

## SECTION 1 - DO I NEED AN EIA?

## DO I NEED AN EIA?

**Name of policy/activity:**

**Contributing to the Cost of Adult Social Care and Support (non-residential) within a Self-Directed Support System**

Please choose one of the following:

Is this a:

- New policy/activity?
- **Existing policy/activity**
- Budget proposal/change for this policy/activity?
- Pilot programme or project?

### Decision

Set out the rationale for deciding whether or not to proceed to an Equality Impact Assessment (EIA)

This Policy is central in defining the adult service users who may (or will not) need to contribute on a weekly basis towards their Individual Budget (to meet their eligible support needs and agreed, personal outcomes). Therefore, it sets the Policy direction that leads to (via the actual contributions for care/support) the amount of income received by Moray Council from such contributions (which is income that helps us to provide sustainable and quality services/support to the eligible, local population). This balancing of the maximisation of independent living for individuals versus the need to raise income to provide services/support is supported by the **COSLA Guidance** on [Charging for Non-Residential Care](#)).

There have been several changes since the last update of the Policy. This includes the Carers (Scotland) Act 2016 clarifying that unpaid carers will not have to contribute to any support they are eligible for, the end to the freeze on certain welfare benefits and the introduction of Free Personal Care for people under 65 who are eligible. This has led (as of early 2020) to 213 service users under 65 being in receipt of Free Personal Care (at a cost to the council of approximately £260,000).

As a result there have been several changes to this Policy to account for the resulting legislative requirements and to ensure those service users who should not be contributing are not doing so.

The Policy has changed mainly in terms of administrative/non-contribution based efficiency measures relating to Direct Payments and payment mechanisms for contributions to the service user's Individual Budget, including paying the contribution net of the service user's assessed contribution (if they have to contribute) and introduction of

prepayment cards for some service users accessing Direct Payments (Option 1 of SDS). These changes have no material effect on the amount that the service user does or does not have to contribute to their Individual Budget. These administrative/efficiency changes are consistent with the Self-directed Support Act 2013 and related Guidance (specifically around Direct Payments and financial assessment/care charging administration by the Community Care Finance and Self-Directed Support (SDS) Teams)).

After careful consideration and use of the Chief Social Work Officer's discretion under the CoSLA Guidance it was decided that the Taper applied to the service user's available income for charging would not be changed and remains at 70% of the service user's available/excess income above their charging threshold (plus 25% buffer). Therefore, there is no significant change to service user contributions above the annual, minor changes via the updated 2021/22 CoSLA Guidance. A 100% Taper would mean that all available/excess income would be taken into account as a contribution and anything less than 100% enables the service user to retain more income above their DWP Personal Allowance/Charging Threshold to assist with maximising independent living and maintaining dignity.

Given the role this Policy plays in income generation and contributions from service users it is clear that this updated Policy requires an EDIA.

**Date of Decision:** 20/08/2021

**If undertaking an EIA please continue onto the Section 2. If not, pass this signed form to the Equalities Officer.**

**Assessment undertaken by** - Garry Macdonald, Commissioning & Performance Officer, Health & Social Care

Director or Head of Service	Jane Mackie
Lead Officer for developing the policy/activity	Garry Macdonald
Other people involved in the screening (this may be council staff, partners or others i.e contractor or community)	Adult Care Practice Governance Board, Strategic Leadership Group, Community Care Finance Team Manager and staff, Self-directed Support Team Manager and staff and SDS Steering Group.

## SECTION 2: EQUALITY IMPACT ASSESSMENT

**Brief description of the affected service****1. Describe what the service does:**

This Policy is central in defining the adult service users who may (or will not) need to contribute on a weekly basis towards their Individual Budget (to meet their eligible support needs and agreed, personal outcomes). Therefore, it sets the Policy direction that leads to (via the actual contributions) the amount of income received by Moray Council from such contributions (which is income that helps us to provide sustainable and quality services/support to the eligible, local population).

The Policy seeks to hold that balance between maximising independent living for individuals and being Human Rights Compatible (through the financial assessment process, taking into account non-discretionary elements such as the Personal Allowance/Charging Threshold plus 25% buffer and other income disregards inherent in the guidance. It also takes into account discretionary elements such as where we set the Taper on available/excess income) and ensuring enough income from contributions to ensure the continuation of the provision of sustainable and quality services/support to the local population.

**2. Who are your main stakeholders?**

- Adult Service Users (particularly those eligible for chargeable services/support)
- Unpaid Carers
- The Community Care Finance Team
- The Self-directed Support Team
- Managers and staff of Adult Social Work Teams
- External Providers including Private Care Agencies, Individual Service Fund Providers and Direct Payments Payroll Providers

**3. What changes as a result of the proposals? Is the service reduced or removed?**

In essence there is no change in the overall framework for financial assessments and contributions which has been in place for decades. The changes are an update to the Policy to take into account legislative requirements around;

- Free Personal Care for people under 65 who are eligible
- Clarification that Unpaid Carers are not to be charged for eligible support

The other changes (administrative/non-contribution based efficiency) are within the terms/boundaries of the legislation and guidance and are designed to balance the maximisation of independence for service users with ensuring sustainable and quality services/support for the local population.

Many service users (particularly those now eligible for Free Personal Care – 213 in early 2020) no longer need to make a contribution or will make less of a contribution. Those

that do make a contribution will see the exact same financial assessment process, largely taking into account or disregarding the same income and capital/income as before with only the usual, minor changes/uprating contained within the updated CoSLA Guidance for 2021/22.

#### 4. How will this affect your customers?

As above – some service users' will (are) no longer paying (pay) a contribution or are paying less of a contribution to the cost of their care/support as a result of Free Personal Care for people under 65.

As above – service users who have eligible care and support needs and who are assessed as able to contribute towards chargeable services/support as part of their SDS Individual Budget will see only the annual, minor changes as per the updated CoSLA Guidance. There are no significant changes to the amount of income they have to contribute (from any available/excess income they may have above their Charging Threshold (plus 25%)).

This is consistent with the terms of the relevant legislation and guidance including the discretion for the Authority of where to set the Taper to balance maximisation of independent living for service users with ensuring enough income to provide sustainable, quality services/support for the local population.

Community Care Finance data has highlighted that since April 2019, as of early 2020 213 service users (under 65) who would/may previously have had to contribute to the cost of care and support that meets the definition of Free Personal Care, were no longer doing so. This has led to a decrease in income for the council approximately £260,000.

Complaints information was also analysed for the past 18 months. There were no complaints relating to contributions but there is another defined pathway for these appeals (the Community Care Charging Appeals Panel).

The Charging Appeals Panel considers a range of requests/appeals from service users relating to; the financial assessment process, the service user's calculated and assessed contribution amount and appeals around charging/contributions. This includes the opportunity for service users to request additional income be disregarded as a contribution to the costs related to their disability (DRE) and with reference to maximising their independence. This links to Section 8 (mitigating factors to offset any negative impacts, including socio-economic, on service users).

5. Please indicate if these apply to any of the protected characteristics		
Protected groups	Positive impact	Negative impact
Race		
Disability	√	√

## APPENDIX 2

Carers (for elderly, disabled or minors)	√	
Sex		
Pregnancy and maternity (including breastfeeding)		
Sexual orientation		
Age (include children, young people, midlife and older people)	√	√
Religion, and or belief		
Gender reassignment		
Inequalities arising from socio-economic differences	√	√
Human Rights	<p>Article 14 may be engaged if another relevant Article is engaged in combination (i.e. Article 8 or Article 1 of Protocol 1 Right to Property) Article 6 which includes the right of appeal which links to charging appeals and complaints procedures.</p> <p><a href="https://www.equalityhumanrights.com/en/human-rights/human-rights-act">https://www.equalityhumanrights.com/en/human-rights/human-rights-act</a></p>	

### 6. Evidence. What information have you used to make your assessment?

<b>Performance data</b>	√
<b>Internal consultation</b>	√
<b>Consultation with affected groups</b>	
<b>Local statistics</b>	√
<b>National statistics</b>	
<b>Other</b>	√

### 7. Evidence gaps

Do you need additional information in order to complete the information in the previous questions?

No. All of the above information relates to statutory requirements, use of discretion within the boundaries of the relevant guidance, consultation with key staff as well as taking into account the charging appeals process (one of the mitigating factors that offset potentially negative impacts from the implementation of the Policy).

## 8. Mitigating action

*Can the impact of the proposed policy/activity be mitigated? Yes*

Please explain

The charging guidance is not statutory guidance and provides significant discretion (within certain non-discretionary boundaries such as the Personal Allowance threshold and 25% buffer being a minimum income guarantee for the service user) for the Authority. This means that even where support is chargeable and the individual is assessed financially as being able to contribute, they may not have to contribute all of their available/excess income (which would be a 100% Taper).

Our Taper is remaining at 70% (which contributes to maximisation of independent living) so there is still room (30%) for further discretion. That might be impacted upwards or downwards by future developments that influence services/support and charging (for example, the independent review of adult social care). For the time being, therefore, there is no significant change to/increase in contributions from service users towards their SDS Individual Budget. The main changes in the updated Policy relate to non-contribution based administrative and efficiency changes. These will streamline the Direct Payments process, bringing increased clarity for staff and service users (and their representatives). For example, clarity in how payments/contributions from the Authority are made, the return to a weekly Individual Budget for the service user (meaning no more contributions by them after the support ends as was the case with annual budgets) and introduction of prepayment cards for some service users with a Direct Payment.

As well as a complaints process we have, again consistent with the charging guidance, set up a specific Community Care Charging Appeals Panel. The service user (or their authorised representative) has access to the panel and able to state the case as to why they think the contribution they are being asked to make is 'unreasonable'. This could be in relation to;

- Procedural errors in the financial assessment
- Seeking additional income disregards (retaining more income) as a contribution towards particular costs that are, for example, related to disability (Disability-related Expenditure such as the cost of extra laundry or extra support around the house, not otherwise available to them, to maximise their independence)

Positive outcomes (for service users) from the Appeals Panel Process result in the service user retaining more income (either through application of the process but more likely the discretion of the panel within the boundaries of the charging guidance). This helps to maximise the service user's independence. The panel inevitably operates by taking the unique circumstances of each case into account and making decisions on a case by case basis to avoid any 'fettering of discretion'.

Financial assessments also include a financial 'health check' for service users to ensure that they are claiming their entitlements – for example, ensuring that those who may be eligible are claiming for Pension Credit, Attendance Allowance, Personal Independence Payment and any associated premiums/disability premiums (additional amounts paid on top of the passport benefit).

Financial reviews are carried out when requested or otherwise at key points in the

service user's support – with flexibility to account for (change the financial assessment amount) changes in the service user's circumstances or health (loss of income, increased income, sale of or acquisition of capital, change in benefit rates etc.).

There are other sources of non-statutory support that service users can be signposted to. For example, for assistance with various costs/expenses. That includes, for example (through their previous occupation, geographic location, age or gender), organisations such as Turn2Us/Elizabeth Finn Care <https://www.turn2us.org.uk/Get-Support>.

### 9. Justification

If nothing can be done to reduce the negative impact(s) but the proposed policy/activity must go ahead, what justification is there to continue with the change?

**Please see Section 8** for the mitigating factors that reduce any negative impacts of the Policy

What is the aim of the proposal?

To balance the maximisation of independent living for individual service users with ensuring enough income from contributions (to the cost of chargeable care/support) to ensure the sustainability and quality of services/support for the local population.

Have you considered alternatives?

Yes. Some of the changes were legislative requirements (including free personal care for people under 65 who are eligible and not charging unpaid carers) so no alternative was available to implementing these. With regard to discretionary elements and impact on income (for the service user and the Authority), we considered other options for the Taper. This included changing from 70% to 80%, which would have meant an increase in contributions from service users from their weekly income. With a reduction in income of £260,000 (approximately) through the implementation (so far as of early 2020) of free personal care for people under 65, these other options (Taper increase) were worth exploring with respect to ensuring sustainable/quality services/support for the local population. The decision was taken to leave the Taper at 70% and not to partially offset the loss of income from the changes to free personal care. In the circumstances at the time (including Covid-19 and potential outcomes from the Independent Review of Adult Social Care) we wanted to place more emphasis on ensuring a balance towards maximisation of independent living, ensuring dignity for service users and ensuring the policy is Human Rights compatible. The only small contribution-based changes are those included annually in the updated CoSLA Charging Guidance.

## SECTION 3 CONCLUDING THE EIA

## Concluding the EIA

1. No negative impacts on any of the protected groups were found.	
2. Some negative impacts have been identified but these can be mitigated as outlined in question 8.	√
3. Negative impacts cannot be fully mitigated the proposals are thought to be justified as outlined in question 9.	
4. It is advised not to go ahead with the proposals.	

**Decision**

Set out the rationale for deciding whether or not to proceed with the proposed actions:

The actions are consistent with legislative requirements and the terms/boundaries and discretion inherent in the charging guidance. Furthermore the actions ensure (along with the mitigating factors in Section 8) the continuation of the balance between maximisation of independent living for service users and ensuring enough income from contributions to continue to provide/facilitate sustainable and quality support for the local population (consistent with the terms of the charging guidance)

**Date of Decision:** 20/08/2021

**Sign off and authorisation:**

<b>Service</b>	Health & Social Care
<b>Department</b>	Adult Social Care
<b>Policy/activity subject to EIA</b>	Contributing to the Cost of Adult Social Care and Support (non-residential) within a Self-Directed Support System
We have completed the equality impact assessment for this policy/activity.	Name: Garry Macdonald Position: Commissioning and Performance Officer – Health & Social Care Date: 20/08/2021
Authorisation by head of service or director.	Name: Jane Mackie Position: Chief Social Work Officer Date: 20/08/2021
Please return this form to the Equal Opportunities Officer, Chief Executive's Office.	