

# Cabinet

17 May 2022

## Minimum Income Guarantees in Charges for Adult Social Care and Support

### For Decision

**Portfolio Holder:** Cllr P Wharf, Adult Social Care and Health

**Local Councillor(s):** All

**Executive Director:** V Broadhurst, Executive Director of People - Adults

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**Report Status:** Public

#### Brief Summary:

Any person receiving local authority-arranged adult social care and support outside a care home needs to retain a certain level of income to cover their living costs. Under the Care Act 2014, charges for care and support must not reduce a person's income below a certain amount. This is a weekly amount, it varies according to the person's age and circumstances, and it is known as the Minimum Income Guarantee or 'MIG'. A local authority must allow people the relevant minimum, but it can decide to allow people to keep more of their income if it wishes.

The MIG applies to settings other than care homes, for example it applies to a person who is receiving care in their own home. It is intended to cover food; clothes; utility bills; contents insurance and other personal expenses. The MIG is not for housing costs such as mortgage costs; rent; council tax; or buildings insurance. Those costs are addressed directly in the person's individual financial assessment.

Dorset Council has until now routinely adopted the national MIG rates that the Department of Health and Social Care (DH&SC) publishes annually in a Circular to all local authorities. Until 2022-23, these Government rates had not increased for five years, with

the result that the real value of the MIG was eroded by price inflation. However, on 28 February 2022 the DH&SC confirmed in a Circular that the national MIG rates would be uplifted by 3%, in line with inflation.

This review considers whether the uplifted national rates are sufficient in Dorset, or whether they should be higher. The review began in October 2021, by looking at whether the national MIG rates for 2021-22 were sufficient in Dorset.

The review and setting of the MIG and PEA in future years will form an explicit and transparent part of the Council's annual budget setting process. An adult social care fees and charging report will be produced to detail all the forecast income and expenditure associated with the Directorate's services.

### **Recommendations:**

The Cabinet is asked to agree that:

- (i) the Dorset Minimum Income Guarantees (MIG) for financial year 2022/23 should be set at the DH&SC MIG rates, which have been uplifted by 3%.
- (ii) the approach to the review in Dorset, (which began in October 2021) involved first establishing that the MIG rates for 2021-22 were sufficiently robust.
- (iii) Dorset Council should not set a maximum percentage of a person's disposable income (over and above the guaranteed MIG) which may be considered in charging during 2022-23.
- (iv) Dorset Council should not set a maximum charge for receiving care outside a care home during 2022-23.
- (v) both formal complaints and informal appeals concerning the MIG should be recorded and reported in a way that gives us ongoing feedback about whether the MIG rates we have set have are sufficient.
- (vi) The Dorset MIG rates should be increased whenever the DH&SC rates increase, with any unplanned mid-year increases being funded by efficiencies within the Adult Social Care directorate. Accepting that there is a financial risk to the Council
- (vii) the approach to setting the Dorset Council Personal Expenses Allowance (PEA), (which applies to residents and temporary residents in residential care) should follow the approach to setting the MIG in future, to offer consistency between care settings.

- (viii) Adult Social Care should recommend considering further increases to the MIG and PEA levels as part of setting the Council's 2023-24 budget, and annually thereafter as part of setting future budgets.
- (ix) Dorset Council may wish to consider the impact of the MIG and PEA in any wider suite of measures it identifies for alleviating increases in the cost of living that all residents have experienced, and particularly those who are receiving care and support.

**Reason for Recommendations:**

The reason for the recommendations is to achieve transparency and more explicitly meet the expectations of the Department of Health and Social Care's [Care and support statutory guidance - GOV.UK \(www.gov.uk\)](#) - particularly paragraphs 8.42–8.48 and Annex C paragraphs 48) - 50).

## 1.0 Background to the Review.

- 1.1 The Minimum Income Guarantee (MIG) comprises a set of rates which vary according to the age and the circumstances of the person. Although the term 'MIG' is not widely known or used, it is a very important part of a complex calculation which ultimately determines how much money a person has left to meet their daily living costs after the Council has taken charges towards the cost of their care.
- 1.2 Another part of that complex calculation arises where a person receives welfare benefits to meet disability needs that are outside the eligibility criteria for adult social care and support. In those cases, our charging arrangements are required by the Care Act 2014 to ensure that the person keeps enough money to cover their disability-related expenditure. For example, the additional costs of bedding because of incontinence, or higher heating costs because of limited mobility.
- 1.3 Since the Care Act 2014 passed into law, the Council has routinely adopted the MIG rates which are set out by the DH&SC in a Local Authority Circular each year. The most recent Circular is [Charging for care and support: local authority circular - LAC\(DHSC\)\(2022\)1 - GOV.UK \(www.gov.uk\)](#) National information is that most local authorities also adopt the national MIG rates.
- 1.4 In December 2020, a Claimant ("SH"), acting through her mother and litigation friend, sought a Judicial Review of the decision by Norfolk County Council to change the basis on which it calculated the charges made to her for the care it provided. The change had substantially increased SH's charges. SH claimed that Norfolk's decision indirectly discriminated against her as a severely disabled person, and in breach of her rights under the Human Rights Act 1998, the European Convention on Human Rights, and the Equality Act 2010. The Claimant's claim was successful, and Mr Justice Griffiths granted relief to SH. [SH, R \(On the Application Of\) v Norfolk County Council & Anor \(Rev 1\) \[2020\] EWHC 3436 \(Admin\) \(18 December 2020\) \(bailii.org\)](#)
- 1.5 The Judicial Review related only to Norfolk County Council's charging policy and did not create a legal precedent that other Councils are obliged to follow. However, the ensuing discussion in the care sector about whether or not the ruling was sound, or might have possible wider implications beyond Norfolk, did bring a welcome focus to several areas:
  - a) The law itself relating to the treatment of income in charging. People who receive income from welfare benefits may have to contribute part of it towards the costs of their care, whereas by law people with care needs

who are receiving earnings from paid employment must be allowed to keep all of it.

- b) The calculation of disability-related expenditure described in paragraph 1.2.
  - c) The Minimum Income Guarantee (MIG).
- 1.6 This review directly addresses area c) The MIG - and also its counterpart rate for people who are in residential care, which is called the Personal Expenses Allowance (PEA). The report only considers our disability-related expenditure policy to the extent that it works alongside the MIG to ensure that the person is left with sufficient income.
- 1.5 The PEA applies to people who are receiving care and support in a care home only. The statutory guidance says that the local authority must leave the person with a minimum amount of income. This is known as the PEA and the amount is set out in Regulations and sent via a Local Authority Circular and it is binding. Any income above the PEA may be taken into account by the Council in determining charges.
- 1.7 The purpose of the PEA is to ensure that the person in residential care has some money to spend as they wish. For example, on stationery, personal toiletries, treats and small presents for friends and relatives. It must not be used to cover any aspect of the person's care and support that the Council has arranged to meet the person's eligible needs.
- 1.8 Finally, the review considers whether Dorset should:
- (i) set a maximum percentage of a person's disposable income (over and above the MIG) which may be considered in charging. For example, we might adopt a policy that would leave a person with the relevant MIG or with 20% of their income – whichever is the higher amount.
  - (ii) set a maximum charge for receiving care outside a care home. For example, we might adopt a policy that we would not charge a person more than 80% of the usual cost of care in a care home, for the care that they are receiving at home. A policy like that could help ensure that people are encouraged to remain in in their own homes, promoting individual wellbeing and independence.

- 1.10 The review was carried out by the Head of Service, the Principal Social Worker, The Policy Manager, and the Financial Assessments Team Manager and Financial Support Manager.

## **2.0 Evidence considered in the review.**

- 2.1 The review began in October 2021. The approach taken was to evaluate the evidence where it was available, and where it was not available to take steps make sure it will be available for future reviews. There are several strands of evidence:

**a) The impact on the MIG of our post-Care Act 2014 financial assessment and charging policy.**

- 2.2 In order to see how the MIG has changed over time, the review compared the current MIG, with the MIG under the pre-Care Act 2014 charging regime. The results of this review were that there were sound decision making in both cases of Dorset County Council adopted the national MIG rates set by the Government, rather than applying a local Dorset rate.

- 2.3 The review also noted that the MIG rates in the pre-Care Act 2014 policy, although more generous, were set somewhat arbitrarily by comparison to our current policy, which places individual disability-related expenditure at the heart of the calculation of what a person is assessed as being able to afford to contribute towards the cost of their care. It was therefore not possible to make a direct and fair financial comparison between the pre-Care Act policy and the current policy.

**b) Our Disability-Related Expenditure (DRE) policy.**

- 2.4 The application of the Council's DRE policy is personalised and individual and it is designed to shelter the person from having to use their disposable income to meet their disability-related needs. The review noted that the proper application of the DRE policy is critical, as it works in conjunction with the MIG to ensure that the person retains 'sufficient funds'.

- 2.5 The meeting considered two recent cases where the Council had been willing to reassess, and increase, the amount of DRE awarded to a person, following an appeal. The review noted that our willingness to reassess on appeal is critical and should continue.

**c) Feedback from complaints.**

- 2.6 In Dorset, complaints are not the same as appeals. The review considered the complaints recorded in a quarterly report provided by the Senior Assurance Officer in Complaints. In quarter 4 of 2020-21, complaints to the Council about financial matters comprised 14 of the 34 complaints that were considered through the formal complaints process. Complaints are not currently formally recorded or analysed in a way that allows us to see whether the MIG is specifically referred to. Recommendation (v) addresses this point.
- 2.7 The review team therefore spoke directly with the manager in People Directorate – Adults & Housing who investigates the complaints. The manager recollected that there had been approximately 6 complaints that specifically referred to the MIG in the 19 years since 2003. Of those complaints, 2 had been received since the Norfolk County Council Judicial Review raised the profile of the MIG. A recommendation has been made to make sure that formal complaints and informal appeals provide useful feedback about whether we are setting the MIG at a sufficient rate.
- 2.8 A look back at recent complaints to the Local Government & Social Care Ombudsman shows that since 1 April 2019, when Dorset Council was vested, there have been 2 Ombudsman decisions that referred to the MIG. (Decisions 19 005 009 and 19 019 462). However, the references were by way of giving contextual background in both cases – and the MIG was not the focus of the complaints or of the decisions.
- 2.9 The review therefore recognised that is generally less likely that we will find complaints framed around the insufficiency of the MIG and it is more likely that we will find complaints around the ‘affordability’ of contributions. The review therefore discussed our usual responses to complaints and appeals about affordability, which are ‘personalised’ responses: including our offer to make sure that the person is receiving all the welfare benefits they are entitled to; and our review of their individual DRE to make sure it was calculated correctly. As the cost of living rises, the Council is likely to receive more appeals and more complaints in this area.

**d) The cost of living in Dorset.**

- 2.10 The MIG is intended to cover food; clothes; utility bills; contents insurance and other personal expenses. (It is not for mortgage costs; rent; council tax; or buildings insurance). If the items that the MIG is intended to cover were more expensive in Dorset than in other regions, there would be at least a prima facie case for increasing the MIG.

2.11 Unfortunately, there appears to be very little reliable data available about regional non-housing related price differences available from the independent sources the review hoped to use, like the ONS. Our findings have been somewhat limited, but they are presented in the table as follows:

Item.	Is Dorset more expensive?
Food	'National pricing' is understood to be the norm among national retailers. <a href="#">Supermarkets are most likely</a> to vary their prices according to the amount of local competition.
Clothes	'National pricing' appears to be the norm.
Utility bills	We found some evidence that the <b>unit</b> cost and <b>fixed cost</b> of electricity is slightly more expensive in the southwest than <a href="#">average</a> , but we would need good data about relative <b>usage</b> (which may be lower as the southwest is mild) to know whether <b>overall costs</b> are likely to be higher or lower in Dorset for the person.
Personal expenses	Personal expenses are almost certainly a mixed picture and likely to be a different experience for different individuals receiving the MIG. It is likely that some personal expenses are higher in Dorset than elsewhere, and some lower.

2.12 The review concluded that based on the information it could gather, the average cost of living is not higher in Dorset than in other regions, in terms of the non-housing costs the MIG is intended to cover. In anticipation of rising energy prices, in future years, the review team will seek direct feedback from individuals subject to the MIG.

**e) The Council's overall finances and budgetary position.**

2.13 The review considered the statement in paragraph 10.27 of the statutory guidance which says:

“In determining how to meet needs the local authority may take into reasonable consideration its own finances and budgetary position. This includes the importance of ensuring the funding available is sufficient to meet the needs of the whole population.”

2.14 The government announced the inflationary uplift in the MIG for 2022-23 on 7 September 2021 in [Build Back Better: Our Plan for Health and Social Care](#). The cost of this uplift to Dorset Council is circa £1m, provision was made for it in the Council's budget setting process for 2022-23. Therefore, the financial implications

of the recommendations in this report are covered, but no further provision is available for an above-inflation uplift in 2022-23.

- 2.15 The alignment of the Dorset MIG to the national rate does present a financial risk to Dorset Council. Were an above-inflation increase to the MIG to be set nationally during 2022-23 then the additional cost of that uplift would have to be absorbed within existing Council budgets. This may require service efficiencies to be found elsewhere. This highlights the importance of Government providing sufficient funding to local Authorities to enable national policies to be implemented locally.

**f) The national policy direction.**

- 2.16 The review noted that In September 2021, 'Building back better', the Government's plan for health and social care' said: "At present, some people face real financial pressures each week or month after paying for their care. To allow people receiving means-tested support to keep more of their own income, the Government will unfreeze the Minimum Income Guarantee (MIG) for those receiving care in their own homes and Personal Expenses Allowance (PEA) for care home residents, so that **from April 2022 they will both rise in line with inflation.**" (Emphasis added). This is the first increase in the MIG since 2016-17.

**g) The Personal Expenses Allowance (PEA).**

- 2.17 The PEA applies to people who are receiving care and support in a care home only. The statutory guidance says that the local authority must leave the person with a minimum amount of income. This amount is known as the PEA and the amount is set out in Regulations and sent via a Local Authority Circular and it is binding. Any income above the PEA may be considered by the Council in determining charges.
- 2.18 The PEA is not a welfare benefit; it is the amount of the person's own income that they **must** be left with after charges have been deducted. However, where a person has no income, the local authority is not responsible for providing one.
- 2.19 The purpose of the PEA is to ensure that the person in residential care has some money to spend as they wish. For example, on stationery, personal toiletries, treats and small presents for friends and relatives. It must not be used to cover any aspect of the person's care and support that the Council has arranged to meet the person's eligible needs.
- 2.20 Whereas councils are required to apply the DH&SC MIG rates, or their chosen higher rates, to every person in the relevant age band, the PEA is different, and councils may use their discretion to apply a higher PEA in individual cases. For

example, where the person needs to contribute towards the cost of maintaining their former home, or where the person has a dependent child. This review has not considered the exercise of discretion in individual cases.

- 2.21 Whilst people in residential care, usually need less disposable income, the review nevertheless recommends that the approach to setting the PEA should follow the approach to setting the MIG in future.

### **3.0 Maximum percentages and maximum charges.**

- 3.1 The Care Act statutory guidance says that councils should consider setting a maximum percentage of a person's disposable income (over and above the MIG) which may be considered in charging. For example, we might adopt a policy that would leave a person with the relevant MIG, or with 20% of their income – whichever is the higher amount.
- 3.2 The same guidance also says that councils should consider setting a maximum charge for receiving care outside a care home. For example, we might adopt a policy that we would not charge a person more than 80% of the 'usual cost of care' in a care home, for the care that they are receiving at home. A policy like that could help ensure that people are encouraged to remain in their own homes, promoting individual wellbeing and independence.
- 3.3 The review considered the case for maximum percentages and/or maximum charges and took into account the example of a London Borough Council (LBC) that sets a maximum charge. The amount the LBC sets is significantly in excess of all benefit entitlement figures. That approach seemed to favour people with more income, i.e. the wealthier, and it did not appear particularly equitable way of investing in care in Dorset.
- 3.4 Overall, the review did not identify any reasonable and equitable way of funding a maximum percentage or a maximum charge, other than by causing greater detriment to statutory care and support services elsewhere in the Directorate.

### **4.0 Conclusions.**

- 4.1 The review has considered the evidence available and made several recommendations about MIGs and PEAs for the financial year 2022-23. The review did not identify an overall case for raising the rates of the MIG and the PEA above those set by the DH&SC at this time. However, some of the evidence available was incomplete, and steps will be taken to build on it for future reviews,

which should be carried out in a similarly explicit and transparent way as part of the Council's annual budget-setting process.

## **5.0 Financial Implications.**

- 5.1 The government announced the inflationary uplift in the MIG for 2022-23 in [Build Back Better: Our Plan for Health and Social Care](#) on 7 September 2021. The cost of the uplift to Dorset Council is around £1m and provision was made for it in the Council's budget setting process for 2022-23. The financial implications of the recommendations in this report are therefore covered, but no further provision is available for an above-inflation uplift in 2022-23.
- 5.2 Were an additional uplift to be announced by the government mid-year in 2022-23, the cost of that uplift would have to be met through efficiencies in Council Directorates.
- 5.3 On 21 June 2022 the Cabinet will consider the Council's performance against its revenue budget in 2021-22 and the impact this has upon reserves, including the general fund.

## **6.0 Climate Implications.**

- 6.1 The climate implications that are associated with the MIG sit with the person and their individual expenditure choices.

## **7.0 Wellbeing and Health Implications.**

- 7.1 Government guidance makes clear that the purpose of the MIG is to promote independence and social inclusion and ensure that the person has sufficient funds to meet basic needs such as purchasing food, utility costs or insurance. This is an important component of the wellbeing principle set out in Section 1 of the Care Act 2014.

## **8.0 Other Implications.**

- 8.1 No other implications have been identified.

## **9.0 Risk Assessment.**

9.1 Having considered the risks associated with this decision; the level of risk has been identified as:

Current Risk: **Medium**

Residual Risk: **Medium**

The risk assessment will remain as **Medium** even after the inflationary uplift. This is because the cost of living for people is currently rising unpredictably. The number of appeals and complaints is also expected to rise.

## **10.0 Equalities Impact Assessment.**

10.1 The Government [MIG rates](#) vary according to the person's age, responsibilities for children, caring responsibilities, relationship status, and disability status.

## **11.0 Appendices.**

**Appendix A** - Extracts from ['Department of Health & Social Care Guidance: Social care - charging for care and support: local authority circular - LAC\(DHSC\) \(2022\)1.](#)

## **12.0 Background Papers.**

All background papers are hyperlinked.

### **Extracts from [‘Department of Health & Social Care Guidance: Social care - charging for care and support: local authority circular - LAC\(DHSC\) \(2022\)1.](#)**

#### **1. Summary**

The circular sets out that, for the financial year 2022 to 2023:

- the personal expenses allowance (PEA) for local authority-supported care home residents increases in line with inflation.
- the minimum income guarantee (MIG) for people receiving local authority-arranged care and support other than in a care home increases in line with inflation.

#### **4.2 Personal expenses allowance**

The PEA is the weekly amount that people receiving local authority-arranged care and support in a care home (residents) are assumed to need as a minimum for their personal expenses and local authorities must apply this.

It is intended to allow residents to have money for personal use. Based on a financial assessment of their resources, individuals must be left with the full value of their PEA. It is then up to them to determine how they spend it.

Local authorities, providers of accommodation, and residents are reminded that the PEA should not be spent on aspects of care and support that have been contracted for by the local authority and/or assessed as necessary to meet the person’s eligible care and support needs by the local authority or the NHS.

For the next financial year (2022 to 2023), the PEA will increase in line with inflation from its current level of £24.90 per week to £25.65 per week.

#### **4.3 Minimum income guarantee**

People receiving local authority-arranged care and support other than in a care home need to retain a certain level of income to cover their living costs. Under the Care Act 2014, charges must not reduce people’s income below a certain amount, but local authorities can allow people to keep more of their income if they wish. This is a weekly amount and is known as the MIG (minimum income guarantee).

For the next financial year (2022 to 2023), the rates of the MIG will increase in line with inflation as follows, where the adult concerned is:

- responsible for, and a member of, the same household as a child, the amount of £86.20 in respect of each child
- a single person and—
  - is aged 18 or older but less than 25, the amount of £74.60
  - is aged 25 or older but less than pension credit age, the amount of £94.15
  - has attained pension credit age, the amount of £194.70
- a lone parent aged 18 or over, the amount of £94.15
- a member of a couple and—
  - one or both are aged 18 or over, the amount of £73.95
  - one or both have attained pension credit age, the amount of £148.65
- a single person who is in receipt of, or the local authority considers would, if in receipt of income support, be in receipt of—
  - disability premium, the amount of the applicable premium is £41.55
  - enhanced disability premium, the amount of the applicable premium is £20.30
- a member of a couple and one member of that couple is in receipt of, or the local authority considers would, if in receipt of income support, be in receipt of—
  - disability premium, the amount of the applicable premium is £29.60
  - enhanced disability premium, the amount of the applicable premium is £14.60
- in receipt of, or the local authority considers would, if in receipt of income support be in receipt of, carer premium, the amount of the applicable premium is £44.55.