

TO: EXECUTIVE
21 JULY 2015

CARE ACT: ARRANGING CARE AND SUPPORT (AT HOME) FOR PEOPLE WHO FUND THEIR OWN SUPPORT ARRANGEMENTS AND FUNDING REFORM
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 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 changes its policy on the financial assessment of couples to be compliant with the Care Act, and the interim arrangements for people who are adversely affected by this change.
 3. That the Council charges interest on Universal Deferred Payments at the rate set by the Department of Health
 4. That the Council charges interest on discretionary Deferred Payments at the maximum rate set by the Department of Health
 5. That the Council charges administration fees for setting up, and managing, a Universal Deferred Payment that meets the cost of that work
 6. That the Council charges a fee to self funders in community based settings for setting up care arrangements that fully recovers the cost of that work.
 7. That the Council amends its policy to allow it to charge a fee to self funders in care home settings, in readiness for a change in regulations expected in April 2016

The proposed Consultation document is given in Appendix 1, and a set of proposed questions in Appendix 2.

- 2.3 That the Executive agree not to introduce charges for Carers Services at this time.
- 2.4 That the Executive note the changes to the Means Test proposed by the Government as part of the Funding Reforms phase of the Care Act.

3 REASONS FOR RECOMMENDATIONS

- 3.1 The Care Act 2014 imposes powers and duties on Local Authorities in relation to these matters from April 2015, with further expected changes in April 2016.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 There is no alternative to implementing the requirements of the Care Act 2014 however there are decisions to be made regarding the detail of local implementation.

5 SUPPORTING INFORMATION

- 5.1 The Executive received a report in November 2014 that initially recommended public consultation on charging to happen from November 2014 to February 2015 based on the draft guidance for Phase 1 of the Care Act; however, the final guidance clarified that consultation was not necessary if Councils were not intending to change their approach to charging. The Executive therefore agreed not to go out to consultation. However consultation will be necessary for the changes outlined below.

Changes in Charging Legislation

- 5.2 The Care Act introduces changed regulations for charging for Residential and Nursing care. Prior to the introduction of the Care Act on 1st April the charging regulations, known as CRAG ("Charging for Residential Accommodation Guidance"), were mandatory. From April 1st 2015 it is no longer mandatory to charge for Residential and Nursing care, however if Councils do choose to continue to charge for Residential and Nursing care they must now use the Care and Support (Charging and Assessment of Resources) regulations, which for Residential and Nursing care effectively replicate CRAG. As it is now at the Council's discretion to charge for Residential and Nursing Care if the Council is to consult on other changes to charges, this represents an opportunity to consult on whether to continue to charge for this service.
- 5.3 Bracknell Forest received £2.5m from charges for Residential and Nursing care in the 2014/15 financial year. A decision not to charge would therefore create a significant budget pressure for the Council
- 5.4 The Care Act also makes some changes to the Fairer Contributions regulations, specifically the treatment of couples. The Council's current Policy when assessing an individual requiring support who is one part of a couple is to assess in the most beneficial way to the individual. All couples are offered a joint financial assessment to identify the most beneficial outcome, whilst noting that a spouse or partner is not obliged to disclose their own resources, should they choose not to.
- 5.5 Paragraph 8.8 of the Care Act Statutory Guidance states: "The local authority has no power to assess couples or civil partners according to their joint resources. Each person must therefore be treated individually". The Council therefore needs to consider how to amend its policy, including any interim arrangements for people who are currently assessed as part of a couple and who would be adversely affected by any change.

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- 5.6 Financial modelling suggests that the additional income that the Council would raise by removing this discretion to couples could be as much as £150k, the additional charges falling on a relatively small number of people, perhaps 50. Some of the extra income is due to legislation on the minimum amount of income people must be left with after charges, related to the levels of certain benefits. They are lower for each person in a couple than they are for single people. There are therefore options to consider both in what the final policy might be, and in its implementation.
- 5.7 The Care Act introduces changes to the duties of Councils in respect of people who fund their own support, effective 1 April 2015. In essence, these are that people with eligible needs whose finances are such that they are not entitled to financial support from the council, have the right to ask the Council to arrange their care and support if this is to be provided other than in a care home, and Councils have a duty to meet this request.
- 5.8 Councils will have the power to charge people for arranging their support where the support is not in a care home, i.e. where Councils are discharging their duties, but will not have the power to charge a fee for arranging support in a care home, i.e. when using their powers. The fee can cover all costs, but must not exceed that. The introduction of a fee will require consultation.
- 5.9 Paragraph 8.58 of the Care Act guidance states that where a local authority chooses to meet the needs of a person who has resources above the financial limit and who requires a care home placement, it must not charge an arrangement fee. This is because it would support that person under its power (rather than its duty) to meet needs, and the ability to charge the arrangement fee applies only to circumstances when the authority is required to meet needs. The draft guidance to the Care Act suggested this would be a duty, but was not made a duty as the Department of Health wished to consult further. It is therefore possible that it will be made a duty, and therefore it is an opportunity to consult on whether the Council should introduce a charge if this is made a duty, and the power to charge is given to authorities.
- 5.10 When arranging support for a self-funder Councils must ensure arrangements are affordable and sustainable. These factors raise potentially significant questions on details of the policy that should be implemented locally, as well as questions on the right to interfere in decisions people make about how they spend their own money.
- 5.11 The Government is introducing changes to the Deferred Payment policy, making it mandatory, but also allowing Councils to charge a set-up fee, a management fee, and interest on the outstanding balance. Introduction of charges will require consultation.

Meeting Needs and Arranging Care

- 5.12 As Councils will have a duty to meet the needs of self-funders in non care home settings, and to inform people that they have the right to make this request, the Council must undertake certain steps to ensure people are informed of their rights.
- 5.13 The next area to consider is how the Council can discharge its responsibilities to “meet needs”. For the purposes of this paper, the relevant ways are:
- the Council arranging for a care and support provider to provide some type of support, for example by commissioning or contracting with a provider;

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- the Council brokering for a care and support provider to provide some type of support
- making a direct payment, allowing the person to purchase their own support, which would be a paper exercise as no money would be paid to the person;

5.14 Making a direct payment in these circumstances would be virtually cost free, and it is not considered cost effective to raise a charge in such circumstances.

5.15 The following is proposed for circumstances where the Council arranges the support:

- People will be offered a choice of providers from those already in a contract with the Council
- People will pay the rate that the provider usually charges people who fund their own support, not the rate that the council pays
- A fee will apply (set up fee), which the person must pay. This will cover the full costs of setting up the package of care including:
 - i. identifying appropriate providers
 - ii. supporting the person to choose a provider
 - iii. negotiating times etc. with the provider
 - iv. issuing an individual purchase order and entering the package onto the ASC IT system.
 - v. setting up methods for the person to pay the full costs of their care

An ongoing support fee will also be charged to the person. This fee is to pay for the full costs of: contract monitoring of the provider, welfare checks should there be any concerns about the provider, at least one review per annum, dealing with payments to providers, raising and collecting care costs from the person receiving the support, dealing with any complaints that are not resolved by the provider, and arranging up to two variations to the support (e.g. change in times, change in provider) per annum.

5.16 Brokering support is where the Council supports the person to enter into a direct contract with providers themselves. Brokering is the preferred option for the Council.

The following is proposed for circumstances where the Council brokers the support:

- People will be offered a choice of registered providers
- The LA will undertake the range of checks of the provider that it would do as if it were entering a contract with the provider (financial risk assessment, insurance check, CQC check and taking up of references). These checks will be shared with the person to enable them to decide if they want to enter into a contract with the provider.

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- People will pay the rate that the provider usually charges people who fund their own support.
- A fee will apply (set up fee), which the person must pay. This will cover the costs of setting up the package of care including identifying appropriate providers, supporting the person to choose a provider, negotiating times etc. with the provider, supporting the person to enter a contract with the provider.
- An ongoing fee will not be charged in these circumstances.
- Any variations that the person wants the LA to broker will incur a further set-up fee.

5.17 As the Council currently arranges care and support for a small number of people who fully fund their own care, the consultation should also address what the transition arrangements are for those people.

5.18 The charge can only be set to cover costs, or lower, but can not exceed costs. The charging arrangements in other Councils local to Bracknell Forest are laid out further below. It is proposed that the charges in Bracknell Forest will equal the full cost of providing the service. It is considered that the cost of setting up the arrangement cost is not likely to exceed £550, and does not exceed £300 per annum to manage the arrangement on an on-going basis.

Deferred Payments – Universal Scheme

5.19 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 the Council to pay their bill for them, repaying the Council at a later point in time, usually after they have died.

5.20 Deferred payments will normally only apply to people whose only asset is their home, and who would only be able to pay their care home bill by selling their home. The Council 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 death. Currently the Council charges interest at 2% above the Lloyds TSB base lending rate from then.

5.21 The Government believes that Councils have not been offering Deferred Payments in line with regulations, and so have introduced Universal Deferred Payments, which will be a mandatory scheme. Anyone who meets the criteria will be eligible for one, and Councils 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
- 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.

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- 5.22 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 1 deferred payment agreement in place.
- 5.23 Councils may, from 1 April 2015, charge interest on the outstanding balance up to the maximum amount specified in regulations. These specify a fixed 0.15% plus the 15-year average gilt yield, as set out by the Office for Budget Responsibility twice a year – currently giving a maximum interest rate of 2.25% as of 1st July 2015.
- 5.24 The Council therefore needs to decide whether or not to charge interest, and if so, what rate to charge. The introduction of an interest rate on Deferred Payments, as it represents a change from current practice, is something the Council should consult on. 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.
- 5.25 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 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;
 - Management and Corporate Overheads.
- 5.26 The Council currently charges a set fee of £350 to cover all of the above, which represents a subsidy against the actual cost. 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. However, if numbers grow significantly, unless the administration fee increases to cover the true cost of administration, this will start to have a greater impact.
- 5.27 It is therefore recommended the Council consults on a proposal to charge for setting up a deferred payment at a rate that covers the true cost to the Council of that activity. It is considered that the cost of setting up the arrangement cost is unlikely to exceed £900, and is unlikely to exceed £300 per annum to manage the arrangement on an on-going basis.
- 5.28 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.

Table 1: Charges in Neighbouring Authorities

	Deferred Payments			Arranging Support for Self Funders	
	Interest Rate	Set Up Charge (£)	Annual Charge (£)	Set Up Charge (£)	Annual Charge (£)
Wokingham	maximum allowed	900	300	550	300
Royal Borough of Windsor & Maidenhead	maximum allowed	900	300	£30 per hour	
Slough	maximum allowed	595	0	not currently charging	
Reading	maximum allowed	783	100	182	65
West Berks	maximum allowed	700	100	not currently charging	
Hampshire	maximum allowed	1190	312	600	320
Surrey	maximum allowed	730	75	not currently charging	

Notes to the above table

Wokingham's figures are part of a current consultation, with the decision due in late June.

Slough's fee for Deferred Payments is excluding disbursements

Reading's Deferred Payments set up charge includes Land Registry fee of £50

West Berks deferred payments fee of £700 includes all disbursements

Hampshire's fee of £312 for a deferred payment increases to £612 if a valuation is needed

Surrey's charges do not include disbursements; Surrey have a £125 redemption charge

Surrey's preferred method for arranging support is as a Direct Payment, with no administrative cost

Surrey charge £265 (set up) £75 (annual) for self funders in care homes if they've a duty to support

Extended Means Test

- 5.29 The Government is proposing to change the "capital thresholds" which determine when someone is a self-funder. At the moment, any one with capital in excess of £23,250 is considered a self-funder. The value of a person's home, if they own it, is only taken into account if they go into a care home. People with capital below £14,250 only contribute towards their social care costs from their income. People with capital between £14,250 and £23,250 contribute from income and from capital (£1 per week for every £250 of capital above £14,250).
- 5.30 The proposal is to increase the upper capital limit to £27,000, leaving the lower capital limit unchanged, or £118,000 where the person's home is taken into account.
- 5.31 As these changes:
- Are mandatory,
 - do not represent a change to the principles of the Council's charging policy,
 - only require changes to the calculations in the financial assessment, and

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- the impact on people is that they are either unaffected or become better off,

it is not necessary to consult on the changes. However, the Executive should note that the changes are likely to have a significant financial impact. The Council's income from charges from these changes is estimated to reduce by £80k in respect of people currently supported. However, the changes will in addition mean that people who would be self-funders under the current thresholds would be entitled to support from the Council under the new thresholds, and this impact is not quantifiable. The loss of income and additional costs will be offset by New Burdens Grant Funding, however the allocations for this have yet to be announced.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 The relevant legal provisions are contained within the main body of the report.

Borough Treasurer

- 6.2 The costs of consultation are relatively low, and can be met from the Care Act Implementation Grant.

Equalities Impact Assessment

- 6.3 Equality for all people being supported will be considered at all stages in the implementation of the Care Act 2014

Strategic Risk Management Issues

- 6.4 A risk log has been developed to support the local implementation of the Care Act 2014.

7 CONSULTATION

Principal Groups Consulted

- 7.1 None at this stage, this paper seeks permission for a Public Consultation on options in respect of charging.

Method of Consultation

- 7.2 N/A

Representations Received

- 7.3 N/A

Contact for further information

Neil Haddock, Adult Social Care, Health and Housing - 01344 351385
neil.haddock@bracknell-forest.gov.uk

Equalities Screening Record Form

Date of Screening:	Directorate: ASCH&H	Section: Performance & Resources
1. Activity to be assessed	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.	
2. What is the activity?	X Policy/strategy <input type="checkbox"/> Function/procedure <input type="checkbox"/> Project <input type="checkbox"/> Review <input type="checkbox"/> Service <input type="checkbox"/> Organisational change	
3. Is it a new or existing activity?	<input type="checkbox"/> New <input checked="" type="checkbox"/> Existing	
4. Officer responsible for the screening	Neil Haddock	
5. Who are the members of the EIA team?		
6. What is the purpose of the activity?	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.	
7. Who is the activity designed to benefit/target?	People who are assessed as needing social care support, particularly people who are assessed as needing residential or nursing care.	
8. a Racial equality - Is there an impact? 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	
8. b What evidence do you have to support this? 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.	
9. a Gender equality - Is there an impact? 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.
9. b What evidence do you have to support this?	Statistics on the numbers of people supported by the Council indicate that a majority of people in residential or nursing care are women.	
10. a Disability equality - Is there an impact? 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.
10. b What evidence do you have to support this?		
11. a Age equality - Is there an impact? 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.
11. b What evidence do you have to support this?	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.	

Unrestricted

<p>12. a Religion and belief equality - Is there an impact? 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>	<p>N</p>	<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>12. b What evidence do you have to support this?</p>			
<p>13. a Sexual orientation equality - Is there an impact? 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>	<p>N</p>	<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>13. b What evidence do you have to support this?</p>			
<p>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.</p>	<p>The proposal would negatively impact on the income levels of people living as a couple who have been financially assessed as a couple until now, but who would be assessed as a single person in future, where the main income and/or savings are held in the name of person being assessed. Mitigation will take the form of phasing in the changes, as well as in considering what the appropriate minimum income level they should be left with should be as the impact on the person's finances from this change comes not just from a theoretical doubling of their income and or savings, but a lower level of income buffer for people living as a couple.</p>		
<p>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?</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>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?</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>17. Could the impact constitute unlawful discrimination in relation to any of the Equality Duties?</p>	<p>N</p>	<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>18. What further information or data is required to better understand the impact? Where and how can that information be obtained?</p>			
<p>19. On the basis of sections 7 – 17 above is a full impact assessment required?</p>	<p>N</p>	<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>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? Please complete the action plan in full, adding more rows as needed.</p>			
<p>Action</p>	<p>Timescale</p>	<p>Person Responsible</p>	<p>Milestone/Success Criteria</p>

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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.	Ongoing	Neil Haddock	
21. Which service, business or work plan will these actions be included in?	Performance & resources team plan.		
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?	No		
23. Chief Officers signature.	Signature:		Date:
24. Which PMR will this screening be reported in?			