regard.

## **2.7 Crime and disorder**

There are no crime and disorder considerations directly arising from this report.

## 2.8 Environment and sustainability

There are no environment and sustainability issues directly arising from this report.

### PART 3 - SIGN OFF

- Chief Executive  x
- Strategic Director(s)  X
- Mayor/Cabinet Member(s)  x
- Chief Finance Officer  X
- Monitoring Officer  X
- Strategic Manager, Policy and, Partnerships  X