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Associated Documents

The following are documents directly linked with this report, references can be found in appendix a.

Document Name	Document	Date Embedded
Charging Policy	 Charging%20Policy%20%20V4%20%2016%	16/8/2021
Department of Health FAQ	 Frequently asked questions on charging	16/8/2021



ASC Non-Residential Charging Policy Review - Financial Impact	 ASciP_20211026_Fi nance Note 26th Oc	26/10/2021
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The Charging Policy Review



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1. Introduction

- 1.1 Following the judgment in R(SH) v Norfolk County Council on 18th December 2020 a review of the current Charging Policy has been carried out. The purpose of this review is to consider the current charging policy to ensure it is compliant with obligations under the Care Act 2014 and statutory guidance, Article 14 ECHR and the Equality Act 2010 and operates fairly to all service users. The Charging Policy can be found in the associated documents table at the front of this report. Torbay and South Devon NHS Foundation Trust (“the Trust”) currently delivers adult social care and support services to the community in Torbay as an agent of Torbay Council (“the Council”). This policy review is conducted by the Trust as the Council’s agent.
- 1.2 The ruling of SH v Norfolk County Council did not directly involve Torbay Council and is not binding upon it. However, the judgement considered a number of issues which have led to broader concerns about the equality impacts of social care charging. Following correspondence on these points, the Council (acting through the Trust) agreed to undertake this review. The Trust committed to carrying out a review of the charging policy by 31 August 2021. This has unfortunately been delayed due to the level of careful review and scrutiny by the staff members involved and the input from external counsel.
- 1.3 The judgment in the Norfolk case considered a decision by Norfolk County Council to alter its Care Act charges policy to: (1) remove a discretionary disregard for PIP income and (2) increase the Minimum Income Guarantee on working-age adults to the statutory minimum (relative to its previous policy, which had set a level Minimum Income Guarantee for working- age and retirement age adults). The net impact of these combined changes was a substantial increase in the charges of working- age adults with PIP income (and in particular those with higher- rate PIP income). The claimant, who was not in work and had higher- rate PIP income, was to go from weekly charges of £16.88 to £50.53 on the full implementation of the policy.
- 1.4 The court found that Norfolk County Council did not have a reasonable justification for the difference in treatment between people with ‘severe disabilities (defined as having higher assessable disability- related benefits and no realistic access to earnings from employment or self-employment, which are disregarded) and those

receiving council services covered by the Charging Policy who were either in work and/or did not have the income from disability-related benefits (or received disability-related benefits at the lower rate). The court considered that the treatment of the claimant and those similarly situated to her was both different and worse than those who were either in work or had lower- rate or no disability- related benefits because the Charging Policy meant that a higher proportion of the claimant's income was assessed as available to be charged than theirs, and the result was that the claimant was charged a higher proportion of income than they were.

- 1.5 In considering whether the Council's actions were justified, the *Norfolk* judgment repeatedly considered that the Council might have raised the same level of revenue in some other way. (See, e.g., at [91]: *'If the same level of charges overall is raised, the Council's aims of funding and encouraging independence and making its charging regime sustainable will be met to the same extent. These aims do not justify the discrimination in this case or make it proportionate. The Guidance warns against the approach adopted by the Council (of assuming that all of the legally assessable income was available to be taken in charges). It also suggests an alternative, which could be used to raise the same amount of revenue (applying a maximum percentage of disposable income to be taken into account in charges).'*) The judgment faulted Norfolk County Council for failing to consider *'other ways of achieving the same balance between cost and revenue,'* [92], and failing to recognise the impact on the policy on people in the claimant's position. The court considered that *'this outcome was overlooked and not considered or consciously justified at all. It appears to have been a consequence that was unintended and unforeseen.'* [88]
- 1.6 Neither the Council nor the Trust had proposed alteration to Torbay's policy, which was substantively set on the implementation of the Care Act 2014, and most recently updated in 2018. However, following correspondence from CASCAIDr after the *Norfolk* judgment, it was agreed that this review would be undertaken to consider the policy in light of that judgment.
- 1.7 This review considers a number of potential alternatives to the current charging policy. It looks in particular at the non-residential aspect of the charging policy with specific consideration of:
 - 1.7.1 The level of minimum income guarantee (MIG) to the statutory minimum
 - 1.7.2 Inclusion of the enhanced rate of personal independence payment (PIP)
 - 1.7.3 How the disability related expenditure (DRE) scheme works
 - 1.7.4 The financial context and impact of a change in the current Charging Policy
 - 1.7.5 Whether an alternative approach to the Charging Policy could be made.
- 1.8 This review has been carried out using a legislative framework relating to specific sections of the following:
 - 1.8.1 The Care Act 2014
 - 1.8.2 The Care and Support (Charging and Assessment of Resources) Regulations 2014 (the charging regs)

- 1.8.3 Statutory Guidance
- 1.8.4 The Public Sector Equality Duty
- 1.9 A full appraisal of the sections of the above legislative framework can be found in Appendix B.
- 1.10 The opinion received from CASCAIDr⁶ expresses a view that Care Act charging policies are likely to be discriminatory against a 'severely disabled' person (defined in the *Norfolk* judgment as a person whose income is from benefits and receives disability-related benefits or higher-rate disability-related benefits) if they:
 - 1.10.1 Reduce the Minimum Income Guarantee (MIG) to the statutory minimum
 - 1.10.2 Choose not to disregard certain disability benefits
- 1.0.3 Have poorly functioning Disability Related Expenditure (DRE) schemes
- 10.2.4 Do not consider alternative approaches
- 1.11 The financial impact of making the changes to the charging policy and the associated consequences have been explored in collaboration with TSDFT finance team.
- 1.12 This review considers Torbay's current charging policy, and what the impact would be if any changes were made to the policy to charge less than is currently being charged. The overall conclusion is that any of the potential changes would lead to significant reductions to the Adult Social Care budget, on a backdrop of substantial existing financial pressures and required savings. It is acknowledged that the changes to the policy considered would leave more income with service users, who would benefit from having that income to use as they saw fit. However, the changes would lead to further cuts to a service which has repeatedly had to make substantial efficiencies over the last several years; further cuts to these services which would be caused by decreases in charges, would be to the detriment of the service and consequently, far more people who use those services.

2. Background

- 2.1 Torbay adult social care (ASC) activity, inclusive of spend, is managed and transacted through the Trust on behalf of Torbay Council. This arrangement is through a risk share agreement where Torbay Council provide a base payment and TSDFT carry the risk on any overspends that might materialise.
- 2.2 Over the last five years, spend on client care has increased consistently by approximately 10% per annum which, in real terms, means that TSDFT is due to spend **£15m** more for ASC this year than it did in 2016/17. These increases have been driven by three components:
 - 2.2.1 Increase in client numbers
 - 2.2.2 Increase in the cost of care (unit costs).

- 2.2.3 planned inflationary uplifts (to a lesser extent)
- 2.3 Whilst the Council has strived to increase the base payment, the increase in base payment has not been proportionate to the increase in cost.
- 2.4 Working in partnership, Torbay Council & TSDFT have co-designed The Adult Social Care Improvement Plan (ASCiP). The ASCiP is a long-term transformational project that seeks to improve the sustainability of the service, in part mitigating the pressures identified in 2.2 by delivering £6m p/a in recurrent savings. The 3yr ASCiP was extended by a further year to allow for the redirection of priorities during the initial Covid Pandemic lockdown. Delivery is now expected by March 2024.
- 2.5 The current cost pressures and requirement to save £6M on a recurrent basis in adult social care by March 2024, as well as identifying additional cost efficiencies on an ongoing basis, will be taken into consideration as part of the recommendations and decision making required within this review.

3. Current Financial Context

- 3.1 Local authorities are required by statute to provide services for those with an assessed social care need. Councils may charge for such services. This is a discretionary decision. However, central government’s assumption when setting the formula grant is that councils will charge for non-residential as well as residential services, and central funding is awarded accordingly. Councils are not entitled to greater levels of central funding if they decline to charge for care services. The council has a statutory responsibility to ensure that it is able to deliver Care Act related activity to the wider population (alongside other Council services) and this includes maximising how limited resources are deployed to the wider wellbeing of the communities we serve. There is already an ambitious Cost Improvement (CIP) in place.
- 3.2 The estimated ASC budget for 23/24 is circa £82m, £71m as shown below with a further £11m of operational costs. The current financial position has led to a CIP target of circa £3m as detailed below.

Service	Exp	Inc	Net
Day Care	1,783,374	-206,479	1,576,895
Direct Payments	6,991,959		6,991,959
Domiciliary Care	18,608,340	-3,447,321	15,161,019

Integrated Project Management Office

Nursing Long Stay	5,788,123	-1,719,318	4,068,805
Nursing Short Stay	433,755	-89,397	344,357
Residential Long Stay Expenditure	33,915,404	-6,743,611	27,171,793
Residential Short Stay Expenditure	4,049,416	-716,451	3,332,965
Supported Living	11,906,369		11,906,369
Grants awarded	342,623		342,623
Bad Debt Provision	586,022		586,022
Staffing & Other	1,094,502		1,094,502
Other Income		-1,493,024	-1,493,024
Total	85,499,886	14,415,600	71,084,286

Cost Improvement Plan (CIP)

Description of Project Element	Description of Project Element	Type	Recurrent / Non-Recurrent	2023/24 Total £
ASC	Transfer to Framework (Contracts)	Assessment Review	Recurrent	£ 34,844
ASC	ASC - MHU65 Overdue reviews	Assessment Review	Recurrent	£ 79,977
ASC	ASC - MHU65 Support for living	Assessment Review	Recurrent	£ 25,770
ASC	OPMH Reviews	Assessment Review	Recurrent	£ 108,810
ASC	R&I Enabling Reviews	Assessment Review	Recurrent	£ 140,119

ASC	Baywide Structure Reviews	Assessment Review	Recurrent	£ 662,101
ASC	Overdue Review Baywide Teams	Assessment Review	Recurrent	£ 392,178
ASC	Technology Enabled Care	Assessment Review	Recurrent	£ 20,372
ASC	Client Contributions	Income Uplift	Recurrent	£ 608,197
ASC	Transitions	Assessment Review	Recurrent	£ 46,911
ASC	Liaison	Assessment Review	Net Recurrent	£ 475,000
ASC	Planning Stage	TBC	Recurrent	£ 400,000
				£ 2,994,279

- 3.3 It is not expected that this financial position will become less challenging in the coming years. The broader context is that adult social care is under pressure at a national and local level with the following pressures having a particular impact.
- 3.4 Social care providers are struggling to retain and attract new starters to their workforce for the following reasons:
- 3.4.1 Remuneration packages for other areas of work (hospitality) has been more competitive than social care.
 - 3.4.2 Reduction in the available workforce following Brexit.
 - 3.4.3 Cost of living increases.
- 3.5 Providers have adopted several approaches to deal with the issue, with some increasing their remuneration packages and others scaling back their provision. With a reduction in capacity, providers increase charges to the Trust, specifically within new agreements of packages of care. Increases in remuneration by providers and decreases in capacity negatively impact the Trust in terms of cost and business activity, leading to the increases in unit costs discussed above.
- 3.6 The complexity of clients' needs has consistently increased in recent years, and this means that packages of care for individuals have increased in cost and volume. This may be caused by delays in diagnosis and treatment in the pandemic leading to people requiring more support from adult social care than would have been seen pre-COVID.

There is a correlation between the increase in cost and complexity to those clients that pass-through hospital discharge that would support this assumption. However, regardless of the cause, the trend has continued for a number of years, and there is no indication it is likely to reverse.

- 3.7 The volume and cost of clients transitioning from children's services to adult social care is a further challenge to the ASC budget.
- 3.8 A number of recent changes have also added to financial pressures, including:
- An increase in the national living wage
 - Employer National Insurance contribution increases
 - Inflationary pressures
 - Loss of funding relating to COVID (including providers having access to free PPE)
 - From April 2022, additional costs were seen in respect of clients under 65 (Mental Illness) who have joint funded packages of care with Devon Partnership Trust (DPT). These will introduce additional recurrent costs.
- 3.9 As a result of the increases in unit costs, number of individuals supported and the increasing complexity of the needs of those individuals, the Trust has a challenging savings target in respect of ASC. With the market conditions detailed above and the continuing pressure on staff groups because of the pandemic, staffing has been diverted to operational pressures. The result has been delays in the ASCiP projects achieving their objectives and associated savings. This places an additional pressure on the ASC financial position as the original £6 million CiP saving is substantially challenged.

4. Objectives of the Charging Policy

- 4.1 The full charging policy can be found at the start of this report in associated documents. The objectives outlined in the current charging policy are as follows.
- 4.1.1 Where the authority is required to arrange care and support for free, it does so.
- 4.1.2 That financial support towards care costs will be determined through financial assessment.
- 4.1.3 To provide clear and transparent information so clients know what they will be charged.
- 4.1.4 To apply the rules consistently and to avoid variation in the way people are assessed and charged.
- 4.1.5 To ensure that the charge to the client for services being provided is no greater than that for which the Trust is charged by the provider

- 4.1.6 To encourage and enable those who wish to stay in or take up employment, education or training. The Trust will help plan for the future costs of helping the client to do so.
- 4.1.7 To ensure that where a client lacks capacity to undertake a financial assessment the Trust will consult a suitable person defined as having Enduring Power of Attorney (EPA), Lasting Power of Attorney (LPA) for Property and Affairs, Lasting Power of Attorney (LPA) for Health and Welfare, Property and Affairs Deputyship under the Court of Protection. Evidence will need to be seen of such legal authority to act.

5. Impact of the Current Policy

As part of the review of the Charging Policy the following were taken into consideration:

5.1 Calculating a person's income

5.1.1 As per the Charging Policy section 7.8, the Trust adheres to Care Act 2014 guidance when calculating a person's income. In line with the Care Act 2014 the following disability benefits are disregarded as part of this calculation:

- a) Direct Payments
- b) Guaranteed Income Payments made to veterans under the Armed Forces Compensation Scheme
- c) War Pension Scheme payments made to veterans with the exception of Constant Attendance Allowance payments
- d) the mobility component of Disability Living Allowance
- e) the mobility component of Personal Independence Payments

5.1.2 In addition, TSDFT on behalf of Torbay Council have used their discretionary power to add disregards beyond the statutory framework. The following payments noted in f and g are also disregarded.

- f) The difference between low rate and high-rate Attendance Allowance unless the Trust are providing night-time support
- g) The difference between middle rate and high rate of Disability Living Allowance unless the Trust are providing night-time support

5.1.3 Other income that is fully disregarded is set out in the Statutory Guidance⁵ section 29 of Annex C: Treatment of Income.

5.1.4 The Trust on behalf of the Council have used their discretionary power to provide support to carers without charge. The Care Act framework permits charging carers for support provided directly to them on a non-residential charging basis.

5.2 Minimum Income Guarantee (MIG)

5.2.1 The current MIG rates are those advised by the yearly Local Authority Circular⁷ and therefore the level of MIG utilised by the policy is at the statutory minimum. The Local Authority Circular raised the level of the MIG in 2023/2024. The Minimum Income Guarantee is set by reference to:

- The person's age;
 - Whether the person is responsible for a child (the MIG increases by £94.90 per child);
 - Whether the person is single or part of a couple;
 - Whether the person is in receipt of disability premium, or would be if in receipt of income support (the MIG increases by £45.75 for a single person or £32.60 for a member of a couple);
 - Whether the person is in receipt of enhanced disability premium, or would be, if in receipt of income support (the MIG increases by £22.35 for a single person and £16.05 for a member of a couple). These adjustments to the MIG would operate solely in favour of adults under 65, as older adults would not qualify for these benefits;
 - The person is in receipt of care premium, or would be, if in receipt of income support.
- 5.2.2 The Trust's policy differs from the national standard by allowing for those individuals under 25 to have the higher level of MIG afforded to them as the over 25 age group (raising the baseline MIG from £82.15 to £103.65 for these individuals). This has been a consistent policy decision over time to alleviate age discrimination, detail of which can be traced back to the fairer charging policy where it states, 'To alleviate age discrimination the applicable amount disregarded for clients over the age of 25, will also apply to those aged 18 to 24 years of age.'
- 5.2.3 When developing the Charging Policy, in line with the Care Act changes, the Trust continued to use 100% of the disposable income which was consistent with the Council approach from the commencement of Fairer Charging in 2001.
- 5.2.4 Individuals with income solely from income support benefits who do not receive any form of a disability premium or 'extra costs' benefit (by means of DLA, PIP or an income-support based disability premium) will be unlikely to have an assessable income which exceeds the MIG. The result of the disregards set in the Regulations is that the overwhelming majority of income actually paid to local authorities within the Care Act framework for working-age adults is disability-related benefit income. The situation is different for older adults, who will often have assessable pension income.

5.3 Use of Disability Benefits

- 5.3.1 The policy currently disregards the difference between the low and high rate of Attendance Allowance and the care component of disability living allowance, unless the nighttime support provided by the Trust is in place (for April 2023 this is £33.65 per week). Attendance Allowance and DLA higher and lower rates are typically differentiated by the presence or absence of needs at night; Personal Independence Payment (PIP) operates on a points-based system, and higher-rate PIP is not necessarily grounded in a need for night-time support. PIP is included for charging at the rate paid, either the standard or enhanced rate. This has been in place since the adoption of the policy.
- 5.3.2 When setting the Charging Policy on the implementation of the Care Act 2014, the Trust had regard to the Care Act guidance and the frequently asked questions provided by the Department of Health, in particular question 203. A copy of the FAQ can be found in associated documents, which sets out an 'expectation' that the treatment of Attendance Allowance is not changed from the pre-Care Act framework.

- 5.3.3 The commencement of the Care Act 2014 prompted the inclusion of the whole rate of PIP as opposed to the Trust's previous approach which did not take into consideration the higher rate of Attendance Allowance, Disability Living Allowance and Personal Independence Payment as per paragraph 42 of the Fairer Charging Guidance.
- 5.3.4 As per the Department of Health FAQ document, point A, question 203 (please see document table at the front of this report). Under the Care Act 2014, the treatment of day and night care is noted in paragraph 40 of Annex C of the CASS Guidance. In effect, this says that day or night care, which is not being arranged by the local authority, likely should be included in the adult's disability-related expenditure. Local authorities should assess a person's disability-related expenditure and allow them to keep enough benefit to meet any needs not being met by the local authority. The Charging Policy currently reflects the Care Act guidance referenced above, which recommends shifting the inclusion or exclusion of higher-rate PIP to the DRE framework.
- 5.3.5 On commencement of the Care Act 2014 and the associated changes to the Charging Policy, consideration was given to when to implement changes to existing and new clients. It was agreed changes would be implemented to existing clients only at the time of the annual review and at the start of the service for new clients. The Trust is aware that as people moved from DLA to PIP, they likely had increased charges because of the funding structure of PIP. Our data suggests a very small number (<2% less than 30 people) of working-age people will remain on DLA, and nearly all clients have been migrated to PIP.
- 5.3.6 PIP and DLA are non-means tested benefits, paid at different rates according to an assessment of need and designed to assist with the additional costs of living with a disability. They are intended to help a person meet the extra costs that result from their disability – to the extent that they are being used for this purpose they cannot be treated as additional income which is available to pay charges (as set out below in relation to Disability-Related Expenditures). Charges are only raised against PIP or DLA income where they are not being used on disability-related expenditures.
- 5.3.7 It is acknowledged that PIP is for working-age adults, and Attendance Allowance is received by older adults, and that the treatment of the benefit is not the same insofar as one is subject to a disregard if the higher rate is in payment (unless nighttime

FAQ Department of Health

Q203. How should AA and DLA day and night payments be treated in domiciliary care charging?

A203. We would expect local authorities to take steps to ensure that adults in receipt of care and support before the implementation of the Care Act are not made worse off as a result of any changes to the charging rules. In addition, as previously, local authorities can design policies which are more generous than the minimum requirements set out in regulations and statutory guidance.

support is within the care plan). The enhanced rate of PIP is included regardless as this is a function of following statutory guidance, which recommends this differential treatment of the two benefits, and the structure of Attendance Allowance normally demonstrates a night need where the person receives the higher rate. PIP recipients are paid the enhanced rate if their overall disability means they qualify for this and is not dependant on needing support at night. However, any nighttime needs paid by the client could qualify for a reduction in the assessed charge allowing for additional expenditure for DRE's.

5.3.8 Neither PIP nor DLA mobility components are subject to any charges, in line with the Care Act framework.

5.4 Disability Related Expenditure (DRE)

5.4.1 The current Trust policy follows the National Association of Financial Assessment Officers (NAFAO) guidance including the heating allowance. The Trust has a flexible approach to assessing the cost of disability which is reflected in the Charging Policy.

5.4.2 The Trust benchmarks high when compared with other localities in assessing disability-related expenditures. The Trust assesses on a client's individual expenditure, with reasonable evidence requested. The financial assessment officer will carry out an individual financial assessment and will discuss expenditure with the client. Table 1 details the average expenditure of other local authorities in comparison to Torbay.

Table 1. Comparison of average expenditure by area	
Torbay	£24
Devon	£14
Notts	£16.50
Merton	£10
York	£14

5.4.3 In practice the Trust's financial assessment officer will discuss expenditure with the client or their legal representative and include DRE that is evidenced and is part of the non-exhaustive list within the policy. Any other DRE that is evidenced would be discussed within the wider team, team manager and the clients social care keyworker for a decision to be made. The full process for which can be seen in figure 1.

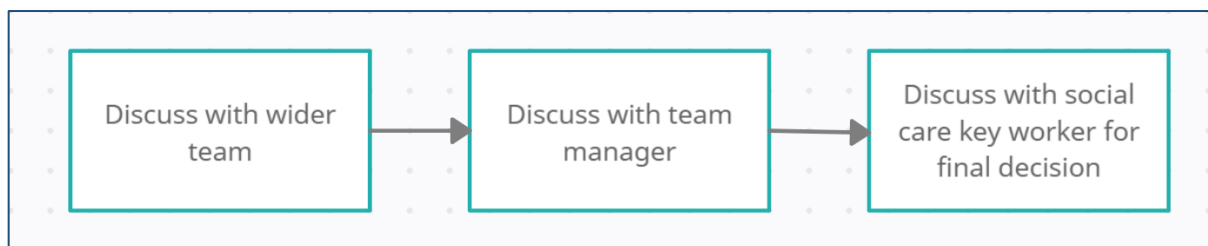


Figure 1. Decision making process for financial assessments relating to DRE

5.4.4 Some examples of less common disability related expenditures that have previously been included in the financial assessment are as follows:

- a) New motor for electric gate on property entrance plus annual service fee
- b) Pet insurance/flea/worm treatment for assistance dog
- c) Osteopathy/Hydrotherapy
- d) Petrol allowance as Mobility component of PIP used for Motability vehicle
- e) Deep clean following DFG works completion
- f) Replacement of washing machine every 6 months
- g) Swim pants
- h) Torbay Council car park permit
- i) Blue Badge
- j) Broadband
- k) Loan to cover vehicle adaptations not covered by Motability scheme
- l) Carers Cinema card/carers expenses ie entrance fees
- m) Bird cage cleaning
- n) Car valet due to skin shedding
- o) Storage fees for homeless/sofa surfer
- p) Music therapy/massage/gym membership (Thera)
- q) Toilet steriliser/maintenance
- r) Mouth camera for dentistry

6. Alternative Approaches

- 6.1 The following table details the possible alternative approaches including benefits and risks.
- 6.2 These alternative approaches are based on recommendations from CASCAIDr opinion and paragraphs 8.38-8.48 of the Care and Support Statutory Guidance.

Option No.	Description	Benefits	Risks
1	<p>Increase the MIG</p> <p>Increase the MIG for affected individuals, in a rational way which is related to their overall income. We consider increasing the MIG in line with current benefit rates.</p>	<p>Reduced charge to affected clients by an average of £20 per week per client. This change would benefit 888 clients.</p> <p>This option does not require an IT system change to implement.</p> <p>This would be beneficial for the individuals affected as they would have more freedom and choices about how they support themselves in society. Having a reduced charge and therefore more money to pay for goods and services could lead to more independence. Having more disposable income can lead to better lifestyle and healthier diet.</p> <p>Individuals would be able to access more opportunities for independent living,</p>	<p>This change would not be consistent across clients due to the operation of the MIG, which varies depending on age and other factors, as set out above.</p> <p>This approach of increasing the MIG in line with current benefit rates would benefit people over pension age clients more as the percentage of benefit increase is approximately 17% for over pension age clients but only approximately 5% for under working age clients. The amount disregarded for pension age clients (MIG) would be an increase of £32.40 per week but only £7.35 per week for working age adults. Therefore, older adults would benefit disproportionately by this increase. This is due to the increases for pension age people in their benefit rates for the years 2015-2021.</p>

Option No.	Description	Benefits	Risks
			<p>Information from the Financial Impact document found in associated documents on page 4 – shows a recurrent reduction in income of £837K per annum. This reduction in income will have a high impact on TSDFT and the ability to provide services and would potentially compromise the ability to deliver against Care Act requirements. Reduced funds for meeting care needs for the wider population resulting in reductions in services to balance the ASC budget.</p> <p>Risk to clients who use the services which would be reduced.</p>
2	<p>Introducing Disregards as Part of the MIG</p> <p>Introducing disregards for elements that councils have a discretion to include in the MIG, particularly disability benefits – we consider disregarding the daily living component of PIP could be disregarded, or other similar benefits, such as the SDP (severe disability premium).</p>	<p>Reduced charge to clients. The amount of the reduction would vary depending on whether client was or was not receiving the benefit, whether they were receiving it at a higher or lower rate, whether they were responsible for children, whether they were living in a couple, the benefits received by the person or others in the household, whether they were in employment or on benefits, and the extent to which the benefit was disregarded as a DRE (there may be other factors which would also affect the extent of any reduction in charges). The benefits would thus vary considerably based on the person's specific living situation.</p> <p>This option does not require an IT system change to implement.</p>	<p>This proposal would come at a substantial cost which would force broader cuts in the service. The benefits only target a select group dependent on household set up, age, type of benefit, and do not assist all people who would be considered 'severely disabled' by the <i>Norfolk</i> standard.</p> <p>Benefits such as the Severe Disability Premium are paid when a person has:</p> <ul style="list-style-type: none"> a) Attendance Allowance (AA) b) Disability Living Allowance (DLA) middle or high rate c) PIP <p>Severe Disability Premium is not payable if the client:</p> <ul style="list-style-type: none"> a) lives in a household with people who

Option No.	Description	Benefits	Risks
		<p>This would be beneficial for the individuals affected as they would have more freedom and choices about how they support themselves in society. Having a reduced charge and therefore more money to pay for goods and services could lead to more independence. Having more disposable income can lead to better lifestyle and healthier diet.</p> <p>Individuals would be able to access more opportunities for independent living with a higher retained income.</p>	<p>do not have a qualifying benefit b) Someone receives carers allowance c) if a person is on Universal Credit.</p> <p>Introducing disregards, only targets a select group dependent on household circumstances, and benefit types and whereas SDP is an extra allowance payable to the most disabled clients, not all would benefit due to not being eligible for the additional payment due to their living arrangements For example a learning disabled client who lives with their family would be unlikely to have the SDP as part of their benefit entitlement but could still have a high charge due to receiving high rate PIP but, and not having a high level of DRE.</p> <p>This would likely disproportionately benefit those clients over pension age as they are more likely to live alone, have no one claiming carers allowance and therefore be eligible for SDP. It would likely have lesser impact on individuals who live with carers and family, who are much more likely to have individuals who are claiming carers' allowance. As older individuals in receipt of care and support also generally have greater incomes, the benefits would likely flow primarily to individuals who have higher rather than lower incomes.</p> <p>Because of the significant number of variables at</p>

Option No.	Description	Benefits	Risks
			play in considering the effects of disregarding SDP, it is difficult to give a financial estimate and one is not offered below. It is, however, clear that this would lose a significant amount of revenue to the service.
3	<p>Introducing Disregards Between Standard and Enhanced PIP</p> <p>To disregard the difference between the standard and enhanced level of PIP daily living component. It is estimated that the total number of clients impacted would be 452. The current differential between the lower and high weekly rates is £33.65/week.</p>	<p>By disregarding the difference between standard and enhanced PIP, those in receipt of enhanced PIP would receive a reduction in charges. This would result in the delivery of reduction in charges for the most disabled client.</p> <p>This would be beneficial for the individuals effected as they would have more freedom and choices about how they support themselves in society. Having a reduced charge and therefore more money to pay for goods and services could lead to more independence. Having more disposable income can lead to better lifestyle and healthier diet.</p> <p>This option also provides an opportunity to align with the disregard for people on DLA and AA for those with night needs for care and support.</p> <p>This option does not require an IT system change to implement.</p>	<p>Estimated Financial Impact - £693K which will have a high impact on TSDFT and the ability to provide services and would potentially compromise the ability to deliver against Care Act requirements.* Further detail of this can be found below, and would require even further efficiencies to be found on a year-on-year basis where costs have been continually increasing for some time.</p> <p>This approach would not benefit those on lower-rate PIP. The effects may be more or less significant depending on how a person is spending their PIP income; where a person is spending all of their PIP income on Disability-Related Expenditures, they would not have any benefit from this change. Conversely, a person who is spending some or none of their PIP income on Disability-Related Expenditure would likely see more benefit.</p> <p>PIP is only for working-age adults. There would be no benefits to older adults (though older adults are entitled to a generally higher MIG under the Care Act framework, and those with night needs for care and support who receive Attendance Allowance have the</p>

Option No.	Description	Benefits	Risks
			<p>higher rate disregarded).</p> <p>A risk to this approach is that it would result in a large proportion of people requiring financial review at the same time every year which would impact staff resource negatively and cause further cuts for service users. This approach would require appropriate planning for implementation to reduce the risk to staff capacity.</p> <p>*Detailed in the ASC Non-Residential Charging Policy Review – Financial Impact, found in the document table at the front of this report</p>
4	<p>Do nothing</p> <p>The Charging Policy remains unchanged.</p> <p>There will be no financial impact for TSDFT from this option particularly as the organisation has no opportunity to raise this money from other sources on a cost neutral basis.</p> <p>People will continue to be means assessed and charged based on their available income.</p> <p>*Detailed in the ASC Non-Residential Charging Policy Review – Financial Impact, found in the document table at the front of this report</p>	<p>No change to current practice, or to the retained income of clients.</p> <p>This option does not require an IT system change to implement.</p> <p>There is no financial impact from this option.</p> <p>It is positive for people who use services because the service will not be obliged to make major service cuts for people with disabilities. This is the only option that does not result in a reduced level of resource for the ASC service or require further recurrent savings to be made to the ASC budget.</p>	<p>It is possible that not changing the charging policy in response to the Norfolk Ruling and subsequent policy review would lead to legal challenges. This would impact staff resource and have an unknown financial impact.</p> <p>It is possible that following legal challenges, changes may need to be made to prevent further challenge. To make the required operational changes whilst also managing an increased workload as a result of legal challenges would present a risk to the finance teams' ability to operate at its optimum level.</p> <p>Service users would not see increases in their retained income.</p>

Option No.	Description	Benefits	Risks
5	<p>Protect a % of a Person's Disability Benefit</p> <p>Would require at least 30% of an individual's disability benefits to be protected. To prevent age discrimination, this approach would need to be implemented across all client groups.</p> <p>Whilst this would help everyone who receives disability-related benefits, it is not a targeted approach; a high cost would be involved - £1,054,000</p>	<p>Reduce charge to those clients with disability benefits by an average of £26 per week per person.</p> <p>This would be beneficial for the individuals affected as they would have more freedom and choices about how they support themselves in society. Having a reduced charge and therefore more money to pay for goods and services could lead to more independence. Having more disposable income can lead to better lifestyle and healthier diet.</p> <p>This would impact 773 clients. This would be good for people because having a reduced charge and therefore more money to pay for goods and services could lead to more independence. Having more disposable income can lead to better lifestyle and healthier diet.</p>	<p>*Estimated Financial Impact - £1,054,000 which will have a high impact on TSDFT and the ability to provide services and would potentially compromise the ability to deliver against Care Act requirements.</p> <p>Implementing this approach across all client groups this option would not target the most disabled clients. This would also be a greater financial cost to the Trust as more clients would have a reduced charge. The reduced funds for meeting care needs for the wider population could result in reductions in services.</p> <p>The TFM system would need to be changed to appropriately calculate client contribution and support this way of working and an IT resource, to carry out the change. This resource will need to be identified within The Council IT team.</p> <p>*Detailed in the ASC Non-Residential Charging Policy Review – Financial Impact, found in the document table at the front of this report</p>
6	<p>To reduce the assessed charge by a percentage rather than charge at 100% of disposable income. For example, a 10% reduction</p> <p>Applying a max 90% of disposable income, after mandatory disregards and DREs have been excluded, in line with para 8.47 of the</p>	<p>This would impact 775 clients, and benefit all clients who are subject to an income charge. The extent of the benefit would depend on the extent of the charge, with those experiencing larger charges having more of a benefit. As in other options, the extent of a person's charge would depend on a number of different factors. While the benefit received by any particular</p>	<p>This would not specifically target the most disabled. The benefits accrued would depend on the extent of the person's charge and would benefit those with the highest income. This would include people with significant pension incomes, and would not be linked to the extent of the person's disabilities.</p> <p>The TFM system would need to be changed to</p>

Option No.	Description	Benefits	Risks
	Guidance	<p>person would depend on a number of factors, it would appear that the amount of additional retained income would be much smaller than in other options.</p> <p>This would be good for people because having a reduced charge and therefore more money to pay for goods services could lead to more independence. Having more disposable income can lead to better lifestyle and healthier diet. However, it appears that where the retained income is smaller, these benefits are likely to be much lesser than in other options.</p> <p>This would be beneficial for the individuals effected as they would have more freedom and choices about how they support themselves in society. Having a reduced charge and therefore more money to pay for goods and services could lead to more independence. Having more disposable income can lead to better lifestyle and healthier diet.</p>	<p>appropriately calculate client contribution and support this way of working and an IT resource, to carry out the change. This resource will need to be identified within The Council IT team.</p> <p>It does not appear that the amount of additional retained income is likely to have a significant impact on clients in their day to day lives. However, the aggregate affect will be detrimental to the service as a whole.</p> <p>Estimated Financial Impact - £247K which will have a high impact on TSDFT and the ability to provide services and would potentially compromise the ability to deliver against Care Act requirements. Further detail can be found in the financial impact document</p> <p>*Detailed in the ASC Non-Residential Charging Policy Review – Financial Impact, found in the document table at the front of this report</p>

6.3 Cumulative Impact

Adult social care is under pressure at a national and local level with a number of pressures having an impact on the 2023/24 financial year:

Any changes to the charging policy in light of the Norfolk Ruling would add a significant cost implication to the organisation.

The table below indicates the estimated recurrent financial impact between £247k and £1,054k.

Option	Estimated Recurrent Impact £,000	Number of clients that would benefit	Average £ benefit
1 - Increase the MIG for affected individuals, in a rational way which is related to their overall income. For example, increasing the MIG in line with current benefit rates.	837	888	Pension aged Clients = £32.40p/w Working age adults £7.35 p/w
2 – Disregarding SDP – due to the numerous variables, it has not been possible to estimate the number of clients affected or estimated recurrent financial impact			Not possible to calculate.
3 - Introducing Disregards Between Standard and Enhanced PIP to disregard the difference between the standard and enhanced level of PIP.	693	452	£33.65 p/w
4 - Do nothing. The charging policy remains unchanged. The above financial figures are indicative recurrent annual values. Precise values will only be known when each client's unique financial capacity / assessment is reviewed and to calculate the full financial impact relating to in year exposure it would require a start date from which this applicable and this is of particular importance if any start date is pre-this financial year.			No change
5 - Protect 30% of a person's Disability Benefit	1,054	773	Approx £26.16 p/w
6 - To reduce the assessed charge by a percentage rather than charge at 100% of disposable income Applying a max 90% of disposable income, after mandatory disregards and DREs have been excluded, in line with para 8.47 of the Guidance.	247	775	£6.11 PW

7. Recommendations

- 7.1 In relation to the options, we would note that the greater the retained income to individuals, the more significant the effects on the service as a whole:
- Option 1: This option would significantly negatively impact revenue available for ASC. It is not targeted at individuals with more significant disabilities.
 - Option 2: This would not benefit those individuals who may be severely disabled that live with carers and/or family. This would disproportionately benefit older clients who live alone and have a high income.
 - Option 3: This option would significantly negatively impact revenue available for ASC; the extent of client benefit would depend on the extent to which PIP income is being spent on Disability-Related Expenditures. Clients with lower DREs would have greater impact from this change.
 - Option 5: This option would significantly negatively impact revenue available for ASC. This would not target individuals with the highest levels of disability.
 - Option 6: The amount the charge is reduced but is unlikely to have a significant impact on clients in their day to day lives. This option would have a significant financial impact to TSDFT's ability to deliver a quality service. The clients with the greatest impact would be those with the greatest income, who are likely to be those with significant occupational pensions.
- 7.2 In response to this review a number of observations have been made relating to current policy processes resulting in the recommendation that the current charging policy in use by TSDFT not be amended at the current time in light of the *Norfolk* ruling. In light of the current financial position and the negative impact that may be realised as a result of any additional financial pressures it is recommended that option 4, making no change, is the most appropriate.
- 7.3 We are aware and give significant weight to the aims of the policy; we would add that ASC is required to balance its budget. In recent years, this has involved making substantial savings to maintain the same level of provision as the demands on the service increase. The budget for ASC (along with services for children's services) have been significantly more protected than other services funded by the Council over this period of time. The need to make savings and/or efficiencies has been necessary repeatedly over the last decade, and continues to be an ongoing project for the service. The context of the current financial situation is that there is no surplus; on the contrary, there are substantial challenges and efficiencies to ensure a balanced budget on current funding. As noted above, when funding is allocated centrally for adult social care, it is anticipated that councils will be raising their own revenue by making charges on people using services.

- 7.4 In considering whether to recommend changes to the charging policy, there is an inherent trade-off between charging people in order to ensure on-going funding for the services, or reducing charges to clients, with the result of reduced service provision. The Trust does not consider that it is in the situation which the court considered to exist in *Norfolk* in which it could maintain the same revenue without its current charges. The Trust main changes to the Care Act charging statutory and guidance framework is in relation to the MIG for 18-24 year-olds, and by providing support for carers without charge (as noted above, there are almost no individuals who remain on DLA). While the Trust could raise additional revenue by eliminating higher MIG for 18–24-year-olds, it would leave young people who require care and support with a baseline MIG of only £82.15 per week, less than any other age group by a significant amount. The Trust would consider that raising charges against support provided directly to carers would not be appropriate, recognising the considerable work of carers and their importance to the well-being of people with needs for care and support.
- 7.5 All social care charges impact vulnerable groups, as social care is by definition only available to people who have disabilities which result in care needs. Strains on the ASC budget also impact on people with disabilities. Charges under the Care Act 2014 service users are means tested and only those considered to have the financial means will be expected to pay the required charge. In particular, we would note that those who are in receipt of disability-related benefits (unlike others) are entitled to disability-related expenditures, which cannot be subject to any charges under the Care Act 2014. To the extent that people have higher levels of income due to receiving PIP, this income is only assessable to the extent that it is not already being used on costs arising out of disability.
- 7.6 We acknowledged that some people will be charged more than others due to their having higher levels of assessable income due to the operation of the Care Act framework. This will include different proportions of income for different people, based on many factors, including differences between people who have income from benefits and people who have income from employment, which, as a matter of law, is disregarded from income charges. There is no discretion for the Charging Policy to treat income from employment in the same manner as benefit income is treated, unless the Council were to disregard all benefit income, which would have very severe impacts on the ASC budget.
- 7.7 The means-tested framework set by the Care Act is based primarily around ensuring that people have a certain absolute level of protected income and that certain types of income are protected from charges. The Council must work within this framework, and is obligated to ensure that people do have sufficient absolute income to meet non-disability-related expenses and DREs. As set out above, individuals who do not receive disability-related benefits are unlikely to have incomes above the MIG in any event, and as a result of the Care Act framework (rather than any decisions by the Council), will not have charges applied. The Council could not make level the proportion of income charged as between people with and without disability-related benefits unless it were to eliminate charges.
- 7.8 While many clients have pension income (which is subject to charges), it is important to understand the relatively small number of clients who receive any income from

employment, and the extent to which that income from employment is sufficient to disqualify them from income-based benefits. The number of clients receiving earnings is 31 with a considerable income range spanning from between £20 to £530 per week. Those on the lower earnings amount also have means tested benefits and the earnings are via the permitted work schemes run by the Department for Work and Pensions, these jobs appear to be in family business or with the providers for whom the clients also receive services. There are 12 people who earn less than £100.00 per week and 8 people who earn above the average amount of £188.00 per week. Of these 31 clients 11 people receive the enhanced rate of Personal Independence Payment. This is a small population of the total client group, many of whom continue to have significant assessable income and pay charges on that benefit income. Where the range in income from employment is so substantial, there is no means of making level the proportion of income paid as charges as between the group of people with benefit income only and those with some form of employment. Where no charges can be made against income from employment, the only way of equalising the proportion of charges would be to ignore benefit income (which represents the sole source of income for the overwhelming majority of the working-age client population), at a substantially larger cost to the service than any of the other options considered above.

- 7.9 We are very conscious of the need to consider the impacts on different groups of people by the Charging Policy. We are also conscious that there are more and less extreme options which could be utilised, and the choice is not simply one between charging and not charging; many different configurations are possible, and a range of less extreme options is considered above.
- 7.10 Having explored five alternative options available to us as recommended in the statutory guidance and by CASCAIDr, the only available that does not seriously compromise the organisation's ability to deliver statutory responsibilities under the Care Act is maintaining the status quo. We accept that several alternatives which disregard certain disability-related benefit income or set a charge against of 90% of assessable income would leave small or large groups of clients with more disposable income, which would be a benefit to the people who retained a higher level of income. Some of these options offer more retained income to a broad population; others offer more benefit to those with enhanced-rate benefits. However, all of these options would lead to a substantial and recurring loss of income to the service, and have a negative impact on the service's ability to deliver, and force further savings to be found annually.
- 7.11 We do not consider it possible to equalise the treatment of income from employment with that from benefits; as can be seen from the small numbers of people in employment, clients are overwhelmingly receiving their incomes from benefits or pensions. Disregarding this income (to treat it in the same manner as income from employment) would lead to a devastating loss of revenue for the service, of far greater scope than the options considered above. Further savings would require more review and reduction in staffing costs (potential redundancies), review and reduction of funding to voluntary sector organisations and seeking further reductions in support packages that could have wide ranging impact on the population of Torbay and impact the abilities of TSDFT to meet their statutory obligations. The reduction

of staff resource and VCSE support would impact the clients in receipt of support from adult social care and negatively impact the ability of TSDFT to provide a quality service in line with statutory requirements. In addition, Adult Social Care in Torbay is closely partnered with health who have been placed in segment 4 of the Single Oversight Framework due its longstanding financial issues. This is the highest category of the Single Oversight Framework and has resulted in national scrutiny and frequent monitoring. Torbay and South Devon NHS Trust as the Integrated Care Organisation that Adult Social Care is partnered with has been placed in segment 3. As a result, the attention of our regulators has been refocused on financial sustainability and operational efficiency and we have a fixed and finite timeline to demonstrate significant financial improvement.

- 7.12 Based on the historic position, current climate, and future outlook neither Torbay Council or TSDFT will be in a position to fund any of the options described that result in a reduction of client contributions due to the considerable pressures they would place on existing services. As is set out above, there are already multiple financial pressures on services which would be exacerbated by the plans above, leading to reductions in the care available to people in the area. There is a challenging £6m savings plan in place, the target for which was calculated prior to the current / future pressures that have been identified in sections 3 and 4. Further savings would require more review and reduction in staffing costs (potential redundancies), review and reduction of funding to voluntary sector organisations and seeking further reductions in support packages that could have wide ranging impact on the population of Torbay and impact the abilities of TSDFT to meet their statutory obligations. The reduction of staff resource and VCSE support would likely impact the clients in receipt of support from adult social care and negatively impact the ability of TSDFT to provide a quality service in line with statutory requirements.
- 7.13 Following the review however, the following suggestions should also be considered:
- 7.13.1 Effectively utilise the process for documenting policy changes and the rationale for such decisions should be developed and implemented to aid future audit and/or review activity.
- 7.13.2 A clear governance route to support policy changes across partnership organisations should be developed and agreed by partners. This should take into account the necessity of some changes needing to pass through council cabinet where relevant and include clear routes of accountability across Torbay and South Devon Foundation Trust and Torbay Council.
- 7.13.3 The Charging Policy is amended with a process map which clearly shows how a decision is made in relation to expenditure that is/is not included in the current list.

Appendix A

1. SH v Norfolk County Council Judgement, 16/8/2021
<https://www.matrixlaw.co.uk/wp-content/uploads/2020/12/SH-v-Norfolk-County-Council.judgment-FINAL.pdf>
2. The Care Act 2014, 16/8/2021
<https://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>
3. The Care and Support (Charging and Assessment of Resources) Regulations 2014 (the charging regs), 16/8/2021
<https://www.legislation.gov.uk/uksi/2014/2672/contents/made>
4. The Public Sector Equality Duty, 16/8/2021
<https://www.legislation.gov.uk/uksi/2011/2260/contents/made>
5. The Statutory Guidance, 16/8/2021
<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#contents>
6. Counsel's Advice for CASCAIDr '*Charging Policies and implications of SH v Norfolk County Council*' dated 22 April 2021, 16/8/2021
<https://www.cascaidr.org.uk/uploads/CounselsAdviceforCASCAIDrontheimplicationsoftheNorfolkDecisiononCareCharges.pdf>
7. Local Authority Circular, 16/8/2021
<https://www.gov.uk/government/collections/local-authority-circulars>.
8. Fairer Charging Guidance, 16/8/2021
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/208323/Fairer_Charging_Guidance_final_2013-06-20_rc.pdf
9. The National Association of Financial Assessment Officers (NAFAO) Guidance, 16/8/2021
10. CASCAIDr Summary of Counsel's advice about the Norfolk Case 16/08/2021
<https://www.cascaidr.org.uk/2021/04/20/summary-of-counsels-advice-about-the-norfolk-case/>

Appendix B

1. The Care Act 2014² ('the Act')

1.1 Section 14

Allows for local authorities to charge for meeting needs under the Care Act 2014.

1.2 Section 17

Sets out that a local authority must assess the financial resources of the service user before being able to charge the service user for meeting their needs.

1.3 Section 78

Sets out that a local authority must 'act under' the statutory guidance.

2. The Care and Support (Charging and Assessment of Resources) Regulations 2014³ ('the Charging Regs')

2.1 *Deals with the local authority's power to charge for care and support and make provision for financial assessments*

2.2 *Part 2 of the Charging Regs deals with the local authority's power to charge for care and support and in particular Reg 7 which provides for a minimum income guarantee ('MIG') for service users not accommodated in a care home*

2.2.1 *This means that a LA may not make a charge if the income of the adult would, after deduction of the charge, fall below a specified amount*

2.2.2 *The specified MIG varies according to age and other factors such as whether a person is single, part of a couple or a lone parent.*

2.2.3 *There are also 'premiums' to be added to the MIG for those who are severely disabled.*

2.3 *Part 4 of the Charging Regs deals with the treatment and calculation of income*

2.3.1 *the starting point is to calculate a person's 'total income' (Reg 13(1)(a))*

2.3.2 *certain amounts must be disregarded from this calculation including (i) earnings derived from employment (employed or self-employed) (Reg 14) and (ii) sums specified in Part 1 of Schedule 1 to the Regs (Reg 15(1))*

2.3.3 *For the purposes of (ii) para 4 provides that, where the LA takes into account in the income calculation any 'disability benefits' (see below), then it must disregard any disability-related expenditure ('DRE') incurred by the individual*

2.3.4 *For the purposes of (ii) para 8 provides that the mobility component of disability living allowance ('DLA') or personal independent payment ('PIP') must be disregarded*

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- 2.3.5 *Also, in cases of needs for care and support other than the provision of care home accommodation, the LA may 'disregard such other sums the adult... may receive as the authority considers appropriate' (Reg 15(2))*
- 2.4 *'disability benefits' for the purpose of para 4 of Schedule 1 of Part 1 of the Charging Regs include attendance allowance (other than severe disablement occupational allowance), DLA and PIP.*
- 2.5 *PIP and DLA are non-means tested benefits, paid at different rates according to an assessment of need and designed to assist with the additional costs of living with a disability.*
- 3. The Statutory Guidance⁵**
- 3.1 The Statutory Guidance and in particular 8.38-8.48 were considered as part of this review; the below is noted in particular:
- 3.1.1 *Para 8.43 states that LA's have 'flexibility' within the legislative framework – 'for example, they may choose to disregard additional sources of income, set maximum charges, or charge a person a percentage of their disposable income'*
- 3.1.2 *Paras 8.46 and 8.47 provide that LAs consider how to 'protect' a person's income, that they should not assume without further consideration that all of a person's income above the MIG is available to be taken in charges and that they 'should therefore consider whether it is appropriate to set a maximum percentage of disposable income (over and above the MIG) which may be taken into account in charges'*
- 4. The Public Sector Equality Duty⁴**
- 4.1 requires local authorities to have due regard to eliminating any discrimination.

Appendix C

Equality Impacts - Identify the potential positive and negative impacts on specific groups

	Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
Older or younger people	Maintaining the status quo would avoid cuts to services which are needed by both older and younger people.	<p>Changes to the policy in different configurations would affect older and younger people differently, depending on their specific benefit entitlements and living situations. (Please refer to chapter 6 above for more detail)</p> <p>The financial evidence shows there is an even split of those over 65 and under 65 who are assessed to contribute to part of their care package.</p> <p>The scope of any change would depend on the nature of the change, as set out above. In some scenarios, benefits would flow primarily to older or younger people.</p> <p>Older people benefit from the operation of the higher MIG in the Care Act framework for those</p>	Older and younger people would not be proportionately more impacted by service cuts.

		over retirement age. Maintaining the status quo will often leave younger people with lower absolute incomes, or higher proportions of their incomes paid as care charges. However, the charge in any particular case will also depend on the person's circumstances, benefits, and use of their disability-related benefits.	
People with caring Responsibilities	Maintaining the status quo avoids cuts to services and avoids increasing burdens on informal carers.		The Trust does not charge carers for support provided to them; carers would not be directly affected by reductions in charges. To keep charging as we do could be seen as having a positive impact on carers as wider service delivery can be maintained.
People with a disability	By definition, care services provided under the Care Act 2014 are only available to people who have a disability. Maintaining the status quo avoids cuts to services to meet the needs of people with disabilities (both more and less severe). The different	It is acknowledged that some disabled people with more severe disabilities pay a higher percentage of income and higher absolute amount of charges due to their being in receipt of the high rate of PIP and other benefits with higher and lower rates. The precise charge experienced by any person will depend on the amount of the person's income and capital, the person's circumstances, how their disability-related benefits are used, and the extent to	



	<p>options considered (other than the status quo) all involve cuts of greater or lesser amounts. These cuts would come on the backdrop of significant pressures on the service, and ongoing savings targets as set out above. Further cuts in funds available to ASC would strain the ability of the service to deliver care and support, and likely lead to reductions in service available for people with disabilities. As noted above, central funding the Council receives to provide care and support is allocated on the assumption that the Council will also be raising revenue, and the Council would not be entitled to higher levels of central funding if it exercised its discretion to charge people less.</p>	<p>which income received is subject to disregards.</p> <p>People with income from employment rather than benefits are less likely to have assessable income above the MIG or to pay a lower overall percentage of income. The decision to make income from employment disregarded for the purposes of social care charging, and not to increase the MIG for PIP or SDP are part of the Care Act 2014 framework.</p> <p>A change in the policy in the ways described above would be more likely to provide additional discretionary income to people whose income is solely from benefits and who are in receipt of PIP (at either the higher or lower rate), who were identified in the <i>Norfolk</i> case as being more likely to be 'severely disabled.' This change would also lead to significant impacts on the service, which would lead to negative effects for people who are in need of care and support.</p> <p>The discussion in section 8 above in relation to individuals whose income is from employment rather than benefit income is incorporated by reference. There is a considerable range in the amount of income received, and eligibility for PIP was found in both those who were and were not in employment.</p>	
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		<p>To help mitigate this and in accordance with the law, the policy uses different levels of MIG dependant on the client's benefit income (or what assumed benefit income would be if entitled if the person were entitled to income support). For example, a person who has certain enhanced disability premium would be entitled to a higher MIG including not only the personal allowance element but also a disability premium and an enhanced disability premium making their MIG higher than less disabled clients. These clients may then have a higher charge, but they will also have a greater absolute retained income under the MIG than those who do not receive enhanced-rate benefits.</p> <p>For those in receipt of disability-related benefits (which are not available to all clients, but only those who meet certain criteria), assessments also take into account that client's disability related expenditure to help ensure the charges are affordable and the client can continue to pay for or purchase those items needed to ensure independence. To the extent that the clients are spending the income arising out of disability-related benefits on disability-related expenditures, they are not subject to charges,</p>	
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		and disability-related income (at higher or lower rates) is only applied to the cost of meeting care needs insofar as it is not already being applied in that manner. The Trust has a flexible way of working with clients re their DREs and will discuss/consult on an MDT basis when less routine expenses are requested. This helps to mitigate the inclusion of PIP in the assessment, as it ensures that the person is not subject to charges where PIP income is already being spent on the costs of disability. Where care and support provided by the Trust is, itself, being expended on meeting the 'extra costs' associated with the person's disability, it is reasonable to charge against this income. The charge assessed for each individual client will depend on the amount and sources of income how the income is spent. The system provides for individual consideration of the needs and actual expenses of those on higher-rate benefits to ensure an affordable charge.	
Women or men			X
People who are black or from a minority ethnic background (BME) (Please note Gypsies /			X



Roma are within this community)			
Religion or belief (including lack of belief)			X
People who are lesbian, gay or bisexual			X
People who are transgendered			X
People who are in a marriage or civil partnership			X
Women who are pregnant / on maternity leave			X
Socio-economic impacts (Including impact on child poverty issues and deprivation)			X
Public Health impacts (How will your proposal impact on the general health of the			X



population of Torbay)			
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