

SURREY COUNTY COUNCIL**CABINET****DATE: 24 FEBRUARY 2015****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****SUMMARY OF ISSUE:**

From 1 April 2015, local authorities must implement part 1 of the Care Act 2014. Under part 1 of the Act, new rules for charging will apply when a local authority arranges care and support to meet a person's support needs. These rules include discretionary powers to be determined by local policy.

At the Cabinet meeting on 25 November 2014, it was agreed that the Council would consult on the proposals to revise the charging policy for adult social care services.

This report summarises the responses to the consultation and sets out a new charging policy for adult social care services and a new deferred payment policy. The Cabinet should consider the summary of consultation responses which can be found at Annex 1.

RECOMMENDATIONS:

It is recommended that:

1. The Cabinet approves the new charging policy for Adult Social Care at Annex 2.
2. The Cabinet approves the Deferred Payment Policy and schedule of charges at Annex 4.

REASON FOR RECOMMENDATIONS:

The Council must revise its current Charging and Deferred Payment Policies to meet the requirements of the Care Act 2014. The proposed policies provide an open and transparent framework which will enable people to make informed decisions about how their care and support needs may be met.

The proposals do not significantly change charging for the majority of people currently receiving care and support.

The recommended Deferred Payment Policy provides more flexibility to people in relation to how they fund their care and support and is in line with the legislation, allowing people to pay for residential care without needing to sell their homes during their lifetime to cover the cost of their care.

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| <u>DETAILS:</u> |
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Introduction

1. This report sets out the key proposals for a new charging policy and a new deferred payment policy from 1 April 2015, to comply with the Care Act. In particular, it addresses charging for Adult Social Care Services using the new power under the Care Act as well as power to charge an administration fee for arranging care for people who could otherwise self-fund.
2. This report also highlights key recommendations in the charging policy concerning, the amount of net available income taken in charges, the treatment of capital and the Council's position on charging carers.

Charging for Adult Social Care Services

3. Under the existing legislation, local authorities have a legal duty to charge for residential and nursing care and a *power* to charge for non-residential services. The Council has previously determined that it will exercise the power to charge for non-residential services in addition to the statutory duty to charge for residential and nursing care. Income from charging for 2014/15 will be in the region of £42 million. This income is an essential contribution to Adult Social Care's budget
4. Under the Care Act 2014, the legal basis for charging for *any* adult social care services changes to a power to charge. This means that from 1 April 2015, a local authority must determine whether or not to exercise this new power to charge.
5. The Cabinet agreed, on 25 November 2014, to consult on whether or not to exercise this new power. A summary of the consultation responses is attached at Annex 1, paragraph 1.
6. It is recommended that the Council continues to charge for all residential and nursing care and non-residential services as set out in the charging policy at Annex 2.

Power to make a charge for putting arrangements in place

7. Under the current rules, local authorities may only recover the direct costs of providing or arranging services, that is, the actual cost of a residential or nursing placement or the cost of care and support at home.
8. From 1 April 2015, when a person (known as a full-cost payer) has capital above the upper capital limit, (currently £23,250) and the Council has a duty to make arrangements for their care and support needs to be met in a residential or nursing care home, or the Council is requested to meet the person's needs in their own home, local authorities may charge an arrangement fee. The arrangement fee or 'administrative charge' may cover the cost of managing the contract with the provider and any administration costs.
9. The Council currently funds around 200 care home placements and recovers the full charge from the person. An administrative charge would enable the

Council to recover the costs of managing any new placements in future in addition to recovering the cost of the placement.

10. From 1 April 2015, the Council's preferred arrangement for meeting the care and support needs of people in their own homes will be via a direct payment net of any contribution. For those people who are required to pay the full cost of their care, there would be no administrative costs involved and therefore no similar administrative charge.
11. The Cabinet agreed to consult on whether or not to charge a fee to cover the cost of putting arrangements in place for those people who are required to pay the full cost of their care and move into a residential or nursing care home. A summary of the consultation responses is attached at Annex 1, paragraph 2.
12. It is recommended that an administrative charge will be made for residential and nursing placements. The administrative charge will reflect the cost incurred in putting the arrangements in place, including any ongoing costs. It is estimated that the average set up cost of putting arrangements in place is equivalent to £265 per placement with an annual charge of £75. If agreed, these charges will take effect from 1 April 2015 and will be subject to annual review.

Percentage of available income taken in charges

13. Under the current charging policy for non-residential services, the financial assessment calculates the service user's gross weekly income, less certain disregarded income, less statutory allowances, certain housing costs and any disability related expenditure to determine the amount of net available income left over for charging. The Council's current charging policy is to take 80% of the net available income in charges.
14. Many neighbouring local authorities take between 90% and 100% of net available income. A table to show the comparison with other local authorities is attached at Annex 3.
15. The Cabinet agreed to consult on whether or not to increase the amount of available income taken in charges from 80% to 90%. A summary of the consultation responses is attached at Annex 1, paragraph 3.
16. It is recommended that the Council increases the percentage of available income taken in charges from the current 80% to 90%. The level of the disagreement with this proposal has been considered along with the potential benefit to the Council in supporting the sustainability of adult social care services. If agreed the increase would take effect from 1 April 2015.

Treatment of capital

17. The new charging regulations prescribe a capital limit (above which people pay the full cost of their care and support) of £23,250 for both residential and non-residential services. Under Surrey County Council's current charging policy, which was set in 2003, the capital cut-off limit for non-residential services is £24,500. It is likely that the national capital cut-off limit will increase to £27,000 in April 2016, it is recommended that the Council retain the capital limit £24,500 for non-residential services and revisit this item in 2016.

18. Where a person has capital between the lower limit (£14,250) and upper limits (£23,250), the charging regulations treat each £250 of capital as equivalent to £1 weekly income. This is known as tariff income. The Council's charging policy for people receiving care and support at home, is to use tariff income on capital equivalent to the amount of interest the person could earn if the capital was invested in a high street bank or building society account. This approach was agreed as part of the consultation in 2003. The new charging rules do not permit tariff income to be calculated in this manner. It is therefore recommended that we disregard income from capital for those people receiving care and support at home. This will reduce the Council's overall income by approximately £1,700 per annum.

Charging Carers

19. The new regulations on charging can be applied to both adults and carers receiving services where the carer is the direct recipient of the service. The Council will need to determine whether or not it intends to charge carers. Carers make a significant contribution towards care and support at home that would otherwise incur additional costs for the Council. It is proposed that the Council will not introduce charging for carer's services.

Universal Deferred Payment Scheme

20. Currently, deferred payment agreements are discretionary. At any one time the Council has approximately 80 agreements in place and proactively offers the scheme to people who meet our criteria. From 1 April 2015, local authorities must offer a deferred payment to people who meet the basic eligibility criteria for the national scheme.
21. The Cabinet agreed to consult on the operation of the new deferred payment scheme.
22. There was a very limited response to the deferred payment consultation despite the efforts to raise awareness of it, only four responses were received. Consequently the responses have not significantly influenced the proposals. It is recommended that the Council implement the scheme from 1 April 2015 as set out in the policy at Annex 4. The discretionary elements of the scheme to be determined by local policy are:
- The Council is permitted to offer a deferred payment agreement to people who do not meet the basic eligibility criteria. The proposed response to this new power is covered in paragraphs 11 and 12 of the policy document at Annex 4. In particular they reflect promotion of the use of deferred payments to encourage people to consider supported living and extra care housing arrangements as an alternative to residential care.
 - 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. It is recommended that we will require a contribution from a person's income to minimise the level of debt.
 - The Council is permitted to accept forms of security other than the first legal charge on a property. It is recommended that the Council would consider this on a case by case basis if a first charge on a property were not available.

- 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. It is recommended that the Council will charge interest at the maximum amount specified in regulations. The interest rate to be applied from 1 April 2015 is 2.65%.
- The Council is permitted to charge an administration charge to include any reasonable costs incurred by the council in relation the deferred payment agreement. At the Cabinet meeting on 25 June 2013, it was agreed that the Council charge legal fees of £250 plus the cost of any Land Registry fees for any deferred payment application whether or not the matter proceeded to completion and a further £125 for the work involved in discharging the legal charge. It is recommended that the Council extend the charges as set out in the schedule of charges attached to Annex 4. If agreed, these will apply from 1 April 2015 to all new applications.

CONSULTATION:

23. Consultation on elements of the Council's charging policy took place from 15 December 2014 for a period of 7 weeks. Consultation documents were issued to 6,400 people in receipt of non-residential chargeable services and 1662 completed questionnaires were received; a response rate of around 26%. An analysis of the responses received is attached at Annex 1.
24. The Council gave people an opportunity to comment on the consultation and a wide range of views were expressed, ranging from those people who disagree with charging for social care to those people who believe that it is reasonable to make a charge if a person can afford to contribute towards their social care and support. These responses are summarised at Annex 1.
25. Consultation on the discretionary elements of the deferred payment took place during the same period. Surrey County Council received just 4 responses to the consultation. This is despite the fact that we circulated information to all Surrey libraries, the Hubs and to the organisations represented at the Care Act Implementation Board. Details of the consultation were also included in a newsletter to 2,000 people on the Surrey Disability Register and to 1,600 staff and partners in the electronic newsletter for Adult Social Care.
26. The Council will monitor take-up of the new scheme from April 2015 to determine whether changes are necessary to improve access to the scheme. There will be a further opportunity to revisit the scheme as part of the implementation of the funding reforms in 2016.

RISK MANAGEMENT AND IMPLICATIONS:

27. 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 reflect both the response rate and the analysis of responses received.

FINANCIAL AND VALUE FOR MONEY IMPLICATIONS:

28. 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.
29. 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 services budget and would bring Surrey in line with the majority of other local authorities.
30. In light of the financial pressures the Council faces, it is equally important that any new charging policies do not create any 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.

Section 151 Officer Commentary

31. 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 income levels to support the delivery of Adult Social Care services and avoid additional costs arising as a result of some of the new requirements of the Care Act.

Legal Implications – Monitoring Officer

32. In recognition of its duty to consult, the Council carried out a 7 week consultation process which resulted in 1,662 completed responses. The consultation exercise was directed at consultees who were considered most likely to be affected by the proposals. All responses have been collated, summarised and will be considered by the Cabinet prior to making a decision on the recommendations made in this report. The Council is therefore satisfied that the duty to consult has been fulfilled.

Equalities and Diversity

33. The equalities impact assessments can be found at Annex 5 and 6.

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| <u>WHAT HAPPENS NEXT:</u> |
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34. Subject to the Cabinet agreeing the recommendations:
- a) The Council will publish its revised policies on its website
 - b) Use the policies to revise its relevant public information
 - c) The policies will be implemented from 1 April 2015
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Contact Officer: Toni Carney, Head of Resources, Adult Social Care, 01483 519473

Consulted:

David Sargeant – Strategic Director Adult Social Care
 William House – Finance Manager
 Deborah Chantler – Principal Lawyer

Annexes: **Annex 1 Responses to the Consultation**
Annex 2 Charging Policy – Adult Social Care Services
Annex 3 Table of other local authorities % of available income
Annex 4 Deferred Payment Policy April 2015
Annex 5 Equalities Impact Assessment – Charging Policy
Annex 6 Equalities Impact Assessment – Deferred Payment Policy

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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