

## 1. Topic of assessment

<b>EIA title:</b>	<b>Implementing the Care Act – charging policy proposals</b>
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<b>EIA author:</b>	Julie Gibbs, Project Officer
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## 2. Approval

	<b>Name</b>	<b>Date approved</b>
<b>Approved by</b>	Toni Carney	4/11/14

## 3. Quality control

<b>Version number</b>	1	<b>EIA completed</b>	4/11/14
<b>Date saved</b>	30.10.14	<b>EIA published</b>	<b>Initial assessment</b>

## 4. EIA team

<b>Name</b>	<b>Job title (if applicable)</b>	<b>Organisation</b>	<b>Role</b>
Tristram Gardner	Project Manager	Surrey County Council	Project Manager
Toni Carney	Interim Senior Manager	Surrey County Council	Project Team
Dina Bouwmeester	Policy Development Manager	Surrey County Council	Project Team
Sarah Wimblett	Project Officer	Surrey County Council	Project Team

## 5. Explaining the matter being assessed

<p><b>What policy, function or service is being introduced or reviewed?</b></p>	<p>In April 2003 Surrey County Council adopted the current Fairer Charging Policy in order to adhere to statutory guidance issued under Section 7 of the Local Authority Social Services Act 1970 to help local councils design reasonable and fair charging policies. The policy sets out in clear terms what services the Council will and will not charge residents.</p> <p>The policy affects all residents of Surrey who are assessed as needing care and support services. Any adult needing care and support is assessed to see if a contribution towards their care costs is required. If required the resident is informed of the assessed charge and calculation in order that they can plan their care.</p> <p>In addition, the Health and Social Care Act 2001, enables local authorities to operate a Deferred Payment Scheme. Regulations made under section 55 of the Act, allow Councils to agree to take a legal charge on a person's main or only home, in which they have a beneficial interest, instead of requiring the immediate payment of the person's full contribution towards the care home fees.</p> <p>The Deferred Payment Scheme was designed to allow a person with property, but without sufficient income or other assets, to fund their chosen residential placement, whilst enabling the person to keep their home on admission to residential care. It was introduced in October 2001.</p> <p>The Department of Health expect Councils to operate a scheme but Councils retain the discretion whether or not to agree to a deferred payment in the individual circumstances of the case. Surrey County Council has a policy on Deferred Payments and operates a deferred payments scheme.</p>
<p><b>What proposals are you assessing?</b></p>	<p>The Care Act 2014 requires local authorities to review their charging policy. Surrey County Council is proposing the following in relation to its own policy, subject to Cabinet agreement and consultation:</p> <ol style="list-style-type: none"> <li>1) The council will consult on the proposals to inform a revised charging policy for adult social care services. The recommended proposals for a revised charging policy are: <ul style="list-style-type: none"> <li>• The council exercises the power to charge for residential and nursing care and non-residential services.</li> <li>• The council will charge an administration fee in any case where the person is able to pay the full cost of their care and support for a residential or nursing home placement but nevertheless the person asks the council to make the arrangements for the placement under the council's usual</li> </ul> </li> </ol>

terms and conditions.

- The council will consult on the proposal to increase the percentage of available income taken in charges for non-residential services by 10% with effect from 1 April 2015

- 2) The council will consult widely on the discretionary elements of the new deferred payment scheme. .

In 2007 the council consulted on its Charging Policy. The proposals assessed here do not significantly change charging for the majority of people currently receiving care and support but it is good practice that a further consultation with residents who may be affected by the revised proposals. A clear and transparent policy on charging enables people to make advanced decisions about their care and support arrangements and with this in mind, a wide consultation on the future operation of the deferred payment scheme is recommended.

### **Background**

The Care Act 2014 and supporting regulations and statutory guidance will replace a raft of legislation and guidance that has been in place for many years. From 1 April 2015, the legal basis for charging will be a power rather than a duty to charge. This new power replaces the existing *duty* to charge under the National Assistance Act 1948 for residential and nursing provision and the *power* to charge for non-residential services (largely under the Chronically Sick and Disabled Persons Act 1970). This means that from April 2015 a local authority *may* make a charge for meeting needs under sections 18 to 20 of the Care Act but is no longer required to do so, that is, unless the person's resources are above the upper capital limit; the local authority is then precluded from paying towards the cost of care in a care home setting.

The council will need to determine whether it intends to charge for residential and nursing provision and non-residential services. The income from charging for 2014/15 will be in the region of £42 million; of which approximately £36 million is from residential and nursing care support and the balance from non-residential contributions.

Income from charging is an essential contribution to Adult Social Care's budget to help maintain front-line services. It is proposed that the council exercises the power to charge for all residential and nursing care and non-residential services unless it is prohibited from charging under the regulations.

### **Power to make a charge for putting arrangements in place**

If, after undertaking a financial assessment, the council identifies that a person's resources are above the upper capital limit, the council is precluded from paying towards the cost of care in a care home setting. However, the person may ask the council to meet their needs; that is, to contract for the person's care in accordance with

the council's usual terms and conditions. In these circumstances, in addition to recovering the full cost of the placement, the council may also levy an administrative charge to cover the cost of putting the arrangements in place. The administration charge must only reflect the costs incurred in making those arrangements.

Given the large number of people who fund their own care in Surrey, it would be costly to make arrangements for people who have the means and capacity to make their own arrangements and the usual response in these circumstances will be to offer information and advice to enable the person to make their own arrangements. However, in any case where arrangements are made for a person whose resources are above the capital limit and there is no overriding duty to meet the person's needs it is proposed that an administrative charge will be made. The administrative charge will reflect the cost incurred in putting the arrangements in place including any ongoing costs. Work is underway to identify the likely costs involved.

### **Percentage of available income taken in charges**

For people in receipt of non-residential care and support, the financial assessment calculates the service user's total weekly income, less certain disregarded income, statutory allowances, certain housing costs and any disability related expenditure to determine the amount of net disposable income left over for charging. The Department of Health recommends that local authorities should consider whether it is appropriate to set a maximum percentage of disposable income which may be taken into account in charges. Many neighbouring local authorities take between 90% and 100% of available income. Surrey's charging policy is to take 80% of net disposable income. If we increased the percentage of net disposable income by 10% to 90%, this would generate an additional £440,000 per annum income. It is proposed that a consultation on the proposal to increase the percentage of net disposable income by 10% to 90% is carried out.

### **Universal Deferred Payment Scheme**

Under the current arrangements, deferred payment agreements are discretionary. From 1 April 2015, local authorities must offer a deferred payment agreement to people who meet the eligibility criteria for the scheme. The key elements of the new scheme are summarised in the information sheet attached at Appendix A.

There are a number of discretionary aspects to the scheme where policy decisions need to be made:

- The council is permitted to offer a deferred payment agreement to people who do not meet the basic eligibility criteria
- The council may seek contributions from a person's income, savings or other assets but must leave the person with up to £144 per week available income (currently this sum is £23.40 per week).

	<ul style="list-style-type: none"> <li>• The council is permitted to accept other forms of security, such as a third-party guarantor, a solicitor's undertaking, a valuable object or an agreement to repay the amount deferred from proceeds of a life assurance policy</li> <li>• The council is permitted to charge compound interest on any amount deferred from the commencement of the agreement until the debt is repaid. The amount of interest must not exceed the maximum amount specified in regulations</li> <li>• The council is permitted to charge an administration charge to include any reasonable costs incurred by the council in relation the deferred payment agreement</li> </ul> <p>It is recommended that we consult widely on the discretionary elements of the deferred payment scheme.</p>
<p><b>Who is affected by the proposals outlined above?</b></p>	<p>The proposals will affect all residents of Surrey who are assessed as having care and support needs. The proposals will affect those who are currently receiving services who have already been financially assessed as well as those who are assessed as having needs in the future. Carers and families may be directly affected if they are funding care and support for their relative. Whilst most families not providing funded support will not be directly affected, they will need to understand the changes nonetheless when assisting their loved ones with care planning.</p> <p>In April 2016 the Care Act introduces a further change which will impact on residents who are moving into residential care and have assets of £118,000 or less as they will be assessed from that time as being below the capital threshold (currently set at £23,250). It is therefore anticipated that a group of residents who would have been funding their own care will approach the council for assessments and will be affected by the changes outlined in this impact assessment.</p> <p>Surrey County Council staff will not be directly affected by the changes; however they will need to understand the new policy and any new procedures which come out of the proposals. Staff in frontline teams will also need to understand the policy so they can provide appropriate advice and guidance during assessments.</p> <p>External organisations will not be directly affected; however they will need to have an awareness of the changes to the charging and deferred payments policies so that they are able to provide correct advice and guidance to their customers.</p> <p>This is an initial EIA and will need to be updated as the consultation responses to these changes become clear.</p>

## 6. Sources of information

### Engagement carried out

Consultation with Surrey residents and Council staff has been undertaken in relation to the Care Act and its implementation in the county. This has included consultation on the charging and deferred payments sections of the legislation as follows:

- Hosting two Care Act consultation events for both residents and staff in July 2014. During both days, held in East and North Surrey four workshops were held specifically focussing on charging and deferred payments. These were attended by a mixture of service users, residents, staff and interested groups from District and Borough councils, Carers groups, Health colleagues from Virgin Care and NHS, Surrey Coalition for Disabled People and care providers.
- At the same time as the above two events residents were encouraged to respond to the national consultation on the Care Act via the Council's web site.
- Road shows with all frontline Personal Care and Support staff will be held during November and December 2014 informing them of the changes and giving them the chance to feedback concerns and answer questions. Charging and deferred payments will be a part of these road shows.
- Local Empowerment boards, Health and Wellbeing Boards and Partnership boards have been engaged early to inform them of the impending changes.

### Data used

The following data has been used to inform changes to the Fairer Charging and Deferred Payments policies.

- Department of Health Impact Assessment on the Care Act 2014.
- Surrey County Council in house financial modelling on the impact of the Care Act
- Surrey County Council in house data from the Adults Information System (AIS) database on client characteristics
- Joint Strategic Needs Assessment (JSNA) data on the profile of Surrey's population broken down by the protected characteristics.

## 7. Impact of the new/amended policy, service or function

## 7a. Impact of the proposals on residents and service users with protected characteristics

Protected characteristic <sup>1</sup>	Potential positive impacts	Potential negative impacts	Evidence
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 135</p> <p><b>Age</b></p>	<p><i>1) Exercising the power to charge for residential and nursing care and non-residential services</i></p> <p>This new power is in line with the council's current policy which is to charge residents for these services. This will therefore have little impact on Surrey residents who are either current or future clients.</p> <p><i>2) Power to make a charge for putting in place the arrangements</i></p> <p>People who ask the council to make arrangements for them may benefit from decreased rates of payment as the council is unable to bulk buy services leading to reduced rates compared to those which private buyers are able to achieve. Even if an administration fee is charged this may be smaller than the savings achieved, though this would not be</p>	<p><i>1) Exercising the power to charge for residential and nursing care and non-residential services</i></p> <p>No negative impacts identifies as this is not a change from our current policy.</p> <p><i>2) Power to make a charge for putting in place the arrangements</i></p> <p>This may preclude self funding clients from accessing our professional services to arrange care and support as they do not want to pay an administration charge.</p>	<p><b>AIS data</b></p> <ul style="list-style-type: none"> <li>There are currently just over 23,000 open clients on the AIS database receiving some type of support.</li> </ul> <p><b>Department of Health Impact Assessment for the Care Act</b></p> <ul style="list-style-type: none"> <li>The impact assessment states that the new rules around deferred payments will have a positive impact on three groups:</li> <li>Group 1: When people enter residential care</li> <li>Group 2: When people already in residential care</li> <li>spend down their assets over time</li> <li>Group 3: When people lose eligibility for a housing disregard due to the death or entry into care of a relative or spouse</li> </ul> <p><b>Joint Strategic Needs Assessment</b></p>

<sup>1</sup> More information on the definitions of these groups can be found [here](#).

	<p>known for sure until the scheme is in operation.</p> <p><i>3) Increasing available income taken in charges from 80% to 90%</i></p> <p>Increasing the available income taken will mean that there will be a larger contribution paid towards the overall Adult Social Care budget which may help in the longer term to ensure that council services are sustainable or increased for vulnerable groups with the protected characteristics.</p> <p><i>4) Universal deferred payment scheme</i></p> <p>Changes to the deferred payment policy are likely to be beneficial for Surrey residents who currently own their own homes but are at risk of having to sell them if they move into residential or nursing care in the near or far future. As Surrey house prices are above average for the United Kingdom this is likely to have a positive impact on people entering care who may be able to afford to</p>	<p><i>3) Increasing available income taken in charges from 80% to 90%</i></p> <p>This could have a negative impact in that it will reduce the disposable income of people who are charged for services. We do not know on an individual basis what people spend their disposable income on and consequently cannot analyse the impact of decreasing that amount.</p> <p>Any negative impacts will be analysed further pending the consultation response.</p> <p><i>4) Universal deferred payment scheme</i></p> <p>The discretionary aspects of the deferred payment policy will need to have a EIA completed once consultation has completed and the final policy has been decided.</p>	<ul style="list-style-type: none"> <li>• Data shows that Surrey has a higher proportion of people over eighty five years old and estimates that this population is set to double by 2033. This will lead to a greater demand on council services and a higher number of people who are able to fund their own care seeking advice and support.</li> <li>• There are an estimated 38,952 people over 65 in Surrey who are unable to manage at least one physical activity on their own. This includes going out of doors and walking down the road, getting up and down stairs, getting around the house, going to the toilet and getting in and out of bed. This number is predicted to rise to 46,883 in 2020.</li> </ul>
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	have greater choice in homes than if they were not able to have a deferred loan.  The discretionary aspects of the deferred payment policy will need to have an EIA completed once consultation has completed and the final policy has been decided.		
<b>Disability</b>	Same as above	Same as above	Same as above
<b>Gender reassignment</b>	No impact	No impact	No impact
<b>Pregnancy and maternity</b>	No impact	No impact	No impact
<b>Race</b>	No impact	No impact	No impact
<b>Religion and belief</b>	No impact	No impact	No impact
<b>Sex</b>	No impact	No impact	No impact
<b>Sexual orientation</b>	No impact	No impact	No impact
<b>Marriage and civil partnerships</b>	No impact	No impact	No impact
<b>Carers<sup>2</sup></b>	Same as above in 'Age'	Same as above in 'Age'	Same as above in 'Age'

<sup>2</sup> Carers are not a protected characteristic under the Public Sector Equality Duty, however we need to consider the potential impact on this group to ensure that there is no associative discrimination (i.e. discrimination against them because they are associated with people with protected characteristics). The definition of carers developed by Carers UK is that 'carers look after family, partners or friends in need of help because they are ill, frail or have a disability. The care they provide is unpaid. This includes adults looking after other adults, parent carers looking after disabled children and young carers under 18 years of age.'

**7b. Impact of the proposals on staff with protected characteristics**

Protected characteristic	Potential positive impacts	Potential negative impacts	Evidence
<b>Age</b>	These proposals do not impact on staff, unless they are in receipt of services in which case see above.	These proposals do not impact on staff, unless they are in receipt of services in which case see above.	These proposals do not impact on staff, unless they are in receipt of services in which case see above.
<b>Disability</b>	As above	As above	As above
<b>Gender reassignment</b>	As above	As above	As above
<b>Pregnancy and maternity</b>	As above	As above	As above
<b>Race</b>	As above	As above	As above
<b>Religion and belief</b>	As above	As above	As above
<b>Sex</b>	As above	As above	As above
<b>Sexual orientation</b>	As above	As above	As above
<b>Marriage and civil partnerships</b>	As above	As above	As above

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<b>Carers</b>	As above	As above	As above
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## 8. Amendments to the proposals

Change	Reason for change
None – these will be reviewed during and post consultation.	

## 9. Action plan

Potential impact (positive or negative)	Action needed to maximise positive impact or mitigate negative impact	By when	Owner
Exercising power to charge – this is in line with our current charging policy	This is going out to consultation and there will be a further impact assessment carried out on completion of the consultation.	February 2015	Toni Carney
Power to make a charge for putting in place the arrangements – might put off self funders from approaching the council for assistance	As above	As above	As above
Increasing the amount of available income taken from 80% to 90%	As above	As above	As above
Universal deferred payments scheme	As above	As above	As above

## 10. Potential negative impacts that cannot be mitigated

Potential negative impact	Protected characteristic(s) that could be affected
Increasing the amount of available income taken from 80% to 90% (as above)	Age, disability, carer
Power to make a charge for putting in place the arrangements.	Age, disability, carer

## 11. Summary of key impacts and actions

<b>Information and engagement underpinning equalities analysis</b>	The initial assessment has been undertaken this will be reviewed and revised following the consultation process
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<p><b>Key impacts (positive and/or negative) on people with protected characteristics</b></p>	<p>1) <i>Exercising power to charge:</i></p> <ul style="list-style-type: none"> <li>This is in line with current charging policy and therefore no impacts have been identified.</li> </ul> <p>2) <i>Power to make a charge of an administration fee where a person is able to pay the full cost of their care and support</i></p> <ul style="list-style-type: none"> <li>This may have a positive impact on Surrey residents needing care and support who would normally have to make their own arrangements. This group will be able to access services at a lower rate which will offset any administration fee charged.</li> <li>A potential negative impact is that people who fund their own care may be put off using Surrey services due having to pay an administration fee.</li> </ul> <p>3) <i>Increasing the amount of available income taken from 80% to 90%</i></p> <ul style="list-style-type: none"> <li>Increasing the amount taken to 90% will bring greater income to Adult Social Care which may benefit vulnerable people using services which could be sustained or increased in light of the increase to income.</li> <li>A negative impact of this policy would be that the disposable income of vulnerable residents would be lowered if the council takes more in way of contributions to care.</li> </ul> <p>4) <i>Universal deferred payments scheme</i></p> <ul style="list-style-type: none"> <li>This scheme will benefit those who own their own homes that need to go into residential or nursing homes providing greater choice and flexibility.</li> <li>Negative impacts have not been identified, but will be further analysed pending the public consultation.</li> </ul>
<p><b>Changes you have made to the proposal as a result of the EIA</b></p>	<p>None – pending consultation response</p>
<p><b>Key mitigating actions planned to address any outstanding negative impacts</b></p>	<p>A public consultation will be carried out to identify any further mitigating actions that may be required.</p>
<p><b>Potential negative impacts that cannot be mitigated</b></p>	<p><i>Increasing the amount of available income taken from 80% to 90%</i></p> <ul style="list-style-type: none"> <li>The disposable income of vulnerable residents would be lowered if the council takes more in way of contributions to care.</li> </ul>

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