

**TO: THE EXECUTIVE  
18 NOVEMBER 2014**

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**CHARGING OPTIONS ARISING FROM THE CARE ACT  
Director of Adult Social Care, Health & Housing**

**1 PURPOSE OF REPORT**

- 1.1 To inform the Executive of changes to regulations on charging for Adult Social Care services introduced by the Care Act.

**2 RECOMMENDATIONS**

- 2.1 That the Executive note the changes in regulations on charging for Adult Social Care services introduced by the Care Act

- 2.2 That, subject to guidance from the Department of Health on whether local consultation is necessary on changes made in national legislation, the Executive agree the following options for charging should be consulted on:

1. That the Council continues to charge for Residential and Nursing care on the basis of the detailed regulations set out in the Charging for Residential Accommodation Guide
2. That the Council charges interest on Universal Deferred Payments at the rate set by the Department of Health
3. That the Council charges interest on discretionary Deferred Payments at the rate set by the Department of Health
4. That the Council charges an administration fee for setting up a Universal Deferred Payment that meets the cost of that work
5. That the Council charges a fee to self funders for setting up care arrangements that fully recovers the cost of that work
6. That the Council engage QA Research to undertake the consultation, at a cost of £3,500

- 2.3 If the guidance from the Department of Health indicates that consultation is not necessary, the Executive delegate the decision not to consult to the Executive Member for Adult Social Care Health & Housing in conjunction with the Borough Solicitor and Director of Adult Social Care Health & Housing.

- 2.4 That the Executive agree not to introduce charges for Carers Services at this time.

### **3 REASONS FOR RECOMMENDATIONS**

- 3.1 The Care Act introduces changed regulations for charging for Residential and Nursing care. The current scheme, known as CRAG, is mandatory. From April 1 2015 this scheme is no longer mandatory. As such, legal advice is that it is considered advisable that local authorities should be consulting on whether to retain the current charging regime. Local authorities have asked for clarification from the Department of Health on whether local consultation is required for the changes in the Care Act that come as a result of national legislative changes.
- 3.2 The Care Act also makes some changes to the Fairer Contributions regulations which provide the parameters within which local authorities set their charges for non residential adult social care services.
- 3.3 The Care Act introduces scope for local authorities to extend the services which they charge for. These are not mandatory, and it is for local authorities to determine whether to charge for specific services or not, and, within laid out parameters, what those charges should be.
- 3.4 As there are choices for the local authority, the Executive is asked to determine whether it agrees with the proposals put forward in terms of options for charging that should be consulted on.
- 3.5 The Council has a framework agreement in place with QA Research. This would provide a cost effective way of carrying out the research, and analysing the results of the feedback. A written quotation for the cost of carrying out the work has been obtained.

### **4 ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 The Council could choose not to consult on its charging policy for Residential and Nursing care, and replicate the CRAG regime. It is considered that this may lead to legal challenge, and, though unlikely, the financial risks of not being able to charge people until any legal challenge has run its course would be avoided by consulting on future charging arrangements.
- 4.2 The parameters for Fairer Contributions policies have changed, however not to the extent that they force changes upon this Council. The current Fairer Contributions policy was last consulted on in 2010, and as the Policy (which was approved by the Executive on 20 April 2010) is the result of that consultation exercise it is not necessary to consult on retaining it. Any changes to the Policy would lead to a financial cost, and as such no recommendations to change it are being made. Therefore no consultation is required.
- 4.3 The Care Act provides scope for introducing charges in a number of areas – local authorities will have the discretion to charge interest on the new mandatory scheme for Deferred Payments, as well as the discretion to charge interest on any extensions to Deferred Payments that the authority decides it wants to introduce. Local authorities will also be able to charge self funders for support planning, and brokering of services.
- 4.4 The Care Act also gives new rights for Carers to an assessment, and to support if the assessment shows that they meet the eligibility criteria. The impact of this is such that some local authorities are considering whether to introduce a charge for carers

services. The arguments for this are presented in the report below, however the recommendation is that charges are not introduced.

## 5 SUPPORTING INFORMATION

### *Residential and Nursing Care*

- 5.1 Under the National Assistance Act 1948, where a local authority arranges residential care for a person it is required to carry out a financial assessment and charge the person such sums as they are assessed as being able to pay. The financial assessment is made using the National Assistance (Assessment of Resources) Regulations 1992. Until now the regulations have been updated annually. The regulations are usually referred to as CRAG – the Charging for Residential Accommodation Guide.
- 5.2 As the regulations are laid down in statute, local authorities have had no discretion on the charges that they will apply. They have had to charge on the basis of CRAG.
- 5.3 The Statutory Guidance accompanying the Care Act makes the following statements in respect of charges for Residential and Nursing Care:

#### Paragraph 8.4

Local authorities have a duty to arrange care and support for those with eligible needs, and a power to meet both eligible and non-eligible needs. **In both cases, a local authority has the discretion to choose whether or not to charge.** Where it decides to charge, it must follow the regulations and have regard to the guidance. The detail of how to charge is different depending on whether someone is receiving care in a care home or their own home or another setting.

#### Paragraph 8.13

Where a local authority has decided to charge, it must carry out a financial assessment of what the person can afford to pay and, once complete, it must give a written record of that assessment to the person.

#### Paragraph 8.14

In carrying out the assessment, the local authority must have regard to the detailed guidance ... that set out how both capital and income should be treated.

#### Paragraph 8.28 [Charging for care and support in a care home]

Where a local authority has decided to charge and undertaken the financial assessment, it should support the person to identify options of how best to pay any charge.

These extracts from the guidance show that charging for Residential and Nursing care will be at the local authority's discretion from 1<sup>st</sup> April 2015.

- 5.4 The basis on which local authorities carry out a financial assessment in order to arrive at an individual's charge is not changing from the current regulations. Bracknell Forest received £2.668m from charges for Residential and Nursing care in

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the 2013/14 financial year. A decision not to charge would therefore create a significant budget pressure for the Council.

- 5.5 Therefore the decision facing the local authority is whether or not to charge, rather than considering a range of alternative options. On this basis it is recommended that, subject to guidance from the Department of Health stating that consultation is not required, the Council consults on a proposal to continue to charge for residential and nursing care in line with its current mandated procedure. This would mean no change in the amounts that people currently pay.

### *Deferred Payments – Universal Scheme*

- 5.6 A deferred payment is an arrangement whereby someone who goes into residential or nursing care who is not eligible for financial support from the Council, on the basis that they have more than £23,250 in assets, can ask for the Council to pay their bill for them, repaying the Council at a later point in time, usually after they have died.
- 5.7 Deferred payments will normally only apply to people whose only asset is their home, and who therefore would only be able to pay their care home bill by selling their home. The local authority therefore pays the bill in the meantime, and places a charge on the person's home. Interest is not chargeable on the balance until 56 days after the person has died. Currently the Council charges an interest rate of 2% above the Lloyds TSB base lending rate from that point.
- 5.8 The Government has been concerned that local authorities have not been offering Deferred Payments in line with regulations, and therefore are introducing Universal Deferred Payments, which will be a mandatory scheme. Anyone who meets the criteria for a Universal Deferred Payment will be eligible for one, and Local Authorities must provide one. The eligibility criteria are as follows:
- anyone whose needs are to be met by the provision of residential care. This is determined when someone is assessed as having eligible needs which the local authority decides should be met through residential care. This should comply with choice of accommodation regulations and care and support planning guidance and so take reasonable account of a person's preferences;
  - who has less than £23,250 in assets excluding the value of their home (i.e. in savings and other non-housing assets); and
  - whose home is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support (i.e. someone whose home is taken into account in the local authority financial assessment and so might need to be sold).
- 5.9 It is anticipated that this will lead to a sharp increase in the numbers of people who request a deferred payment, partly because of the change in regulations making the scheme compulsory, and partly due to the greater publicity given to Deferred Payments. The Council currently has 2 deferred payment agreements in place.
- 5.10 In conjunction with this, the Government is proposing in the guidance that local authorities may charge interest on the outstanding balance. Where local authorities charge interest this must not exceed the maximum amount specified in regulations. The draft guidance states that this will be an amount between 3.5% and 5%, and is

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being set at a rate that ensures that Councils cover the cost of lending the money, but do not make a profit by doing so.

- 5.11 The Council therefore needs to determine whether or not to charge interest, and if so, what rate of interest to charge. If interest is charged, loans will be structured to minimize accumulation of interest. Thus, for instance, people will not take out a lump sum loan on which they accumulate. Instead, the value of the loan will increase each month in line with their care costs. It is recommended that the Council consults on a proposal to charge an interest rate for Universal Deferred Payments at the rate set by the Government.
- 5.12 There are administrative costs involved in setting up a deferred payment agreement. These include:
- Registering a legal charge with the Land Registry against the title of the property, including Land Registry search charges and any identity checks required;
  - Undertaking relevant postage, printing and telecommunications;
  - Total employment costs of those providing the service, including training;
  - Cost of valuation and re-valuation of the property;
  - Costs for removal of charges against property;
  - Overheads, including (shares of) payroll, audit, top management costs, legal service.
- 5.13 The Council currently charges a set fee of £350 to cover all of the above. When the volumes of people taking out a deferred payment agreement are very small, with only 6 being made in the last 3 years, there is little financial impact on the Council of subsidising the true cost of administering the agreements if this is more than £350. However, if numbers grow significantly, unless the administration fee increases to cover the true cost of the administration function, this will start to have a greater impact.
- 5.14 It is therefore recommended that the Council consults on a proposal to charge for setting up a deferred payment agreement at a rate that covers the true cost to the Council of that activity. The current cost is estimated at £500.
- 5.15 The Council would continue to charge the applicant the cost of any other expenses incurred such as valuation costs, and disbursements such as land registry fees.

### *Deferred Payments – Discretionary Scheme*

- 5.16 In addition to the mandatory scheme, local authorities may also offer deferred payments in the following cases:
- when meeting care home charges would leave someone with very few accessible assets (this might include assets which cannot quickly / easily be liquidated or converted to cash);

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- when someone would like to use wealth tied up in their home to fund reasonable top-ups
- whether someone has any other accessible means to help them meet the cost of their care and support; and / or
- if a person is narrowly not eligible for a deferred payment agreement given the criteria above, for example because they have slightly more than the £23,250 asset threshold. This should include people who are likely to meet the criteria in the near future.
- If a person's care is provided in extra care housing, or supported living, rather than in a care home.

5.17 The draft regulations recognised that the costs, and in particular the risks to the authority's finances, are greater in these instances and therefore proposed to allow for a higher interest rate to be charged. However, the final guidance states that the rate will be the same as for the mandatory scheme. It is recommended that the Council consults on a proposal to charge an interest rate for discretionary deferred payments at the rate set by the Government.

### *Other Charges*

5.18 The regulations permit local authorities to charge an administration fee in the case of a person who has eligible needs but whose assets exceed the upper capital limit. People in these circumstances are not entitled to receive any financial assistance from the local authority and may pay the full cost of their care and support until their capital falls below the upper capital limit. They may ask the local authority to arrange their care and support for them.

5.19 In such cases, the local authority may apply an administration fee to cover its costs. However this must not be higher than the cost the local authority has incurred in arranging that care and support.

5.20 At present the local authority does not charge self funders an arrangement fee to do this, and the numbers of people who the local authority supports in this way is very small. It is likely that the Care Act would lead to significantly greater numbers of people asking the local authority to undertake this for them, which has the potential to create a cost pressure.

5.21 It is therefore recommended that the Council consults on a proposal to establish a charge sufficiently to fully recover the administration costs of arranging care and support for self funders.

### *Carers Services*

5.22 The expansion in the rights of carers to an assessment, and to a personal budget if the needs identified in the assessment show that the carer is eligible for support, is likely to result in significantly greater numbers of carers receiving services. This has prompted some questions in other local authorities as to whether carers services should be charged for.

5.23 There is no clear business case in favour of charging for carers that adequately recognises the contribution they make in keeping costs to the health and social care

economy down. As such it is recommended that the Council does not seek to introduce charges for carers services at this time.

## **6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS**

### Borough Solicitor

- 6.1 The relevant legal provisions and issues are set out within the main body of the report.

### Borough Treasurer

- 6.2 The relevant financial provisions are contained within the main body of the report. The cost of using QA Research to carry out the consultation is expected to be about £3,500, and this can be met from the Care Act Implementation Grant.

### Equalities Impact Assessment

- 6.3 An equality impact screening has been carried out.

### Strategic Risk Management Issues

- 6.4 By consulting on the proposal to continue to charge people for care home fees, the Council is addressing the risk of a challenge made on continuing to charge, which could have a significant impact on Council finances. The other proposals in the paper are designed to mitigate the risk to Council finances of subsidising people who are self funders, the numbers of whom are expected to grow with the implementation of the Care Act.

## **7 CONSULTATION**

### Principal Groups Consulted

- 7.1 No groups have been consulted in this report. The report seeks authority to consult.

### Method of Consultation

- 7.2 The consultation would form two parts, the first targeted at existing users of residential and nursing care. They, or their named representatives would be approached directly. The other element of the consultation would be aimed at the general public, and would be in the form of an on line questionnaire.

### Representations Received

- 7.3 n/a

### Background Papers

### Contact for further information

Neil Haddock - 01344 351385  
[Neil.haddock@bracknell-forest.gov.uk](mailto:Neil.haddock@bracknell-forest.gov.uk)

## Equalities Screening Record Form

<b>Date of Screening:</b>	<b>Directorate:ASCH&amp;H</b>	<b>Section:Performance &amp; Resources</b>
<b>1. Activity to be assessed</b>	To consult on proposals to continue to charge for residential and nursing care fees in line with mandatory guidance. To consult on proposals to set charges for services to people not entitled to funding from the Council that ensures the Council does not subsidise those services.	
<b>2. What is the activity?</b>	XPolicy/strategy <input type="checkbox"/> Function/procedure <input type="checkbox"/> Project <input type="checkbox"/> Review <input type="checkbox"/> Service <input type="checkbox"/> Organisational change	
<b>3. Is it a new or existing activity?</b>	<input type="checkbox"/> New <input checked="" type="checkbox"/> Existing	
<b>4. Officer responsible for the screening</b>	Neil Haddock	
<b>5. Who are the members of the EIA team?</b>		
<b>6. What is the purpose of the activity?</b>	To continue to charge for residential and nursing fees in line with mandatory guidance, and to set charges for services to people not entitled to funding from the Council to ensure the Council does not subsidise those services.	
<b>7. Who is the activity designed to benefit/target?</b>	People who are assessed as needing social care support, particularly people who are assessed as needing residential or nursing care.	
<b>8. a Racial equality - Is there an impact?</b> What kind of equality impact may there be? Is the impact positive or adverse or is there a potential for both? If the impact is neutral please give a reason.	N	
<b>8. b What evidence do you have to support this?</b> E.g equality monitoring data, consultation results, customer satisfaction information etc.	People's eligibility for services is assessed on the basis of need. Equality monitoring suggests there is no bias on the basis of race in the outcome of assessments.	
<b>9. a Gender equality - Is there an impact?</b> What kind of equality impact may there be? Is the impact positive or adverse or is there a potential for both? If the impact is neutral please give a reason.	Y	People's eligibility for services is assessed on the basis of need. Equality monitoring suggests there is no bias on the basis of gender in the outcome of assessments. However, as the majority of people who need support are older people, and women live longer than men, women are more likely to be eligible for the services that the proposed continuing charging regime would apply to.
<b>9. b What evidence do you have to support this?</b>	Statistics on the numbers of people supported by the Council indicate that a majority of people in residential or nursing care are women.	
<b>10. a Disability equality - Is there an impact?</b> What kind of equality impact may there be? Is the impact positive or adverse or is there a potential for both? If the impact is neutral please give a reason.	Y	People's eligibility for services is defined by the impact that that individual's disability or health condition has on them. People who need residential or nursing care will have more complex needs.
<b>10. b What evidence do you have to support this?</b>		
<b>11. a Age equality - Is there an impact?</b> What kind of equality impact may there be? Is the impact positive or adverse or is there a potential for both? If the impact is neutral please give a reason.	Y	People's eligibility for services is assessed on the basis of need. Equality monitoring suggests there is no bias on the basis of age in the outcome of assessments. However, the majority of people who need support are older people, and in particular, the vast majority of people who need residential or nursing care are older people.
<b>11. b What evidence do you have to support this?</b>	Statistics on the numbers of people supported by the Council in residential or nursing care indicate that the vast majority are defined as older people.	



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<p><b>12. a Religion and belief equality - Is there an impact?</b>          What kind of equality impact may there be?          Is the impact positive or adverse or is there a potential for both? If the impact is neutral please give a reason.</p>		N	<p>People's eligibility for services is assessed on the basis of need. In Bracknell, numbers of people with different religions or beliefs are too low to test for bias on the outcome of assessment. However, equality monitoring suggests there is no bias on the basis of race, gender, or age in the outcome of assessments, and it is therefore assumed that this is true across all protected characteristics.</p>	
<p><b>12. b What evidence do you have to support this?</b></p>				
<p><b>13. a Sexual orientation equality - Is there an impact?</b>          What kind of equality impact may there be?          Is the impact positive or adverse or is there a potential for both? If the impact is neutral please give a reason.</p>		N	<p>People's eligibility for services is assessed on the basis of need. In Bracknell, numbers of people with different sexual orientation are too low to test for bias on the outcome of assessment. However, equality monitoring suggests there is no bias on the basis of race, gender, or age in the outcome of assessments, and it is therefore assumed that this is true across all protected characteristics.</p>	
<p><b>13. b What evidence do you have to support this?</b></p>				
<p><b>14. Please give details of any other potential impacts on any other group (e.g. those on lower incomes/carer's/ex-offenders) and on promoting good community relations.</b></p>	<p>The proposal to continue charging for residential and nursing care on the basis of the current nationally mandated scheme is based on a means assessment, which ensures that people only pay for what they can reasonably afford. The other proposals are designed to ensure that people whose financial means are such that they are not entitled to funding from the Council are not subsidised by the Council.</p>			
<p><b>15. If an adverse/negative impact has been identified can it be justified on grounds of promoting equality of opportunity for one group or for any other reason?</b></p>	<p>People with the protected characteristics of age or disability are the people who are most likely to need social care support, and therefore to be impacted by any charging regime.</p>			
<p><b>16. If there is any difference in the impact of the activity when considered for each of the equality groups listed in 8 – 14 above; how significant is the difference in terms of its nature and the number of people likely to be affected?</b></p>	<p>People with the protected characteristics of age or disability are the people who are most likely to need social care support, and therefore to be impacted by any charging regime. Approximately 500 people are supported in residential or nursing care in any one year.</p>			
<p><b>17. Could the impact constitute unlawful discrimination in relation to any of the Equality Duties?</b></p>		N	<p>The power to charge people for social care services is enshrined in statute, and can only apply to people who, because of their disability, which will often be caused by conditions associated with ageing, need adult social care support.</p>	
<p><b>18. What further information or data is required to better understand the impact? Where and how can that information be obtained?</b></p>				
<p><b>19. On the basis of sections 7 – 17 above is a full impact assessment required?</b></p>		N	<p>The power to charge people for social care services is enshrined in statute, and can only apply to people who, because of their disability, which will often be caused by conditions associated with ageing, need adult social care support. The proposal is to continue charging in line with the currently mandated scheme, which becomes discretionary on 1 April 2015.</p>	
<p><b>20. If a full impact assessment is not required; what actions will you take to reduce or remove any potential differential/adverse impact, to further promote equality of opportunity through this activity or to obtain further information or data?</b> Please complete the action plan in full, adding more rows as needed.</p>				
	<b>Action</b>	<b>Timescale</b>	<b>Person Responsible</b>	<b>Milestone/Success Criteria</b>
<p><b>Means Assessment – all people who are eligible for services undergo a financial assessment to ensure that they do not pay more than they can reasonably afford.</b></p>	Ongoing		Neil Haddock	

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<b>21. Which service, business or work plan will these actions be included in?</b>	Performance & resources team plan.
<b>22. Have any current actions to address issues for any of the groups or examples of good practice been identified as part of the screening?</b>	No
<b>23. Chief Officers signature.</b>	Signature: _____ Date: _____
<b>24. Which PMR will this screening be reported in?</b>	