

**TO: THE EXECUTIVE  
17 NOVEMBER 2015**

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**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 the outcome of the consultation on charging options arising out of the changes to powers and duties on Local Authorities brought about by the Care Act, which commenced on 3 August and ended on 25 October 2015.

**2 RECOMMENDATIONS**

- 2.1 That the responses received during the consultation period be noted.
- 2.2 That the Executive agree the following options for charging:
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 approves the interim arrangements for people who are adversely affected by this change (see paragraph 5.7)
  3. That the Council charges interest on Universal Deferred Payments at the rate set by the Department of Health, currently 2.25%.
  4. That the Council charges interest on discretionary Deferred Payments at the maximum rate set by the Department of Health, currently 2.25%.
  5. That the Council charges an administration fee of £900 for setting up a Universal or discretionary Deferred Payment, and an annual fee of £300 for managing that Deferred Payment.
  6. That the Council charges a fee to self funders in community based settings of £300 for setting up care arrangements, and £200 per annum for ongoing management of the those arrangements.
- 2.3 That the Executive notes that there was overwhelming support for its policy of not introducing charges for Carers Services (see paragraph 7.3)

**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. The Executive decided to consult first before making any changes to current policies.

#### **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 details of local implementation.

#### **5 SUPPORTING INFORMATION**

- 5.1 The Executive received a report in July 2015 that recommended public consultation on the options laid out in paragraph 2.2, and accepted those recommendations.
- 5.2 The consultation started on August 3<sup>rd</sup>, and ended on October 25<sup>th</sup>. Everyone supported by Adult Social Care received a letter, information pack, blank survey and Stamped Address Envelope to complete and post back. In addition, all providers of residential and nursing care, domiciliary care, day care and voluntary sector organisations were also written to.
- 5.3 The consultation was also posted on line on the Council's consultation portal, and publicised in Town & Country and the Bracknell News.
- 5.4 Officers from the Financial Assessment Team also attended the Carer's Lunch on 18 September to explain the changes, answer questions, and assist people with returning their questionnaires.
- 5.5 A number of options for amending the current policies were considered and consulted upon, and these are identified below.

#### **5.6 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**

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.

Bracknell Forest receives about £2.5m from charges for Residential and Nursing care per year. A decision not to charge would therefore create a significant budget pressure for the Council. No Councils locally have decided to stop charging for Residential and Nursing Care, and the consultation responses indicated a majority in favour of continuing to charge for this.

**It is recommended that the Council continues to charge for Residential and Nursing care.**

#### **5.7 That the Council changes its policy on the financial assessment of couples to be compliant with the Care Act, and determines the interim arrangements for people who are adversely affected by this change.**

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

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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. 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.

Financial modelling suggests that the additional income that the Council would raise by removing this discretion to couples could be as much as £150k. However, the additional charges fall on a relatively small number of people, perhaps 50. For some people this impact will be very significant, and therefore the Council needs to consider whether there should be any protection period.

The consultation indicated that people were broadly in favour of the proposal on the amount of income that people would be entitled to keep, protected from charges, if they were in a couple – i.e. that those limits were in line with benefits for people aged over 65. People were overwhelmingly in favour of a protection period for people impacted.

**Therefore the recommendation is to change the policy to be compliant with the Care Act, with the amounts disregarded being in line with benefits amounts for single people and couples, and with protection for existing people.**

**It is proposed that people will be completely protected from the increase until 1<sup>st</sup> April 2016; protected from 50% of the increase from 1 April 2016 until 31<sup>st</sup> March 2017, and then the protection is removed from 1<sup>st</sup> April 2017.**

- 5.8 That the Council charges interest on Universal Deferred Payments at the rate set by the Department of Health, and administration charges for setting up and managing a Universal Deferred Payment at a rate that meets the cost of that work.**

### **Deferred Payments – Universal Scheme**

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.

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.

Anyone who meets the criteria will be eligible for one, and Councils must provide one. The eligibility criteria are as follows:

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- 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.

There are also circumstances where a Council is not obliged to offer a Deferred Payment, but may choose to do so. These may include for example where people receiving care and support in Supported Living Accommodation, for people who wish to use their home to fund more than just their core care costs.

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 1<sup>st</sup> July 2015.

There are also administrative costs involved in setting up a deferred payment agreement, which include registering a legal charge with the Land Registry against the title of the property, costs of valuing the property, and staffing costs.

The Council currently charges a set fee of £350 to cover all of the above, which represents a subsidy against the actual cost; this is estimated to be £900, with an on-going charge of £300 per year.

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.

The Consultation showed that people were against the idea of the Council charging either interest or set up fees for such arrangements. Nevertheless, the Council does have the power to charge such fees, and these fees only cover the costs to the Council of making such arrangements. The frequency of such arrangements in Bracknell Forest to date has been low, and as such the financial implications are very low. However, not charging would then be subsidising the support of people who are assessed as being able to fund their own care, at the Council's cost.

**It is recommended that the Council introduces an interest rate for Deferred Payments at the rate set by the Department of Health. This should only apply to new Deferred Payments taken out after 1<sup>st</sup> January 2016.**

**It is recommended that the Council charges a fee of £900 (set up) and £300 per annum to cover the administrative costs of managing a Deferred Payment. The increase from £350 should only apply to new Deferred Payments taken out after 1<sup>st</sup> January 2016.**

- 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. Councils also have, for the first time, the power to charge people for this service, as long as that fee only covers the cost of providing it.

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5.13 There are broadly three ways in which the Council can discharge its responsibilities to “meet needs”. These 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;
- 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

This service would, if the recommendation is accepted, attract a set up and ongoing management fee to 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.
- People will pay the rate that the provider usually charges people who fund their own support.

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- 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.

5.18 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 £300, and does not exceed £200 per annum to manage the arrangement on an on-going basis.

5.19 The consultation showed that people were broadly split between those in favour of this proposal, and those against. However, not charging would then be subsidising the support of people who are assessed as being to able to fund their own care, at the Council's cost. It is not known how much demand there will be in future from people asking the Council to do this, however any additional income raised will be equal to the additional costs incurred of providing this service.

**It is recommended that the Council charges a fee of £300 (set up) and £200 (per annum) to self funders in community based settings for setting up care arrangements to fully recover the cost of that work. The fee is to take effect from 1<sup>st</sup> January 2016.**

5.20 The table below shows the 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           | 755 + disbursements | 261 + disbursements | 260                                | 194               |
| Royal Borough of Windsor & Maidenhead | maximum           | 900                 | 300                 | £30 per hour                       |                   |
| Slough                                | maximum           | 595 + disbursements | 0                   | not currently charging             |                   |
| Reading                               | maximum           | 783                 | 100                 | 182                                | 65                |
| West Berks                            | maximum           | 700                 | 100                 | not currently charging             |                   |
| Hampshire                             | maximum           | 1190                | 312                 | 600                                | 320               |
| Surrey                                | maximum           | 730                 | 75                  | not currently charging             |                   |

## **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

### 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 People who receive services, and voluntary organisations who support people who need, or are likely to need, social care.

### Method of Consultation

7.2 On line and posted surveys, and public meetings.

### Representations Received

7.3 A summary of responses is given in the table below. Annex 1 shows a more detailed breakdown of the responses, including splitting the responses between those received on line compared to those received by post. Annex 2 lists all the narrative comments that were received.

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|   | Numbers                 |         |                               | Total Responses | %                       |         |                               |
|---|-------------------------|---------|-------------------------------|-----------------|-------------------------|---------|-------------------------------|
|   | Agree or Strongly Agree | Neutral | Disagree or Strongly Disagree |                 | Agree or Strongly Agree | Neutral | Disagree or Strongly Disagree |
| To what extent do you agree or disagree that:   |                         |         |                               |                 |                         |         |                               |
| <b>1. Charging for services</b><br>The Council should continue charging for residential and nursing care  | 112                     | 42      | 33                            | 187             | 60%                     | 22%     | 18%                           |
| <b>2a. Interest charges</b><br>The Council should charge interest on deferred payments  | 60                      | 36      | 91                            | 187             | 32%                     | 19%     | 49%                           |
| <b>2b. Administration charges</b><br>The Council should charge an administration fee equal to the costs of setting up and managing Deferred Payments                | 42                      | 47      | 95                            | 184             | 23%                     | 26%     | 52%                           |
| <b>3. Managed services</b><br>The Council should charge an administration fee for arranging care and support for people who fund their own care                     | 71                      | 41      | 74                            | 186             | 38%                     | 22%     | 40%                           |
| <b>4. Carers services</b><br>The Council should continue to provide services to carers free of charge   | 153                     | 16      | 20                            | 189             | 81%                     | 8%      | 11%                           |
| <b>5a. Couples assessments</b><br>People already receiving services should be protected from any changes in the Policy for a period of time                         | 150                     | 30      | 3                             | 183             | 82%                     | 16%     | 2%                            |
| <b>5b. Couples Assessments</b><br>It is fair to have a minimum income of £144 for each pensioner in a couple when the minimum income is £189 for a single pensioner | 76                      | 48      | 58                            | 182             | 42%                     | 26%     | 32%                           |

### Contact for further information

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[neil.haddock@bracknell-forest.gov.uk](mailto:neil.haddock@bracknell-forest.gov.uk)



## Equalities Screening Record Form

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|--|--|--|
| <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 amend the Adult Social Care charging policies to take account of new powers given to Local Authorities by the Care Act, and take account of new duties imposed on Local Authorities by the Care Act. 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>  | 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   |  |
| <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. To amend the charging policy in respect of people who are one part of a couple in line to be compliant with a change in regulations brought about by the Care Act. |  |
| <b>7. Who is the activity designed to benefit/target?</b>  | People who are assessed as needing social care support   |  |
| <b>8. a Racial equality - Is there an impact?</b><br>What kind of equality impact may there be?<br>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><br>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><br>What kind of equality impact may there be?<br>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><br>What kind of equality impact may there be?<br>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><br>What kind of equality impact may there be?<br>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><br/>         What kind of equality impact may there be?<br/>         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><br/>         What kind of equality impact may there be?<br/>         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 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.</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. However, the proposal is to not change the existing charging arrangements.</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> |
|  | 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   |                                   |

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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>   |                                    |