

CABINET	AGENDA ITEM No. 6
18 JANUARY 2016	PUBLIC REPORT

Cabinet Member(s) responsible:	Councillor Wayne Fitzgerald, Deputy Leader and Cabinet Member for Integrated Adult Social Care & Health	
Contact Officer(s):	Wendi Ogle-Welbourn, Corporate Director People & Communities	Tel. 863749

TREATMENT OF WAR DISABLEMENT PENSION - ADULT SOCIAL CARE CHARGING

R E C O M M E N D A T I O N S	
FROM : The Deputy Leader and Cabinet Member for Integrated Adult Social Care & Health Corporate Director, People & Communities	Deadline date : N/A
That Cabinet:	
<ol style="list-style-type: none"> 1. Considers the motion moved by Councillor John Fox and unanimously supported by Full Council, as set out in Appendix 1; 2. Considers whether the Adult Social Care Charging Policy be amended to fully disregard the war disablement pension in the social care financial assessment, effective from February 2016, in accordance with the motion; and 3. Supports the Local Government Association's call for additional funding to be provided by Central Government to ensure that such a policy change is financially sustainable. 	

1. ORIGIN OF REPORT

- 1.1 This report is submitted to Cabinet following the motion moved by Councillor John Fox, the Council's Armed Forces Community Champion, to full Council on 14th October 2015 (see Appendix 1), which has its origins in the Royal British Legions 'Insult to Injury' campaign (Appendix 2). The motion was supported unanimously by Council.

2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is to consider and seek approval to a proposed change to the Council's adult social care charging policy in response to Councillor Fox's motion.
- 2.2 This report is for Cabinet to consider under its Terms of Reference No. 3.2.1' To take collective responsibility for the delivery of all strategic Executive functions within the Council's Major Policy and Budget Framework and lead the Council's overall improvement programmes to deliver excellent services'.

3. TIMESCALE

Is this a Major Policy Item/Statutory Plan?	NO
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4. ADULT SOCIAL CARE CHARGING POLICY

Background

- 4.1 Charges for social care services are determined by an individual means test or financial assessment, which takes into account a person's financial resources and personal circumstances and compares these against nationally set minimum protected income levels and allowances. The type of income a person receives determines how it is treated in the financial assessment calculation, for example if it is taken fully into account, partially disregarded or fully disregarded.
- 4.2 Military compensation comes in many different forms, but is not treated consistently in the statutory guidance that sets out the rules for care charges. Veterans injured after 6 April 2005 receive income compensation through the Armed Forces Compensation Scheme, which is fully disregarded in the financial assessment calculation. However, veterans injured prior to 5 April 2005 receive a War Disablement Pension, which is subject to a £10 disregard - with the remainder of the income taken into account in the financial assessment. War Disablement Pension income above this £10 level therefore increases the person's care charge, and reduces the Council's contribution towards a person's care costs.
- 4.3 This difference in treatment has been identified as anomalous by the Royal British Legion (RBL), who have mounted a campaign ('Insult to Injury' - Appendix 2) to highlight the issue. RBL estimates that nationally about 4,000 people are affected, and is asking the Government to amend current charging rules, and supply additional funding to Councils so that no injured veteran has to give up their compensation to cover the cost of their care.
- 4.4 The Local Government Association describes the situation as an 'unfair anomaly' that treats veterans differently depending on when they were injured – and has also called for more Government funding for Local Authorities to protect injured war veterans from spending military compensation on social care costs.

Armed Forces Community Covenant

- 4.5 In January 2013, the Council was a signatory to the Armed Forces Community Covenant alongside RAF Wittering and the Royal British Legion. The Covenant is a voluntary statement of mutual support between the civilian community and the local Armed Forces community. Its purpose is to recognise and remember the sacrifices made by members of the Armed Forces community, particularly those who have given the most. The Community Covenant complements the principles of the Armed Forces Covenant that governs the relationship between the Nation, the Government and the Armed Forces community.
- 4.6 The Motion from Councillor John Fox in his capacity as Armed Forces Community Champion falls within the principles of the Community Covenant and will help to demonstrate the council's commitment to its Armed Forces community.

Proposal

- 4.7 The motion moved by Councillor John Fox at full Council on 14th October 2015 requested a review to identify the numbers of War Disablement Pensioners in Peterborough who are accessing social care support, and also asked that a report be brought to Cabinet to explore whether both forms of military compensation can be exempted from financial assessments for care. The motion also called for support to be given to the LGA's call for additional central government funding to be provided to ensure such a change is financially sustainable. The motion was approved unanimously by full Council.
- 4.8 The Council's charging policy is currently undergoing a review in response to the changes introduced by the Care Act, and in response to the financial pressures the Council is facing. The application of a full disregard of War Disablement Pension income in

Peterborough financial assessments would require a relatively minor change to the Council's adult social care charging policy - which would not impact on this wider review and could be applied currently, without administrative difficulty.

Local impact

- 4.9 Adult social care records report that four Peterborough residents are in receipt of War Disablement Pension. Of these, two have been financially assessed as not needing to pay a charge towards the care and support services they receive, so there would be no financial benefit to them, or financial cost to the Council, of disregarding War Disablement Pensions for these clients. Of the remaining two, one person is in residential care, and the other person receives care and support services at home. Care charges for these individuals would decrease by an average of £52 per week if War Disablement Pension were to be disregarded in full in the financial assessment.
- 4.10 The estimated loss of revenue to the Council overall of disregarding War Disablement Pension currently for these clients would be £1.8k for the remainder of the current financial year, and £5.4k per annum thereafter (assuming no further changes). Although difficult to predict, it is not expected that the numbers of those in receipt of War Disablement Pension and care and support services will rise in the future.
- 4.11 Of Peterborough's neighbouring local authorities, the charging policy position on the disregard of War Disablement Pension is as follows:
- Cambridgeshire – disregards War Disablement Pension in full
 - Lincolnshire - disregards the first £10 only
 - Norfolk – disregards the first £10 only
 - Northamptonshire – disregards the first £10 only

5. CONSULTATION

- 5.1 If the Council makes a change to its care charging policy that has a positive impact which does not disadvantage any group or individual, then formal public consultation is not ordinarily required.

6. ANTICIPATED OUTCOMES

- 6.1 If approved, the proposed change to the Council's charging policy will reduce the charges for a small number of individuals receiving care services, and will therefore respond positively to the campaigns for fairer treatment of injured war veterans. The change will reduce Council revenue raised from care charges by a negligible amount in the current financial year, and by a comparatively small amount in future years.

7. REASONS FOR RECOMMENDATIONS

- 7.1 The proposed changes to the charging policy will ensure that the Council's approach to the treatment of military compensation:
- Recognises the sacrifice of those injured in service
 - Is equitable, fair, and consistent with the treatment of other forms of compensation
 - Rectifies a widely-perceived anomaly
 - Is within the Council's discretion, and
 - Has a negligible/low financial impact

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 The alternative options considered are:

- a. To leave the charging policy unchanged in respect of its treatment of War Disability Pension.

This was rejected since there is a widely held view that there is an anomaly in the treatment of military compensation that requires rectifying, and the will of the Council has been clearly expressed that such a rectification should be considered locally.

- b. To reduce care charges even further for those injured in military service.

This option was also rejected since this would cause a further loss of revenue to the Council at a time of extreme financial pressure. Also, the recommended option is in accord with the campaigning stance of the Royal British Legion, and the views of the Local Government Association.

9. IMPLICATIONS

Financial implications

- 9.1 If the new disregard were to be introduced currently, the financial impact in the 15/16 year would amount to a negligible loss of revenue of c£1.8k. This additional cost can be accommodated in 2015/16, but will create a cost pressure in subsequent years, although amounts would remain comparatively low – in the region of £5.5k per annum.

Legal implications

- 9.2 The Care Act provides a single legal framework for charging for care and support under sections 14 and 17. It enables a local authority to decide whether or not to charge a person for the care and support that they receive, except where it is expressly stated in the Act, regulations and guidance that charges must not apply. The overarching principle is that people should only pay what they can afford, and will be entitled to financial support based on a means-test, and some will be entitled to free care.
- 9.3 The Care Act provides a number of broad powers for Councils to carry out certain functions. Where a Council chooses to exercise these powers, it may be necessary to consult on how it intends to do so. A Council would only usually be expected to consult locally where it is using its discretion in relation to the exercise of a particular function.
- 9.4 There is no statutory duty to consult in the Care Act 2014 but there may be consultation duties at common law. The statutory guidance which accompanies the Care Act 2014 refers to some decisions on which a local authority must or should consider consulting.
- 9.5 The general principles of the common law duty to consult provides that where a procedural legitimate expectation arises where there are substantial grounds for expecting a policy to continue for people's benefit or there is a proposal to cut a benefit/service then fairness requires consultation before a decision is made.
- 9.6 There will be a common law duty to consult if the local authority is introducing a significant change in policy or practice that may adversely affect service users. In relation to charging the statutory guidance expressly states that a charging policy under the Care Act must be consulted on unless the local authority simply continues with the previous policy. A local authority must follow the statutory guidance unless there is a good reason not to.

Ward implications

- 9.7 This report does not have any implications for any individual ward.

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985)

11. APPENDICES

Appendix 1 - motion moved by Councillor John Fox, the Council's Armed Forces Community Champion, to full Council on 14th October 2015.

Appendix 2 - Royal British Legions 'Insult to Injury' campaign leaflet

COUNCIL AGENDA ITEM No. 12 14 OCTOBER 2015 PUBLIC REPORT

MOTIONS ON NOTICE

The following notices of motion have been received in accordance with the Council's Standing Order 13.1:

5. Motion from Councillor John Fox

That this Council:

1. Acknowledges the extraordinary risks that members of our Armed Forces, past and present, take with their health and lives in defence of our freedom. Unfortunately, this unique sacrifice is not being properly recognised within our social care charging policies as only veterans who were injured after April 2005 are able to retain their military compensation awards in full when accessing support for their care. In contrast, veterans who were injured before April 2005, who are known as War Pensioners, typically find that all but the first £10 per week of their military compensation is taken to cover their care costs.

2. Agrees that it is profoundly unfair that the date when a veteran was injured should determine the level of support that they can expect to receive when accessing social care. This is particularly true given that both forms of military compensation are otherwise treated the same and fully exempted from other means tests for statutory benefits, including Universal Credit. To add insult to injury, the current situation amounts to a clear breach of the Armed Forces Covenant, which states that;

“Those who serve in the Armed Forces, whether Regular or Reserve, those who have served in the past, and their families, should face no disadvantage compared to other citizens in the provision of public and commercial services”.

This is because current charging guidance stipulates that compensation awarded to civilians injured at work must be fully exempted if placed in a trust fund. War Pensioners are unable to protect their military compensation in this way as their payments are received in regular, weekly instalments, as opposed to a one-off lump sum payment.

3. Recognises, in light of the information above, that there is an unfair anomaly in existing social care charging guidance and accordingly resolves to:

- i. Identify the number of War Disablement Pensioners currently accessing social care support from the Council;
- ii. Honour its Community Covenant commitments by bringing a report to Cabinet which explores whether both forms of military compensation can be fully exempted from financial assessments for social care support; and
- iii. Support the Local Government Association's call for additional funding to be provided by Central Government to ensure that such a policy change is financially sustainable.

INSULT TO INJURY

Veterans injured during Service have most of their compensation taken to cover the cost of their social care. Military compensation is awarded as recompense for the pain and suffering experienced by injured Service personnel and veterans; it should not be treated as normal income.



TAKE ACTION TODAY!

Please take action today and join over 3000 people who have asked the Government to amend current charging rules, and supply additional funding, so that no injured veteran has to give up their compensation to cover the cost of their care.



WAR PENSIONERS ARE BEING UNFAIRLY TREATED

Veterans injured in Service before 5 April 2005 receive a War Disablement Pension in compensation. Yet, unlike civilians, if these injured veterans have or develop social care needs, they routinely find that they have to use their compensation to pay for their support.

This is unfair and needs to change. Military compensation is rightly exempted from other financial assessments for statutory benefits, including Universal Credit and Council Tax Support.

Furthermore, in England and Wales, veterans injured after 6 April 2005 (and therefore receiving compensation through the Armed Forces Compensation Scheme) are already able to keep all of their compensation payments when accessing social care support.

All veterans, regardless of when they were injured or where they now live, should be able to retain the compensation that is rightfully theirs. Not only would this bring the treatment of military compensation within the social care system into line with other statutory benefits, but it would also ensure parity with civilian personal injury compensation, which can be placed in a trust fund to ensure that it is not counted in means tests for social care.

WE STILL NEED YOUR HELP

A big thank you to all of our fantastic supporters! Before the General Election, you sent **over 3000 letters** to your MPs, and hundreds more to members of the Devolved administrations.

Our campaign is not over though and **injured veterans still need our help**.

The government is currently asking for ideas of what could be included in the next Budget. This is a great opportunity to **get your voice heard!**

Please write to the Treasury using the link below and call on the government to provide funding so that no injured veteran has to give up their compensation to cover the cost of their care.