

**SURREY COUNTY COUNCIL****CABINET****DATE: 25 NOVEMBER 2014****REPORT OF: MR MEL FEW, CABINET MEMBER FOR ADULT SOCIAL CARE****LEAD OFFICER: DAVID SARGEANT, STRATEGIC DIRECTOR ADULT SOCIAL CARE****SUBJECT: IMPLEMENTING THE CARE ACT – CHARGING POLICY PROPOSALS****SUMMARY OF ISSUE:**

From 1 April 2015, local authorities must implement part 1 of the Care Act 2014. Fundamental reforms to the way in which people pay for their care will become law from April 2016. The Act provides the opportunity to introduce some relatively minor adjustments to the way that the charging system for care and support operates from April 2015.

Under the Care Act, new rules for charging will apply when a local authority arranges care and support to meet a person's support needs. In certain circumstances, the act states that care and support must be provided free of charge, for example, free reablement support for up to six weeks; whilst in other circumstances, the local authority may ask the person to pay towards the cost of providing support, for example, support at home or in residential care. There are also circumstances when the local authority is prohibited from contributing towards the cost of a person's care and support, for example when a person in residential care has savings or capital above a prescribed limit.

This report provides an overview of the key changes to the charging arrangements from April 2015 that would require consultation to implement.

**RECOMMENDATIONS:**

It is recommended that the Cabinet agrees:

1. The Council will consult on the following proposals as part of a revised charging policy for adult social care services:
  - The Council exercises the power to charge for residential and nursing care and non-residential services in every case, unless it is prohibited from doing so by law or determines not to do under Council policy.
  - 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 terms and conditions.
  - The Council will increase the percentage of available income taken in charges

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for non-residential services by 10% with effect from 1 April 2015

- The Council will consult widely on the discretionary elements of the new deferred payment scheme.
2. The Cabinet receives a further report at its meeting on 24 February 2015, detailing the response to the consultation and proposed Charging Policy.

#### **REASON FOR RECOMMENDATIONS:**

The Council has previously consulted on the policy of charging for care and support. The recommendations made in this report do not significantly change charging for the majority of people currently receiving care and support but it is right that we consult people who may be adversely affected by the revised proposals. A clear and transparent policy on charging enables people to make advanced decisions about their care and support arrangements.

#### **DETAILS:**

##### **Power to make a charge for residential and nursing provision**

1. 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.
2. The Council will need to determine whether or not it intends to exercise its' power to charge for residential and nursing provision as well as non-residential services. The income from charging for 2014/15 will be in the region of £42 million; approximately £36 million from residential and nursing care support and the balance from non-residential contributions.
3. Income from charging is an essential contribution to Adult Social Care's budget to help maintain front-line services and it is recommended 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 or otherwise outside of our current policy.

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

4. If, after undertaking a financial assessment, the Council identifies that a person's resources are above the upper capital limit<sup>1</sup>, 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 on behalf of the person in accordance with the Council's usual terms and conditions. In

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<sup>1</sup> the amount of savings above which the person must pay the full cost of their residential care, currently £23,250

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.

5. 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**

6. 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 £440k per annum income. It is recommended that we consult on the proposal to increase the percentage of net disposable income by 10% to 90%.
7. There are currently 1609 people in Surrey who would be directly impacted by this proposal; i.e. those people assessed to pay a contribution. People assessed to pay the full cost or receiving free services are not affected by this proposal. The average weekly increase is £5.27 per week; the range of increase will be £0.23 to £52.92 per week.

### **Universal Deferred Payment Scheme**

8. Under the current arrangements, deferred payment agreements<sup>2</sup> 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 Annex 1.
9. There are a number of discretionary aspects to the scheme where policy decisions need to be made:

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<sup>2</sup> The deferred payment scheme is designed to help a person who has been assessed to pay the full cost of their care home fees but cannot afford to pay the full amount immediately because their capital is tied up in their home. The Council pays the fees in exchange for a legal charge on the person's property. The fees are repaid to the Council when the property is sold.

- 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.
- 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
- 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
- The Council is permitted to charge an administration charge to include any reasonable costs incurred by the Council in relation the deferred payment agreement

10. It is recommended that we consult on the discretionary elements of the deferred payment scheme widely in order that we achieve a wide cross section of views.

#### **CONSULTATION:**

11. Consultation on the Council's charging policy will take place from mid December for a period of 6 weeks. We will write to people currently in receipt of a chargeable service. The outcome of that consultation will be referred back to Cabinet for further discussion and decisions on the final charging policy.
12. Consultation on the discretionary elements of the deferred payment scheme will take place via the Council's website and other sources at the earliest opportunity for a period of 6 weeks. The proposals on the final deferred payment policy will be referred back to Cabinet.

#### **RISK MANAGEMENT AND IMPLICATIONS:**

13. There is a reputational risk if the Council implements policy changes but fails to consult on matters where the public expect to be consulted. The recommendations in this report will address the risk.

#### **Financial and Value for Money Implications**

14. Continuing to charge for residential and non residential care is essential in order to sustain the Adult Social Care budget. A decision not to charge would cost the Council up to £42m of receipts annually. This income could not be replaced by savings or alternative funding sources and so reductions in service provision would be required in order to make up the shortfall.
15. In light of the financial pressures the Council faces, it is equally important that any new charging policies do not create an additional administrative burden. As such, it is appropriate that, subject to consultation, administration charges

are levied on commissioning care for individuals who have the means to pay for their own care and for offering deferred payment agreements. This will ensure that front line services are not affected by these policy changes.

16. The proposal to increase the percentage of disposal income taken into account when calculating assessed charges for non residential care to 90% is estimated to generate £440k of additional income towards the forward budget. This will again help to reduce the impact on front line services and will bring Surrey in line with the majority of other local authorities.
17. Consultation costs will be met from funding received for implementing the Care Act.

#### **Section 151 Officer Commentary**

18. The income received from charging for social care is an important aspect of the Council's overall funding. The Section 151 Officer supports the policy changes outlined in this report in order to maintain (and potentially increase) income levels and avoid additional costs arising as a result of some of the new requirements of the Care Act.

#### **Legal Implications – Monitoring Officer**

19. Whilst there is no statutory duty to consult on proposals to change the way in which a Local Authority carries out its duties, there is an expectation enshrined in case law that any local authority making decisions affecting the public will do so fairly and in a way that cannot be said to be an abuse of power. A number of the proposals referred to in this report relate to a desire by the Authority to make a charge to its residents using a power rather than a duty. It is therefore important to test the fairness of that approach in a consultation exercise. The accepted method by which a Local Authority can demonstrate its adherence to the fairness principle is by consulting on any changes which would have the effect of withdrawing existing benefits or advantages available to its residents. Such consultation will need to involve those directly affected by such changes together with the relevant representative groups. The responses to the consultation will need to be conscientiously taken into account when the Cabinet makes any future decision in relation to the home

#### **Equalities and Diversity**

20. The equalities impact assessment can be found in Annex 2. This is an initial assessment that will be updated during the development of the Charging Policy. At this stage, a negative impact which cannot be mitigated has been identified in relation to the recommendation to increase the percentage of available income taken in charges for non-residential services by 10% with effect from 1 April 2015.

#### **WHAT HAPPENS NEXT:**

- Consultation on the Council's charging policy will take place from mid December for a period of 6 weeks.
- Consultation on the discretionary elements of the deferred payment scheme will take place widely at the earliest opportunity for a period of 6 weeks.

- Subject to agreement a report on the outcome of both consultation exercises will be brought back to Cabinet 24 February 2015, with the proposed Charging Policy.
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**Consulted:**

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William House – Senior Principal Accountant  
Deborah Chantler – Principal Lawyer

**Annexes: Annex 1 Universal Deferred Payment Scheme  
Annex 2 Equalities Impact Assessment**

**Sources/background papers:**

- Care Act 2014
  - Care Act 2014 Impact Assessment
  - Care and Support Statutory Guidance
  - The Care and Support (Deferred Payment) Regulations 2014.
  - The Care and Support (Charging and Assessment of Resources) Regulations 2014
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