

# PERTH AND KINROSS COUNCIL

## Strategic Policy and Resources Executive Sub-Committee

20 August 2018

### Charging for Community Care Services

Report by Depute Chief Executive (Chief Operating Officer) (Report No. 18/262)

#### PURPOSE OF REPORT

The purpose of this report is to:-

- advise the sub-committee of emerging risks and issues which are likely to impact on the Council's ability to implement the revised charging policy in respect of income thresholds for individuals below pensionable age in receipt of social care services;
- request authority to defer the implementation of the revised charging policy;
- note that whilst adult social work and social care functions are delegated to the Integrated Joint Board, income and charging is not a delegated function and remains the responsibility of the Council; and
- note that the budget savings of £300,000 originally approved in February 2016 are unlikely to be achieved should implementation be deferred.

#### 1. INTRODUCTION

- 1.1 In February 2018, the Council confirmed a budget decision originally approved in 2016, to implement changes to the policy on charging income thresholds which is due to be implemented from 1 October 2018.
- 1.2 This report sets out emerging issues and risks arising from recent and programmed legislative change, and judicial challenge which now call into question the Council's ability to safely implement the proposed policy change.

#### 2. BACKGROUND

- 2.1 The charging income threshold is the set level of personal income below which a person can receive care services at home without needing to pay a contribution or charge towards the cost of the services they receive. This allows clients a guaranteed weekly income to pay for bills, food, clothing, leisure activities, etc.
- 2.2 The charging income thresholds recommended by CoSLA for 2018-2019 are as follows:

Single person below state pension age	£134 per week
Single person of state pension age	£204 per week
Couple below state pension age	£204 per week
Couple of state pension age	£311 per week

These thresholds are linked to rates set by the UK Government Department for Work and Pensions and are reviewed annually by CoSLA in line with any benefit increases.

- 2.3 In addition to the above threshold, rent/mortgage and council tax payments are also disregarded, along with certain benefits such as the mobility component of Disability Living Allowance or Personal Independence Payment.
- 2.4 To date, Perth & Kinross Council has only applied one income threshold for all clients – the ‘single person of state pension age’ amount. During that time therefore a proportion of the client group have been able to keep more of their income than they would have under the CoSLA four threshold approach which many other councils have adopted.

### 3. REVISED POLICY

- 3.1 As part of the budget process in February 2016, Council agreed to move away from a single income threshold for all and to adopt an approach more in line with that recommended by CoSLA.
- 3.2 In adopting the revised charging thresholds, the Council chose not to distinguish between single and married clients (as the CoSLA thresholds provide for) and instead adopted 2 thresholds to apply:

Person below state pension age	£134 per week
Person of state pension age	£204 per week

### 4. IMPLEMENTATION ACTION TO DATE

- 4.1 A small project team was established to implement the Council decision in respect of the revised charging policy.
- 4.2 There are currently around 3,900 clients who receive chargeable non-residential care services. Of this, 579 are of working age and potentially affected by the proposed change in threshold from October 2018. Below is a table showing the impact on these clients:

Increase Per Week	Number of Clients
£0.00	233
£0.01 - £10.00	44
£10.01 – £20.00	14
£20.01 – £30.00	17
£30.01 – £40.00	18
£40.01 – £50.00	59
£50.01 – £60.00	16
£60.01 – £70.00	171
£70.01 or greater	7

- 4.3 From April 2018 the team have been writing, telephoning and visiting, in accordance with clients’ preference, the 346 clients who would be affected by an increase in contribution costs under the new policy to discuss the change

and impact which it would have on them personally. A factsheet was also provided to clients during visits.

- 4.4 All clients were offered an up-to-date financial assessment/income maximisation check prior to the change being implemented to make sure they are receiving all the benefits and financial support they are entitled to.
- 4.5 Clients were also advised that they could make an application to the Discretion Panel if they felt that they would face undue financial hardship because of the change in policy. Full information about this appeal process was provided to everyone affected.
- 4.6 The Discretion Panel has met monthly to consider any such applications. As at 8<sup>th</sup> August 2018, 38 applications had been received, of which 6 were awarded discretion. A small number are still in process as additional information is required before a final decision can be made.
- 4.7 Letters were received from approximately 20 client's families, and these were replied to on a case by case basis, with no subsequent correspondence being received, with one exception. Where appropriate, it was explained what percentage of the care package the client was being asked to pay and the percentage of their income that the client were being left with.
- 4.8 From the direct engagement that officers have had with clients and families, most understood the need to change the policy and were accepting of the increased charges.
- 4.9 The SWIFT social care management information system has been updated to enable revised invoices to be issued covering the period from October 2018 to March 2019, which if implemented would generate net income in the region of £300,000.

## **5. CURRENT ISSUES AND RISKS**

- 5.1 The decision to change the policy in respect of income thresholds dates back to 2016. Since then the legislative landscape has changed significantly with the implementation of the Carers (Scotland) Act 2016 and the proposed changes to charging for personal care for individuals who are under 65 years of age (referred to as "Frank's Law").
- 5.2 The Carers Act requires the Council to waive charges for clients when we provide replacement care to give the carer respite. The issue is complex, as it is often difficult to distinguish between replacement care to give the carer a break and that which should properly be assessed as part of the individual's care needs. The Scottish Government are currently in the process of amending their guidance to provide greater clarity for local authorities as they seek to implement the legislation. Depending upon what the amended guidance says, this may require further changes to charging for all clients including those affected by the current proposed policy. Until this clarity is provided however this remains an unknown in respect of many clients.

- 5.3 “Frank’s Law” extends free personal care to under-65s and is expected to come into force in April 2019. The regulations were approved by the Scottish Parliament in June of this year but we are awaiting further guidance. This will require further assessment and changes to charges in respect of clients under 65 years in receipt of care at home.
- 5.4 A further consequence of these legislative changes is the potential for additional new clients to come forward for assessment.
- 5.5 Given that both of these legislative changes impact upon the same client group as those potentially affected by the revised charging threshold policy, and given that there is still a lack of clarity as to how the new legislation is to be implemented, it has been difficult to assess what the cumulative impact of these changes to the charging regime will be. It would seem prudent to pause and reassess this when the respective statutory guidance is available.
- 5.6 It should also be noted that the Council has been served with a writ for Judicial Review in respect of one particular client affected by the revised policy. The judicial review application raises a number of potential issues relating to equalities and human rights. The matter is complex and the challenges relate to both the policy itself and the process for determining it.
- 5.7 The Council is currently seeking Counsel’s opinion on a number of issues and in particular any potential risks associated with the application of thresholds based on age which may not only be a significant issue for Perth & Kinross Council but also for other local authorities who have adopted the approach set out in the CoSLA guidance.

## **6. PROPOSALS**

- 6.1 In light of the issues raised within the Judicial Review application and the lack of clarity as to the impact of the Carers Act and “Frank’s Law” it is therefore proposed to defer the implementation of the revised policy in respect of charging thresholds. This will allow the Council to assess its approach to charging, taking into account the cumulative impact of new legislation, its equalities duties and legal advice from Counsel in terms of potential risks to adopting an approach in which age is a factor in determining contribution thresholds.
- 6.2 As the Charging Threshold Policy flows from a wider Contributions Policy which was approved in 2013, it is proposed that the Council take this opportunity to review the broader charging policy for non -residential services to ensure that it remains fit for purpose, reflects recent legislative change and continues to comply with its equalities duties.

## **7. CONCLUSIONS AND RECOMMENDATIONS**

- 7.1 The issues and potential risks, highlighted within this report, arising from recent legislative change and a current judicial challenge may now call into question the Council’s ability to safely implement the proposed policy change.

7.2 It is recommended that the Executive Sub-Committee agrees to:

- (i) defer the implementation of the revised charging policy;
- (ii) instruct officers to carry out a further assessment of both the charging thresholds policy and the wider contributions policy to ensure compliance with new legislation and duties under the Equalities Act;
- (iii) note that whilst adult social work and social care functions are delegated to the Integrated Joint Board, income and charging is not a delegated function and remains the responsibility of the Council; and
- (iv) note that the budget savings of £300,000 originally approved in February 2016, are unlikely to be achieved should implementation of the policy be deferred.

#### Author

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#### Approved

Name	Designation	Date
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## 1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

<b>Strategic Implications</b>	<b>Yes / None</b>
Community Plan / Single Outcome Agreement	N/A
Corporate Plan	N/A
<b>Resource Implications</b>	
Financial	YES
Workforce	N/A
Asset Management (land, property, IST)	N/A
<b>Assessments</b>	
Equality Impact Assessment	N/A
Strategic Environmental Assessment	N/A
Sustainability (community, economic, environmental)	N/A
Legal and Governance	N/A
Risk	N/A
<b>Consultation</b>	
Internal	YES
External	N/A
<b>Communication</b>	
Communications Plan	N/A

### 1. Strategic Implications N/A

### 2. Resource Implications Financial

The financial implications arising from this report will be monitored and reported to future meeting of the Strategic Policy & Resources Committee.

### 3. Assessments N/A

### 4. Consultation Internal

- 4.1 Head of Adult Social Work & Social Care Services
- 4.2 Head of IT & Revenues
- 4.3 Chief Social Work Officer
- 4.4 Head of Finance

### 5. Communication N/A

### 6. Background papers N/A

### 7. Appendices N/A