

Individual Decision

The attached report will be taken as an
Individual Portfolio Member Decision on:

Thursday, 25 October, 2012

Ref:	Title	Portfolio Member	Page No.
ID2550	Fairer Contributions Policy	Councillor Joe Mooney	1 - 28



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Individual Executive Member Decision

Title of Report:	Fairer Contributions Policy
Report to be considered by:	Individual Executive Member Decision
Date on which Decision is to be taken:	25 October 2012
Forward Plan Ref:	ID2550

Purpose of Report: To confirm the amendments to the wording of the current policy agreed as part of the Judicial Review challenge.

Recommended Action: Accept changes to the wording.

Reason for decision to be taken: Clarification following legal challenges.

Other options considered: None.

Key background documentation: Original Fairer Contributions Policy, revised Fairer Contributions Policy and legal documents.

Portfolio Member Details	
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Implications

Policy: Minor changes to the wording on the existing Fairer Contributions Policy. These amendments have no impact on the actual policy and how it is currently implemented but provide clarity.

Financial: None

Personnel: None

Legal/Procurement: The amendments to the policy have been agreed by way of a Consent Order - the terms of which are attached.

Environmental: None

Property: None

Risk Management: None

Equalities Impact Assessment: EIA for original policy decision on 12 April 2012 applies.

Consultation Responses

Members:

Leader of Council: None

Overview & Scrutiny Management Commission Chairman: None

Ward Members: N/A

Opposition Spokesperson: None

Local Stakeholders: N/A

Officers Consulted: Margaret Goldie, Jan Evans and Leigh Hogan

Trade Union: Not applicable

Is this item subject to call-in?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval		<input type="checkbox"/>
Delays in implementation could have serious financial implications for the Council		<input type="checkbox"/>
Delays in implementation could compromise the Council's position		<input checked="" type="checkbox"/>
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months		<input type="checkbox"/>
Item is Urgent Key Decision		<input type="checkbox"/>
Report is to note only		<input type="checkbox"/>

Supporting Information

1. Background

- 1.1 The Fairer Contributions Policy was signed off by Special Executive on 12 April 2012.

2. Fairer Contributions Policy

- 2.1 After its introduction there was a legal challenge to the new charging policy which resulted in a claim for Judicial Review.
- 2.2 Following legal advice it was agreed to amend the wording in Section 6 of the policy to provide clarity that there was no link between allowable Disability Related Expenditure and the Council's current eligibility threshold under Fair Access to Care. Accordingly, an agreed Consent Order has been filed with the High Court and is attached together with the amended Policy.
- 2.3 In order to give authority to the amendment, an Individual Decision is required. Once made, the Fairer Contributions Policy will be re-published.

3. Equalities Impact Assessment Outcomes

- 3.1 A full EIA was attached to the papers on 12th April 2012. There is no need for a further Equality Impact Assessment.

4. Conclusion

- 4.1 That the Individual Decision is signed off to confirm the change in wording to the original policy.

Appendices

Appendix A – Agreed consent order and amended policy

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IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR
JUDICIAL REVIEW

BETWEEN:

THE QUEEN
on the application of
A, B and C¹
(by their litigation friends)

Claimants

-v-

WEST BERKSHIRE COUNCIL

Defendant

CONSENT ORDER

BEFORE THE HONOURABLE

DATED THE

UPON THE DEFENDANT AGREEING to:

1. Amend its Fairer Charging policy as per the attached document (annexed hereto), the said amendments including that disability-related expenditure applies to the cost of services to meet 'presenting' rather than just 'eligible' needs, as defined in the *Prioritising Need* statutory guidance.
2. Conduct a fresh financial assessment of the First and Second Claimants applying the amended policy.
3. Suspend the charges presently levied against the First and Second Claimants until the fresh financial assessment has been completed and provided to their litigation friend.

¹ See order of Cranston J dated 1st June 2012 for Claimants' anonymity

IT IS ORDERED BY CONSENT THAT:

1. The Claimants' application for judicial review be withdrawn;
2. The Defendant agrees to pay the Claimant's costs, to be determined by the court if not agreed.
3. There be detailed assessment of the Claimants' publicly-funded costs.

Signed.....IRWIN MITCHELL LP

Solicitor for the Claimant

Signed.....

Solicitor for the Defendant

Fairer Contributions Policy for Non-Residential Care Services

Document Control

Document Ref:		Date Created:	
Version:		Date Modified:	June 2012
Revision due	April 2013		
Author:	Jo England	Sign & Date:	
Owning Service			
Equality Impact Assessment: (EIA)	Date undertaken:	March 2012	
	Issues (if any):		
Chief Executive	Sign & Date:		
Corporate Director (Community Services)	Sign & Date:		
Councillor Joe Mooney Portfolio holder for Community Care		Signed off by Special Executive 12 April 2012	

Change History

Version	Date	Description	Change ID
1	12 April 2012	New Policy	1
2	23 May 2012	Fuel rates amended to 12/13 figures	2
3	27 June 2012	Legal advice	3

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 - Appendix 5 Glossary of Terms*

1. Introduction

The purpose of this policy is to establish how West Berkshire District Council will ask people for a contribution towards the cost of the adult social care support they receive. This document covers the following areas:

Sections 2 to 4 explain the national framework which relates to making contributions to Adult Social Care, the main legal requirements, and how the Council's policies for residential and non residential services operate,

Section 5 identifies which Adult Social Care services funded by the Council people may be asked to make a contribution towards,

Section 6 explains how a financial assessment is carried out,

Section 7 explains how people's contribution is calculated and once that is done, how people can make the contribution, and

The final sections, 8 to 17, explain what happens if people cannot afford to pay or want to make a complaint as well as containing other relevant miscellaneous information.

Adult Social Care is going through a period of significant change, moving from "traditional" services arranged by the Council following a care assessment towards personal budgets. In both cases the Council may require the individual receiving support to make a financial contribution and this policy covers both circumstances.

The Council is committed to ensuring it uses a consistent and fair approach to assessing and collecting contributions from individuals. This approach will promote affordable, sustainable services for people who require Adult Social Care Services.

2. Legislative Context

The following is a brief outline of the legal framework relating to the contributions individuals can be asked to make towards the cost of their support.

Where residential care is provided contributions are made within the framework of the *National Assistance (Assessment of Resources) Regulations 1992* and the current Charging for Residential Accommodation Guide (CRAG) issued by the Department of Health. The Council has to apply these rules for individuals in permanent residential care.

Councils are also entitled to ask for a contribution towards the cost of non-residential adult social care services provided under Section 17 of the *Health and Social Services and Social Security Adjudication Act (1983)*. Under Section 17 (3) of this Act, users of these services can request a review of their assessed contribution at any stage.

In November 2001, the Department of Health issued statutory guidance to Councils on charges for non-residential social care entitled *Fairer Charging Policy for Home Care and other non-residential Social Services - Guidance for Councils with Social Services Responsibilities*. This guidance required that Councils implement a 'Fairer Charging' Policy.

In January 2008 The Department of Health issued a circular on the transformation of Adult Social Care. This required a personalised approach to Adult Social Care which will eventually allow all eligible individuals to have a personal budget to enable them to make their own choices around how their support should be provided.

In July 2009 The Department of Health issued a best practice 'Fairer Contributions Guidance' for use when calculating an individual's contribution to their personal budget. This supplements their current Fairer Charging Guidance.

The Council's *Fairer Contribution Policy* will ensure that with effect from 30 April 2012:

- Individuals in receipt of non-residential and short term respite care services contribute to the cost of their services subject to a financial assessment
- As part of their financial assessment, the Council offer to undertake a welfare benefits assessment for individuals to ensure they can claim all entitled benefits, thereby minimising their own contribution to support costs.

The services covered within this framework include both those chosen by an individual when planning how to spend their personal budget and those provided as a result of a community care assessment by a social worker or care manager.

3. Permanent Residential Accommodation and CRAG

Adult Social Care will seek contributions for residential accommodation in line with the current CRAG. Charges for permanent residential accommodation are not therefore covered further in this policy.

This does not include short term placements of less than 56 consecutive nights as well as residential respite care. Any individual who would like information on CRAG can obtain it from the Department of Health. The link to the website being shown below:

<http://www.dh.gov.uk/en/Publicationsandstatistics/index.htm>

Whilst this *Fairer Contributions* policy is separate from CRAG, there are a number of times where it uses the same rules or limits as that contained within CRAG and these are referred to throughout the policy.

4. Contribution Principles

The Council adopts the following over-arching principles to ensure fair contributions from individuals:

- In order to act reasonably throughout the process of obtaining contributions the Council will, in all cases, consider the circumstances of each individual on the merits of each case,
- Contributions from individuals will be fair and reasonable, and calculated with their input through an individual financial assessment,
- To ensure that people contribute only what they can reasonably afford. Those individual whose capital is below the upper capital threshold will retain a sum for their basic living expenses which is equivalent to Income Support or Pension Credit Guarantee level + 25% as **Protected Income** (see 6.3), before they are asked to make any contributions,
- Whether the individual receives a service after a community care assessment by a social worker or care manager, or receives a personal budget, the financial assessment will be calculated in the same way,
- In most cases contributions will be applied to the total cost of the service funded by the Council e.g. live in carer but in some cases the contribution will be applied to the average cost e.g. home care and not the actual cost to the Council,
- Contributions will not exceed either the cost of the service or a person's individual budget (if they receive one),
- Contributions will not be required for the cost of the assessment or administration processes for the service provided, except that where an external brokerage service is provided this will be included as part of the personal budget,
- Benefits advice will be available to individuals through the assessment process to try and ensure that they have access to their full benefits and entitlements,
- If an individual does not pay their assessed contribution, or lodges an appeal against the assessed contribution, the Council will not refuse or withdraw services which meet a person's assessed needs.
- Where an individual does not pay their assessed contribution debt recovery will be pursued for all outstanding verified contributions and court proceedings will be initiated if invoices are not paid.

5. Types of Non-residential Services

The Council funds a wide range of adult social care services. The following describes what are provided without charge and what might incur a contribution:

5.1 Services Provided Free of Contributions

The Council can not apply any contribution towards:

- Community equipment services, including assistive technology, costing less than £1,000 (supplied as a result of an assessment) as defined in the Community Care (Delayed Discharges etc.) Act 2003. Examples of these include commodes, stair rails and grab rails.
- Intermediate Care services. If these are in addition to an established (albeit in some cases interrupted) package of support, contributions will continue against the established package. The individual's assessment will identify those services provided under Intermediate Care arrangements.
- Assessment and care planning services – such as supported self assessment, needs assessment, support planning and care management

5.2 Services where a contribution will be sought

People will be assessed to make a contribution for most other adult social care services, including those taken by way of a direct payment. This includes:

- Home Care (including the cost of two cares where these are necessary)
- Community Support,
- Day Care and Out reach support,
- Transport,
- Employment Support
- Respite care in a residential/nursing home (not exceeding 56 consecutive nights)
- All services arranged within a Personal Budget, including the cost of brokerage services provided outside the Council

This list is not exhaustive and other services which are not the 'non traditional' community care services listed above will require an assessed contribution (except where there is statutory guidance or a Council policy already in place on contributions for such services).

5.3 Services Outside of the 'Fairer Contribution' Policy

Adult Social Care provides a number of other services which are not community care services. These are subject to separate legislation over contributions and are not covered in this policy:

- Meals at a Resource Centre. These will be subject to a flat rate charge and although this charge will be added to any weekly assessed contribution it will not be subject to the financial assessment process.
- After-care services under the Mental Health Act (Section 117).
- Advice and assessment.
- Care for sufferers of CJD.
- Any services funded by the NHS (e.g. Continuing Health Care).
- Occupational Therapy/Equipment.
- Reablement Care Services
- Issue of Blue Badges

6. Assessing a Financial Contribution

6.1 Overview of the financial assessment process

A full financial assessment will be undertaken for individuals who receive services for which a contribution can be made, including those who are in receipt of a personal budget. This is in order to establish an individual's ability to contribute towards the total cost of their chargeable services.

The financial assessment will ensure that individuals:

- Have sufficient money to meet their basic housing costs and some disability related expenditure
- Retain their basic 'Protected Income', so this is not included in the assessment calculations, where their capital is below the upper threshold

The assessment calculation is summarised as:

Assessable Income (see 6.2)

Less: Protected Income (see 6.3)

Less: Housing Costs (see 6.4)

Less: Disability Related Expenditure (see 6.5 to 6.7)

Less: Other Allowable Expenses

Equals: Assessed Contribution



Where individuals have capital this may affect the assessed contribution. If an individual's capital exceeds the limits specified in CRAG (see Appendix 2), they will be required to pay the full contribution for services supplied. Property (and income from property) will be treated in accordance with CRAG except that the value of the main home is not included in the calculation. If the capital is below this limit there may be an assumed income called *tariff income* that is included in the calculation. This is explained in section 6.8.

Where an individual is co-habiting as part of a couple, it is the Council's policy to assess the contribution in the way which is more beneficial to the individual. This will only apply if the individual has not already been assessed as liable to pay the full cost due to their own capital and 50% of any jointly owned capital. This process is explained in more detail in section 6.8.

The Council has currently set a minimum contribution, currently £1.25 per week (see Appendix 2). If an individual's assessed contribution is less than this minimum, no charge will be made as it is not viable to collect a contribution below this level.

Examples of calculated contribution are provided at Appendix 1.

As part of the financial assessment process, advice will be provided to individuals regarding benefit entitlement. Assistance will be available to complete benefit applications should a potential entitlement be identified.

Where assistance is provided in applying for a benefit, the individual will be notified of the effect of the new benefit on their assessed contribution, which will be backdated to the date of award.

6.2 Assessable Income

The assessment process will look at the total income an individual has available to make a contribution. In line with legislation or national guidance certain sources of income will be treated differently in the calculation, as explained below.

The income below will **not** be included in the assessment:

- Earnings (as per DOH guidance)
- Statutory Sick Pay, Statutory Adoption Pay and Statutory Maternity Pay or Allowance
- Mobility component of Disability Living Allowance
- Night time element of the care component of Disability Living Allowance and Attendance Allowance unless night time care/support is provided by Adult Social Care
- Any Charitable Income
- Savings Credit element of Pension Credit
- Working Tax and Child Tax Credit

- War widows' supplementary pension
- A partner's disability related benefits
- Winter fuel and Cold Weather payments
- Social Fund Payments
- Maintenance payments specifically relating to a child
- Child benefit.
- War Disablement Pension or Armed Forces compensation Scheme: Guaranteed Income Payment and War Widows Pension or Armed Forces Compensation Scheme

The sources of income below will only partially be included in the assessment:

- Survivors Guaranteed Income Payment (The first £10 per week has to be disregarded, but anything above this is included)
- Sub tenants – Treatment of any income from sub tenants will be in accordance with the current CRAG (Presently the first £20 per week has to be disregarded, but anything above this is included)
- Boarders - Treatment of any income from boarders will be in accordance with the current CRAG (Presently the first £20 per week plus half of any income over £20 per week has to be disregarded, but anything above this is included).

Individuals whose capital and savings are less than the maximum limit as set out in CRAG but above the CRAG lower limit (shown in *Appendix 2*) will have a tariff income assumed. This will be calculated in accordance with the rules specified in CRAG. Unless stated otherwise in this policy, the treatment of all other income will follow CRAG.

If individuals have released funds using Equity Release Schemes the income may be included in the financial assessment process. Refer to *Appendix 3* for further information.

6.3 Protected Income

Individuals whose capital is below the upper capital threshold will retain income equivalent to either basic Income Support or Pension Credit Guarantee level plus 25% as 'Protected Income', which is not included in the assessment calculation. This amount will depend on the individual age and benefit entitlement as per DOH guidance.

6.4 Housing Costs

The following household expenditure may be allowed in the contribution calculation depending on the individual's circumstances:

- Rent (net of housing benefits)
- Mortgage (net of income support or pension credit assistance)
- Board and lodgings (as defined and managed in CRAG)
- Council Tax (net of Council tax benefit)
- Building insurance (not including contents)
- Essential service charges and ground rent (net of assistance funding)

6.5 Disability Related Expenditure

The Department of Health defines Disability Related Expenditure (DRE) as any reasonable additional cost that the individual incurs to meet their specific needs due to a disability or condition. To ensure that the individual retains appropriate funding to meet these costs, an allowance for DRE is included in the assessment process where applicable.

NB: Disability related expenditure is not restricted/related to West Berkshire Council's eligibility criteria under Fair Access to Care. DRE is related to any presenting need identified in the community care assessment which is not met by WBC under its Eligibility criteria.

Therefore, DRE will be considered when:

- The extra cost is needed to meet an individual's specific need due to a condition or disability as identified in the individual's **community care** assessment; and
- The cost is reasonable and can be verified (Receipts will be requested); and
- It is not reasonable for a lower cost alternative item or service to be used; and
- The expenditure is required to meet the individual's **presenting** care needs.

The Council has a schedule of reasonable DRE costs (see *Appendix 4*). These costs will be reviewed each year.

6.6 Exclusions to a DRE

All decisions on whether expenditure is DRE will be made with reference to individual circumstances. However, DRE allowance will not usually be made for the following :-

- General items or services required for daily living, which would be used by the general population and not specific to a condition or disability i.e. food and utility bills
- Structural or landscaping work (e.g. tree surgery, path laying or re-laying) in gardens or house;
- Window cleaning
- Amounts paid in relation to private care arrangements that falls outside of an individuals assessed care needs
- Any item or service met by a payment from a Community Care Grant or where another funding source has been provided
- Cleaning that falls outside of an individuals assessed care needs
- Gardening that falls outside of an individuals assessed care needs
- Laundry that falls outside of an individuals assessed care needs
- Cost of someone going to do the individual's shopping
- Enrichment activities
- Social activities
- Dental Treatment (including dentures)
- Optical Treatment (including glasses)
- Hearing aids (including batteries and insurance)
- Massage
- Hydrotherapy
- Physiotherapy
- Toiletries
- Broadband and telephone charges
- Alternative therapies/medicines
- Personal assistant that **falls outside of an individuals assessed care needs**
- Mobile phone charges
- Household cleaning products
- Dog walking
- Sky or other Media packages
- The difference between the actual cost and the lower cost alternative where it is reasonable for the individual to use a lower cost alternative and the lower cost alternative is available

Where a particular item of expenditure combines more than one item or service, instead of disallowing all of the expenditure, the elements that meet the individual's specific need due to their disability or condition can be allowed. For example hair washing is allowed if the individual could not do this task themselves. However, hair cutting would not be allowed as this is a service used by the general population and is not a disability related expense.

The individual will be requested to provide receipts for expenses claimed. If previous receipts have not been kept, the individual will be asked to provide receipts of future expenses. Receipts or evidence is required for common expenses, i.e. utilities. The amounts in *Appendix 4* show an average expenditure for various household types. This will be used to calculate the extra costs due to the

individual's condition or disability. These amounts will be reviewed annually. If the individual does not provide receipts, despite requests to do so, the Council will decide that the expense should not be allowed.

6.7 Special Equipment

Costs for purchasing special equipment (e.g. stair lifts) will be allowed if they meet the individual's specific need due to a disability or condition. The amount allowed will be based on the life span of the equipment and the purchase price paid by the individual, where this is considered reasonable. This allowance will not apply if the purchase was funded by a Disabled Facilities Grant or any other source of external funding.

Maintenance and repair costs for special equipment will also be allowed if that equipment meets the individual's specific need due to a disability or condition. The weekly amount allowed will be the annual cost divided by 52 weeks.

6.8 Other factors that affect the assessment

Shared costs

If more than one person lives in the individual's home the additional costs relating to a disability or condition will be shared between the occupants whose needs contribute to the additional costs.

Capital

The value of capital and assets is as defined in CRAG and the National Assistance (Assessment of Resources) Regulations (1992).

Individuals with capital above the CRAG upper limit (including property but excluding the value of their main home), are liable to pay the full contribution for services supplied (or towards the personal budget). When an individual moves out of a property that they own and becomes ordinarily resident in alternative accommodation, the owned property will no longer be deemed their main home and will be regarded as capital for the purposes of the contribution assessment.

Where individuals have capital value below the CRAG upper limit, but more than the CRAG lower limit, their ability to contribute will be assessed using standard processes and take into account an assumed weekly income from the capital. This is called *tariff income*.

The capital limits will be reviewed annually in accordance with CRAG. If an individual knowingly reduces their capital in order to reduce their contribution (for example by excessive spending or gifting), this will be taken into account in the assessment and the contribution may be calculated as if that person still holds the capital that has been disposed of.

Couples

Where an individual is co-habiting as part of a couple, the assessment process is summarised in the sections below. This only applies if the individual hasn't already been assessed as liable to pay full cost based on their own capital and 50% of any jointly owned capital.

For these purposes a couple is defined as follows:

- A legally married husband and wife
- Two individuals who have lived together as a married husband and wife for at least twelve months but who are not legally married
- Two individuals of the same sex who under the Civil Partnership Act 2004 have formed a civil partnership
- Two individuals of the same sex who have lived together as a couple for at least twelve months but who have not formed a formal civil partnership under the Civil Partnership Act 2004.

When assessing one member of a couple the Council's has the discretion to assess in the most beneficial way to the individual. All couples will be offered a joint assessment to identify the most beneficial outcome, whilst noting that a spouse or partner is not obliged to disclose their own

resources, should they choose not to. However they will be required to identify any income or capital (such as a welfare benefit) that both members of a couple are entitled to jointly.

When assessing one member of a couple as a single person:

- 100% of solely owned and 50% of all jointly owned capital and savings will be taken into account (excluding the value of the main home);
- All assessable income appropriate to the individual will be considered;
- An allowance will be made for 50% of the couple's total joint basic household expenditure;
- The 'protected income' will be 50% of the couple's allowance
- An allowance will be made for the individual's Disability Related Expenditure

When assessing as a couple:

- The income and savings capital for the couple will be considered. If the spouse or partner is not willing to disclose this information, the individual will be assessed as a single person;
- An allowance will be made for 100% of the couple's basic household expenditure;
- The 'protected income' level will be that of a couple;
- The couple's assessed disposable income is then halved prior to considering any individual Attendance Allowance or Disability Living Allowance awarded;
- An allowance will be made for the individual's Disability Related Expenditure
- When both partners receive support which is chargeable, the standard CRAG capital limits will be doubled.

7. Contributions Payable, the Contribution Period and Methods of Payment

7.1 Personal Budgets

The following points relate to contributions payable where an individual is in receipt of a personal budget:

- The contribution payable will either be the amount of the gross personal budget or the individual's assessed contribution, whichever is lower;
- Where an individual (or a suitable person who receives a Direct Payment on behalf of an individual) receives a Direct Payment their contribution will be paid in full (this process may change in future);
- An individual will be invoiced for their contribution to the personal budget. An invoice will be raised to the individual every twenty eight days in arrears.
- Individuals will contribute from the date the personal budget commences.
- Personal Budgets will be audited on an annual basis and any unspent money will need to be repaid.

7.2 Other Services

The following points relate to contributions payable where an individual has their support needs met by services organised by the Council after an assessment of need:

- The contribution payable will either be the actual chargeable cost of services supplied during the period or the individual's assessed contribution, whichever is lower
- Where an individual (or a suitable person who receives a Direct Payment on behalf of an individual) receives a Direct Payment their contribution will be invoiced every 28 days in arrears
- Where a Direct Payment is not received an individual will be invoiced for their contribution towards costs. An invoice will be raised to the individual in arrears after every twenty eight day period.
- Where a service was supplied or was available but the individual does not receive it because they are absent – for example they are away from their home at the time they are due to receive home care, a contribution will still be required unless the absence has been pre-

notified (at least 24 hours in advance to the Council) or is due to hospitalisation, illness or other circumstances beyond the individual's control. Where an individual believes they should not be required to contribute to a service they should contact their care manager in the first instance.

- Any overpayments will be reimbursed to the individual or credited towards the cost of future services. The individual will be notified accordingly; and
- Individuals will contribute from the date the service commences.

7.3 Charging Week

An individual's assessed contribution will apply to any services (including non-residential or respite care) provided in each charging week. A charging week starts on a Monday and ends on a Sunday. For example services that run from Wednesday to the following Tuesday will be charged across two charging weeks.

8. Non disclosure of Financial Details

Individuals have the right to choose not to disclose their financial details. If this right is exercised they will be required to pay the full contribution applicable at the time the service was provided or personal budget was received.

9. Delays in completing the Financial Assessment

If an individual unreasonably delays completing the financial assessment they will be required to pay the full cost of services supplied (or value of the personal budget), until a financial assessment is completed. If a financial assessment results in a lower contribution than this, consideration will be given to refunding the difference depending on the circumstances of the case. Discretion in this matter will be held by the relevant budget holding manager within Adult Social Care.

'Unreasonable delay' will be determined on a case by case basis, however as a general rule the Council will expect the individual or their representative to be available for a visit within 2 weeks of contact from the Welfare Benefit team. Where the individual or representative prefers to complete the financial circumstances statement by post, then it is expected that this will be returned to the Council within 2 weeks. If further information is required for the financial assessment then it is expected that the individual will provide this within 2 weeks of the date it was requested.

If the individual co-operates with the assessment within 28 days of service commencement, any reduction in contribution will be reimbursed or credited against future service costs.

10. Debt Recovery

If the individual does not pay the contribution either in full or in part and the invoice remains unpaid, the Council's debt recovery procedures will be instigated. This may result in legal action and extra costs to the individual.

11. Review of Financial Circumstances

Individuals are required to inform the Welfare Benefit team as soon as their financial circumstances change, as this may affect their assessed contribution. This specifically includes receipt of a new benefit or if they believe that a change will result in a reduction to their financial assessment and want it to be applied immediately.

Following notification of a change or a review visit, a new financial assessment will be completed using the information provided. If the revised assessment results in an increase in the weekly contribution, the individual will be notified of the revised contribution and it will be backdated to when the individual's circumstances changed.

If the revised assessment results in a decrease in the weekly contribution, this will be backdated to one month before the date of the review or the date that the individual's circumstances changed, whichever is the later date.

The individual's financial circumstances and assessed contribution may be reviewed at any time. Occasions that may instigate a review are listed below.

- On request from the individual or his / her authorised representative
- Following an award or withdrawal of a benefit
- When new information is received as to the individual's income and expenditure
- When the Department of Work & Pensions increases benefits
- As a result of any changes during the budget setting process
- At the request of the appropriate Service Manager

12. Annual Review

In addition to the reviews described above, the financial assessment will be reviewed annually to take account of the annual increases in benefits and other incomes which take place each April. Where the individual is in receipt of benefits paid at standard rates, the revised amount will be substituted. Benefits paid at non standard rates will be increased by the same inflator used by the Department of Work and Pensions to increase benefits.

For other components of the financial assessment, such as occupational pensions, a percentage increase linked to Consumer Price Index (CPI) will be applied unless another amount is agreed in the Council's annual budget setting process. Disability related expenditure, rent and Council tax will not automatically be increased.

Changes resulting from the annual increases or the application of a revised protected income rate will apply from the date assigned to these changes. An explanation and full details of the revised assessment will be sent to the individual, who will be asked to check the figures and contact the Welfare Benefit team if they believe it is not an accurate representation of their circumstances.

13. Contribution Issues

West Berkshire District Council aims to ensure all assessed individuals' financial contributions for services are fair and reasonable. The Council acknowledges that at times, some individuals may experience difficulties or exceptional circumstances which should be considered on an individual basis, and treated with dignity and respect. To ensure these individuals are provided with an opportunity to have their own circumstances considered, the Council offers two ways they can formally request that their assessed contribution is reconsidered, through:

- Waivers; or
- Reviews & Appeals processes

13.1 Waivers

A waiver is a request to set aside the assessed contribution for a fixed period prior to any invoices being raised. A waiver will only be issued in exceptional circumstances, where to raise a contribution would have a detrimental impact on the individual or others. If a waiver may be appropriate this will be referred to the relevant budget holding manager.

If the relevant budget holding manager agrees that the contribution would have a detrimental impact on the individual, then the contribution will be suspended for up to three months and then reviewed. Examples of reasons to issue a waiver may include (this is not an exhaustive list):

- Vulnerable adults at risk of abuse, and where Adult Social Care are closely monitoring the situation;

- Individuals at risk of self-harm or neglect e.g. through drug or alcohol abuse or mental health problems;
- Where individuals are experiencing trauma (e.g. bereavement of a close relative or family breakdown and where their financial or other circumstances are temporarily unstable);
- Where an individual is in severe financial difficulty and to incur a further debt would have a detrimental impact on them.

Any requests for such waivers must be recorded on an Adult Social Care Waiver Form. Any waivers over £1,000 will require the approval of both the relevant budget holding manager and the Head of Adult Social Care. A copy of this form will be held by the Welfare Benefit Team Manager who maintains a record of all waivers so that they can be highlighted to the Council's Section 151 Officer on a quarterly basis.

13.2 Reviews and Appeals

The Council has a robust appeals process to ensure individuals can express their views, request a review or lodge an appeal against their assessed contribution. This process does not form part of the complaints process and this process should be followed before making a complaint. The Council welcomes feedback from individuals, and has dedicated officers to manage the review, appeals and complaints processes.

An individual can appeal if:

- If they are dissatisfied with their assessed contribution calculation,
- They believe that they have insufficient funds to pay the contribution, or
- They believe that the contribution is incorrect (i.e. incorrect cost of service have been charged)

In any of these circumstances they have the right to request a review under the non-residential contribution Review and Appeals procedure.

The individual or their authorised representative can start the review process at any time by contacting their social worker or the Welfare Benefit Team.

Review and Appeals Procedure

West Berkshire District Council's Review and Appeals procedure exists to protect the rights of all individuals by encouraging a fair and open resolution of any issues. This process provides a safeguard to those people who have been assessed to make a contribution, however cannot reasonably afford to pay the assessed contribution (or part of it), or feel that the contribution has been incorrectly assessed.

Under Section 17 (3) of the Health and Social Services and Social Security Adjudication Act (HASSASSA) 1983 individuals have the right to ask the Council to review their contribution at any time if they receive a service from the Council, for which they are being asked to contribute and they believe their contribution is too much.

The person can request a review, and if they can demonstrate to the Local Authority that their means are insufficient for them to reasonably pay the assessed contribution the Local Authority may reduce the amount of the contribution accordingly. In some case they may waive the contribution.

However, it is for the person, with help if necessary from an adviser, friend or advocate to demonstrate to the Local Authority that their means are insufficient to reasonably meet their assessed contribution.

The Review and Appeals Process

As with all contributions, the individual will have a comprehensive financial assessment and be notified of their assessed contribution towards their care.

Where an individual can provide supporting evidence to the Council to demonstrate that they have been unfairly assessed or are unable to afford the contribution, they can request a review of their contribution or lodge an appeal. If individuals are concerned about their contribution, they should contact the Welfare Benefit team as soon as possible to resolve the issue promptly.

The council will consider reviews or appeals within 3 months of the date of charge notification and only accept at its discretion those received outside this timescale.

Stage 1 – Review of the assessment

Individuals can request a review by having a simple review form completed. This can be completed in by the individual, or with assistance from a family member, friend, Care Manager/ Social Worker, or advocate via the telephone, or email.

Once this completed form and information to support the review is received, the case will be reviewed within 10 working days.

The review will be considered by the Welfare Benefit Team Manager who will:

- Review information from the Financial Assessment, ensuring the information is accurate and complete;
- Establish whether the individual has additional factors or information which should be taken into consideration;
- Request the contribution to be re-calculated, if appropriate;
- Advise the individual of the review outcome and any changes to the contribution, effective date, and the individual's right to access the next stage of the process if they are still dissatisfied with the outcome and explanation provided.

This advice will be provided in writing and be ready for collection or delivery within 24 hours of Welfare Benefit Team Manager's decision.

The individual should request the review panel stage within 10 working days of the review outcome.

If the Welfare Benefit Team Manager requires clarification from the individual regarding their application for review, they will make contact with them within 10 working days. Where there is doubt regarding the stated expenditure, or expenses appear higher than typically expected, the Welfare Benefit Team Manager will request supporting evidence from the individual, as well as use their discretion in making decisions about the appropriate allowances to be awarded.

Where an individual does not co-operate with the review process, or refuses to provide satisfactory evidence, they will continue to contribute the assessed amount, or the actual cost of services supplied (if higher).

Non co-operation or objection to the principle of making a contribution will not qualify a user for a reduction in their contribution.

While a review is being undertaken, the individual will continue to pay the assessed contribution until the Welfare Benefit Team Manager decides to change or continue the assessed contribution.

The Welfare Benefit Team Manager has the discretion to backdate contribution reductions to the date of the request for an appeal, or in exceptional circumstances, to the date the charges commenced.

In cases where it appears that the individual can not reasonably be expected to pay the assessed contribution the Welfare Benefit Team Manager can defer contributions until the review is completed.

Stage 2 – Appeals Panel

If the individual is still dissatisfied at the end of the stage 1 review, they can appeal against the reviewed decision. Appeals will be considered by an Appeals Panel.

This panel consists of three people, the Client Financial Services Manager, a care Service Manager and a Team Manager or Assistant Team Manager. The Appeals Panel will be convened within 15 working days of the Council receiving the initial request for a review.

Both the Welfare Benefit Team and the individual can provide written submissions to that panel before the panel hearing.

In extraordinary circumstances if the panel members consider from the submissions that the appeal is “frivolous, vexatious, repetitive or out of jurisdiction” the panel can recommend to the Head of Adult Social Care that the appeal should not be heard. The decision of the Head of Adult Social Care as to whether to proceed is final.

The Review Panel will consider the issues and information presented at the stage 1 review and any new related information. The individual may make representations themselves or a nominated representative can make representations to the panel meeting.

The Panel will be able to hear from the individual and Welfare Benefit Team Manager and seek legal advice where appropriate.

The Chair of the Review Panel will advise the Head Adult Social Care and the individual of its findings and recommendations in writing, within 2 working days of the panel hearing.

The Head of Adult Social Care will respond in writing to the Review Panel’s recommendations and identify any the action the Council will take within 3 days of receiving the Panel’s recommendations.

The decision of the Adult Social Care Department prevails. Where the individual is still dissatisfied with the outcome they have the right to access the statutory complaint procedure. Timescales for the acceptance of complaints will be consistent with those used in the Statutory Complaints Procedure.

14. Independent Living Fund

The Independent Living Fund (ILF) is a national resource dedicated to the financial support of disabled people to enable them to choose to live in the community. This financial support was available to those who meet certain eligibility criteria, including being in receipt of support funded by Adult Social Care of more than £320 per week (excluding any contributions from individuals), aged between 16 and 65 and in receipt of the higher rate care allowance of the Disability Living Allowance.

Recipients of awards from ILF will continue to be financially assessed for their contribution towards adult social care. As part of their agreement with ILF they may be asked to make a contribution towards their ILF award. This contribution will be included in the financial assessment process.

15. Privacy

Information will be collected to enable the calculation of contributions relating to services provided and assessment of welfare benefit entitlement. In accordance with the *Data Protection Act 1998*, this information will only be shared with other relevant people and agencies in accordance with the data protection principles or with the written consent of the individual or their legally appointed representative. An individual has the right to request to view their personal information held by the Council at any stage.

16. Equality Impact

An equality impact assessment has been undertaken for West Berkshire District Council’s *Fairer Contribution Policy* to understand the likely impact of this policy on vulnerable people with the protective characteristics outlined in Equalities legislation.

Where there is an adverse impact on individuals, they may be considered under the transitional arrangements.

Appendices

Appendix 1 Example Contribution Calculations

In this Appendix, income means the total money an individual receives that is taken into account in the calculations and allowances mean the minimum total income an individual is allowed to keep before a contribution is required.

Examples use 2012/13 Benefit rates

Example 1 Single person pensionable age no disability-related benefit

Income	
State Pension	£107.45
Pension Credit	£ 35.25

Total Income =	£142.70

Allowances	
Pension Credit Guarantee	£142.70
Plus 25% Buffer	£ 35.67

Total Allowances =	£178.37

As the income is less than allowances no contribution will be payable by the individual

Example 2 Single person aged between 18 and pensionable age + DRE of £30.00

Income	
Income Support	£101.35
Disability Living Allowance	£ 51.85

Total Income =	£153.20

Allowances	
Basic Income Support	£101.35
Plus 25% Buffer	£ 25.34
DRE	£ 30.00

Total Allowances =	£156.69

As the income is less than allowances no contribution will be payable by the individual

Example 3 Single person over pensionable age + DRE of £5.50

Income	
Retirement Pension	£125.00
Occupational Pension	£ 25.00
Attendance Allowance	£ 51.85
Tariff income (on Capital of £18,000)	£ 16.00

Total Income =	£217.85

Allowances	
Basic Pension Credit	£142.70
Plus 25% Buffer	£ 35.67
DRE	£ 5.50

Total Allowances = £183.87

Assessed maximum contribution = **£33.98** per week (i.e. the difference between Total Income and Total Allowances)

Example 4 Single person over pensionable age, with Attendance Allowance + DRE of £32.20

Income	
Retirement Pension	£107.45
Pension Credit (Inc SDP)	£ 90.50
Attendance Allowance	£ 51.85

Total Income =	£249.80

Allowances	
Basic Pension Credit	£142.70
Plus 25% Buffer	£ 35.67
DRE	£ 32.20

Total Allowances =	£210.57

Assessed maximum contribution= **£39.23** per week (i.e. the difference between Total Income and Total Allowances)

Appendix 2 West Berkshire District Council Charge Rates (2012-13)

Rates for 2012-13

- Homecare - £20.00 per hour
- Community Support - £17.00 per hour
- Day Centre - £41.80 per day
- Transport - £7.50 per trip
- Outreach - £16.50 per hour

Other services will be charged at the actual cost of the service.

Minimum Assessed Contribution £1.25 per week

Capital Limits 2012-13

Maximum threshold	£23,250 (full contribution applies above this level irrespective of income)
£0 - £14,249	Disregarded
Lower threshold	£14,250
£14,250 – £23,249	Tariff Income applied at the rate of £1 for every complete £250, or part £250.

Protected Income - individuals who capital is below the upper capital threshold will retain a level of income equal to the *basic income support* (Explained above) plus a 25% buffer. This is the *Protected Income*.

Appendix 3 Equity Release Scheme

The most common form of Equity Release Scheme is a Home Reversion Scheme (HRS), where a home owner will transfer the ownership of all or part of their home to a commercial or 'not for profit'

organisation. Depending on the terms of the HRS, the funds released may be paid to the home owner in full on the date of the transfer, or may be translated into an annuity, or a combination of these.

Where a HRS results in the home owner receiving an annuity or where payments are made by instalments be they for life or for a fixed period, then all such payments will be treated as income, unless any of the following provisions apply:

- Where certain detailed conditions set out in CRAG relating to annuities are met, then specified amounts comprised within the gross income from the annuity can be disregarded, namely, the component of the gross income which represents the weekly amount of interest on the loan (net or gross of income tax, where applicable);
- Where any part of the income or capital derived from a HRS plan is used to fund capital developments or disability related works to the property in question, the income so used may be disregarded from the charge calculation. The service user must produce evidence to this effect in order to claim such a disregard;
- Where the released funds are paid in instalments the total value of all the instalments outstanding will be added to the total value of all other savings held by the service user. If this total exceeds the current CRAG upper capital limit, the instalments will be treated as income and taken into account over a period equivalent to that which it represents, e.g. a payment due to be made calendar monthly is taken into account for a calendar month; and
- If this total is less than the current CRAG upper capital limit, each instalment will be treated as capital.

Other forms of equity release schemes will be considered on an individual basis. Additional information about equity release schemes can be obtained from the Access For All team on 01635 503050.

Appendix 4 Disability Related Expenditure – guide amounts

ITEM	AMOUNT	EVIDENCE
Heating Allowance	Single Person – Flat / Terrace £1,101 per year Couple – Flat / Terrace £1,451 per year Single Person – Semi Detached £1,169 per year Couples – Semi Detached £1,539 per year Single Person – Detached £1,422 per year Couples – Detached £1,873 per year Difference between actual and average (above) will be divided by 52 to obtain a weekly expenditure.	Bills from Provider
Community Alarm System	Actual cost unless included in Housing Benefit or Supporting People Grant.	Bills from Provider
Privately arranged care	Actual cost if included in care assessment to meets critical need and can not be met by West Berkshire Council.	Signed receipts for at least 4 weeks using a proper receipt book
Dietary needs	Max £2.96 pw if more than £25.85 pw per person is spent on food and non-alcoholic drinks AND dietary needs are identified in care assessment	

ILF	Client contribution as assessed by ILF	
Wheelchair/Scooter	£3.37 pw manual wheelchair £8.22 pw powered wheelchair	Evidence of purchase. Care manager or OT to confirm that this is an essential requirement. No allowance if equipment is provided free of charge
Powered Bed	Actual cost divided by 500 (10 yr life) up to a maximum of £3.78 pw.	Care manager or OT to confirm that this is an essential requirement. Evidence of purchase.
Turning Bed Actual	cost divided by 500 up to a maximum of £6.55 pw.	Care manager or OT to confirm that this is an essential requirement. Evidence of purchase.
Powered reclining chair	Actual cost divided by 500 up to a maximum of £2.98 pw	Evidence of purchase.
Stair-lift	Actual cost divided by 500 up to a maximum of £5.30 pw	Evidence of purchase without DFG input
Hoist	Actual cost divided by 500 up to a maximum of £2.60 pw	Evidence of purchase without DFG input
Wear and tear on clothing	Max £4.50 pw if more than £4.50pw is spent on replacements and need is identified in care assessment	Receipts
Wear & tear on bedding	Max £2.00pw if need is identified in care assessment	Receipts
Incontinence Aids	Not allowed unless identified in the care assessment that NHS supplies cannot be used or are inadequate.	Receipts
Chiropodist	Actual cost if identified in Assessment and NHS chiropodist not available. Based on 6 weekly visits.	Receipts
Hair Washing	Actual cost of washing & drying allowed where service user is unable to wash their own hair, and hair wash is not part of the care package. Actual average weekly costs up to £7.50 per week	Receipts
Medical and chemist items	Consider items that should be made available via prescription. Allow cost of annual pre paid prescription divided by 52 weeks or actual cost, whichever is lower.	Receipts. Request for future receipts to be kept if unavailable
Travel costs	Costs net of any DLA Mobility Component may be allowed if they are incurred solely or mainly due to disability and the critical need is	Receipts

	identified in the care assessment.	
Adaptations to property	Cost net of any Disabled Facilities Grant will be considered if they are critical to the individuals assessed care need, will be taken into account where any capital uses does not have an affect on the assessment. If capital was below the lower threshold then the cost will be allowed over 5 years	Receipts
Other Costs	As identified in the care assessment to meet an individuals critical care needs that are not excluded DRE items	Receipts

Appendix 5 Glossary of Terms

Basic Income Support

This term refers to the basic level of Income Support **or** guarantee level of pension credit (for individuals over pensionable age). The amount considered 'basic' is annually determined by the Department of Work and Pensions.

Charging for Residential Accommodation Guide (CRAG) Published by the Department of Health and available at:

www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance

CRAG offers guidance to Local Government Authorities on financially assessing individuals for contributions to services.

Day Care Services are for the elderly and people with disabilities and offer a range of activities and college tutored courses.

Direct Payments are payments made to an individual to allow them to meet their own support needs rather than services being provided directly by the Council

Guarantee Credit (Pension Credit Guarantee) Replaced Income Support for people over pensionable age. If your income is below a certain level, the guarantee credit makes up the difference.

Home Care/ Home Support services can include:

- Intimate personal care
- Prompting of medication
- Preparation and cooking of food
- Specialised help for service users suffering from Dementia.

Income Support A benefit for people with a low income. It can be paid on its own if you have no other income, or it can top up other benefits or earnings to the basic amount the law states people need to live on.

Intermediate Care is a coordinated short term care arrangement of up to six weeks to enable people to maximise their level of independence in order for them to remain living in the community.

Personal Budgets are an allocation from the Council to an individual eligible for social care support based on an assessment of need. The individual can use this allocation in the most appropriate way to meet his support needs, either by deciding what services the Council should provide, or, if they would like to obtain the services themselves, by receiving a Direct Payment.

Protected income

The non residential financial assessment process will always ensure that individuals who capital is below the upper capital threshold will retain a level of income equal to the *basic income support* (Explained above) plus a 25% buffer. This is the *Protected Income*.

Savings Credit (Pension Credit Savings)

For people aged 65 and over, this is intended to reward people who have made provisions for retirement above the basic state pension.

Tariff Income

Where individuals have capital of £14,250 or more, but less than £23,250 (based on the 2011 – 12 rates), an assumed level of income (£1 per week for every £250) will be included in the financial assessment. This is called *Tariff Income*.