



Cabinet (Resources) Panel

3 March 2015

Report title	Charging and contributions policies for adult social care	
Decision designation	AMBER	
Cabinet member with lead responsibility	Councillor Steve Evans Adult Social Care	
Key decision	Yes	
In forward plan	Yes	
Wards affected	All	
Accountable director	Linda Sanders, People	
Originating service	Older People	
Accountable employee(s)	Helen Winfield Tel Email	Head of Service – Financial Support Services 01902 553353 helen.winfield@wolverhampton.gov.uk
Report to be/has been considered by	N/A	

Recommendation(s) for action or decision:

The Cabinet (Resources) Panel is recommended to:

1. Approve that the Council exercises its power to charge for residential and nursing care and non-residential care and support in every case, unless it is prohibited from doing so by law or determines not to do so under Council policy
2. Approve the arrangement fee in any non-residential case where the person is able to pay the full costs of their care and support but nevertheless the person asks the Council to make the arrangements under the Council's usual terms and conditions (outlined in paragraphs 3.5)
3. Approve the annual uplifted contributions to non-residential care and support from 1 April 2015 (outlined in paragraph 3.6 and Appendix A)

4. Confirm that the policy of not charging for carers services be continued pending a review to establish the best use of resources in relation to enhanced Care Act responsibilities (outlined in paragraph 4.7)
5. Approve the use of the maximum permitted interest rate and administrative costs (outlined in paragraph 5.6) for the Council's revised Deferred Payment and Loan Policy
6. Approve the proposal to undertake a review of charging and contributions policies between now and October 2015 in the light of the Care Act funding reform changes to be implemented from April 2016 (outlined in paragraphs 6.1 to 6.9)

1.0 Purpose

- 1.1 This report will set out the rights of the Council to charge for adult social care and support under the Care Act 2014. It will set out proposed new charges for people who request the Council arrange their care and support even though they have the finances to pay it themselves. The report also sets out proposed charges under a Deferred Payments Agreement and Loan Policy in accordance with the Care Act. Finally, it will set out the proposed contributions for non-residential care and support following annual inflation uplift from April 2015. This report does not significantly change charging for the majority of people currently receiving care and support.

2.0 Background

- 2.1 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 contributions/charging system for care and support operates from April 2015. Under the Care Act, new rules for charging will apply when a Council arranges care and support to meet a person's care and support needs. In certain circumstances, the Act states that care and support must be provided free of charge, for example, intermediate care for up to six weeks; however in other circumstances, the Council may ask the person to pay towards the cost of providing care and support, for example, support at home or in residential care. There are also circumstances when the Council 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.
- 2.2 The Care Act 2014 now gives the Council a right rather than a duty to charge for certain care and support. The Act also establishes a Council duty to offer a Deferred Payment Agreement to those who wish to use an asset, usually an owned property, to defer their costs towards residential and nursing care. This Council already has such a scheme in place. The Act does give the Council a new power to use a compound interest rate on the deferred amounts and also to recover reasonable costs for setting up such agreements.

3.0 Power to Make Charges

- 3.1 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. 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 under the Health and Social Services and Social Security Adjudications Act 1983. This means that from April 2015 a Council may make a charge under Section 14 of the Care Act for meeting needs but is no longer required to do so. The exception to this is where a person in a care home has assets above the upper capital limit; in this situation the Council is precluded from paying towards the cost of care and support.

- 3.2 The Council needs 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 £18.2 million; approximately £14.0 million from residential and nursing care support and the balance of £4.2 million from non-residential contributions.
- 3.3 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.
- 3.4 The legal framework for charging is set out in Sections 14 and 17 of the Care Act. When choosing to charge, a Council must not charge more than the cost that it incurs in meeting the assessed needs of the person. It also cannot recover any administration fee relating to arranging that care and support unless a person with eligible needs has assets above the upper capital limit and has asked the Council to arrange their non-residential care and support on their behalf. In such cases where a person does have assets above the upper capital limit, the Council may apply an arrangement or administration fee to cover its costs.
- 3.5 It would be costly to make arrangements for those who have the means and capacity to make their own arrangements and the usual response in these circumstances has been to offer information and advice to enable the person to make their own arrangements. However, under the Care Act there is a duty (spelt out in paragraph 8.55 of the statutory guidance) to meet eligible need in cases where a person asks the Council to do so irrespective of their resources. Where such arrangements are made for a person whose resources are above the capital limit it is recommended that the Council exercises this power. The power to levy an arrangement fee in similar circumstances for residential and nursing cases is due to come into force in 2016 but is currently being reviewed. It is proposed that that a level of costs that are reasonable and do not exceed the actual costs involved will be charged. The proposed indicative charge is £150.00 which will be subject to review under the annual fees and charges exercise.
- 3.6 On the basis that the Council exercises its right to charge for non-residential care and support it is proposed to uplift the current contributions with effect from 1 April 2015. The proposed rates reflect the 1% increase in basic working age benefits (as per the welfare reform cap) and a 1.2% increase in Attendance Allowance (AA)/Disability Living Allowance (DLA)/Personal Independence Payment (PIP). A 1% rise has been therefore been applied to Band B/C and a 2.2% rise for all other bands. The proposed rises for the lower and higher rate contribution bands for very sheltered housing, supported living and shared lives reflect the actual increase in the rate of AA/DLA/PIP and the actual rise in the amount for severe disability. It is not proposed to change the formula of 50% of the AA/DLA (middle and higher rates only)/PIP plus 80% of the amount for severe disability for contributions towards the cost of these types of 24 hour care and support.
- 3.7 These proposed increases to contributions are detailed in the **Appendix A** to this report. Cabinet (Resources) Panel on 9 December 2014 agreed to receive a separate report (to that for Fees and Charges) for Adult Social Care Charges.

- 3.8 Major funding reforms are due in April 2016 (see part 6 below). Draft regulations (*The Care and Support (Cap on Care Costs, etc.) Regulations 2015*) and draft statutory guidance are currently subject to government consultation which ends on 30 March 2015. When these are finalised in late 2015 the impact of this will need to be considered alongside the annual review of charges and contributions and the overall policies.
- 3.9 The annual review of adult social care charges and contributions will, in future, take place in October in accordance with the corporate realignment of increases to fees and charges.

4.0 Carers Services

- 4.1 It is recognised that carers play a vital role in the care and support system, it is estimated that nationally carers provide £87 billion worth of care (Carers Trust 2014).
- 4.2 Where a carer has eligible support needs of their own, as set out in the Care Act 2014, the Council, for the first time, has a duty to arrange support to meet these eligible needs. It also has powers to provide services which do not meet the eligibility criteria, for instance as a preventative measure.
- 4.3 Where a Council is meeting the needs of a carer by providing support directly to them, it has the power to charge the carer.
- 4.4 This Council does not currently charge for support delivered to carers directly. Estimates on the income of the Care Act regarding the volume of carers seeking direct carer support cannot be based upon existing activity so this area will need to be part of the review following implementation of the Act from 1 April 2015.
- 4.5 In addition, this Council does not currently charge for non-residential support delivered to the person with care and support needs where the primary objective is to support the carer. This currently includes approximately 400 carers. The review will need to examine this area too.
- 4.6 With Care Act responsibilities for carers' support needs, the Council will have to balance the value of the caring role with the risk of a significant increase in the number of carers with eligible support needs whom the Council will have a duty to support. The Council may therefore need to consider whether carers (with a wide range of income and capital levels) should be expected to contribute to the cost of any support they receive.
- 4.7 On this basis it is recommended that the current policy of not charging for carer support remains in place, until October 2015, pending the outcome of a review to establish the best use of Council resources in relation to Care Act responsibilities for carer support needs.

5.0 Deferred Payment Agreement and Loan Policy

- 5.1 Under the current arrangements, deferred payment agreements are discretionary. From 1 April 2015, Councils must offer a deferred payment agreement to people who meet the eligibility criteria for such a scheme.
- 5.2 This Council has a deferred payment scheme in place already. In light of the Care Act the policy related to the scheme has been reviewed and the revised policy has been approved by the Care Act Programme Board. The policy is included as part of the background papers for this report. The summary of changes to the policy is as follows, and principally covers discretionary aspects provided under the new regulations:
- The Council is permitted to offer a deferred payment agreement to people who do not fully meet the eligibility criteria e.g. where a person has slightly more than the upper capital limit in liquid assets or where a person's care and support is provided in supported living accommodation rather than a care home.
 - 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 fee to include any reasonable costs incurred by the Council in relation the deferred payment agreement e.g. Land Registry costs.
- 5.3 There are some 120 Deferred Payment Agreements in operation and it is expected that there will be a turnover of some 30 ending and new ones established in 2015/16.
- 5.4 The interest rate for deferred payments is based on the cost of government borrowing. The regulations and statutory guidance for the Care Act 2014 set out the maximum interest rate chargeable by the Council, which is derived from the 15-year average gilt yield. The Council can charge less than this rate (or can charge no interest at all), but cannot charge more than the nationally-set maximum rate, which is derived by adding this gilt yield rate to the default component (0.15 %). On the basis of the current gilt rate (2.5 per cent) it is proposed that the compound interest rate that the Council will charge from 1 April 2015 to 30 June 2015 will be 2.65 per cent.
- 5.5 The rate which will be applicable from 1 July 2015 to 31 December 2015 will be dictated by the next fiscal event with the rate matching the figures published by the Office for Budget Responsibility (OBR) in the coming months. It is proposed that the Council will use the maximum allowed interest rate.
- 5.6 The costs for the Council of setting up an agreement vary if the property is registered or unregistered with the Land Registry. Based on reasonable costs from current agreements it is proposed that if the property used as part of the agreement is registered

then the cost will be £396.00 and if the property is unregistered and will need to be registered then the cost will be £596.00. It is recommended that the Council include these amounts with the deferred debt or, if a customer requests, charge for them separately 'up-front'.

- 5.7 This Council also incurs costs in respect of monitoring deferred payment agreements. However, this can vary quite considerably between agreements and therefore it is recommended that no additional fees are charged in 2015/16 other than the legal fees previously discussed (paragraph 5.6 above) and that the establishment of other charges should be considered as part of the next fee and charges exercise.

6.0 Funding Reforms under the Care Act 2014 to be implemented in April 2016

- 6.1 From April 2016, the Care Act 2014 introduces major financial changes to the provision of care and support. A '**cap**' on care costs, '**independent personal budgets**' and '**care accounts**' will be introduced (as outlined below).
- 6.2 Where a person is assessed as having eligible care and support needs but is not eligible for financial support to meet them due to the level of their resources, Councils will have a duty to provide the person with an **independent personal budget** setting out what it *would* cost the local authority.
- 6.3 Councils must set up and update a **care account** for all people with a **personal budget** (where they are eligible for financial support) or an **independent personal budget** (where they are not eligible for financial support) which details the costs (or notional costs in the case of an independent personal budget) of meeting their eligible needs for care and support.
- 6.4 When the total amount accrued in the **care account** reaches the **cap** figure to be defined in regulations, the person becomes eligible for full funding for their care and support and will not be liable for charges. This figure is due to be set at £72,000 in 2016-17 and will rise each year in line with average earnings.
- 6.5 The **care account** will exclude the 'daily living costs' of people in residential care who will pay an amount of £230 per week (in 2016-17) towards meeting expenses associated with room and board. The Act ensures that progress towards the cap will not include people's contribution towards these 'daily living costs' and residents will be liable for daily living costs even when their accrued care costs reach the cap.
- 6.6 Financial support will need to be provided to more people overall to help them with care costs as the financial limit above which financial support from the Council is not available will increase from £23,250 to £118,000 including their share of the value of their home, if it is not otherwise disregarded.
- 6.7 Where the value of a care home resident's home is disregarded or where a person is receiving non-residential care and support at home, they will be eligible for financial support for their care and support if they have capital of £27,000 or less (instead of the current capital limit of £23,250 or less).

- 6.8 The Care Act 2014 includes a power to set the **cap** at different amounts for people of different ages in regulations, including a **zero cap** for specified categories of person, for example, people who have eligible needs for care and support at the point when they turn 18. People of working age who develop care needs before retirement age will benefit from a cap set lower than £72,000.
- 6.9 These major funding reforms are due to be implemented in April 2016. Draft regulations (*The Care and Support (Cap on Care Costs, etc.) Regulations 2015*) and draft statutory guidance are currently subject to government consultation which ends on 30 March 2015. When these are finalised in late 2015 the impact of this will need to be considered by the Council.
- 6.10 It is therefore proposed to undertake a further review of charging and contributions policies between now and October 2015 in the light of the Care Act funding reform changes to be implemented from April 2016

7.0 Financial implications

- 7.1 Continuing to charge for residential and non-residential care and support is essential in order to sustain the Adult Social Care budget. A decision not to charge would cost the Council up to £18.2 million of receipts annually. The proposed uplift of non-residential services will result in approximately £65,000 (based on the same number and profile of customers retaining their care and support).
- 7.2 In light of the financial pressures the Council faces, it is equally important that any new contributions or charging policies do not create an additional administrative burden. As such, it is recommended that administration charges are levied on commissioning care for individuals who have the means to pay for their own non-residential care and for those individuals to whom a deferred payment agreement is offered. This will ensure that front line services are not affected by these policy changes. Any administration charge will need to be robust and justifiable if challenged.
- 7.3 Based on an estimate of 10 care and support packages put in place for those people with assets above the threshold at an estimated cost of £150 each, this would equate to £1,500 of cost recovery per annum.
- 7.4 Based on an estimate of 30 new deferred payment agreements with an administration charge of £396.00 for 90 per cent of agreements and £596 for 10 per cent of agreements this would equate to £12,480 of cost recovery per annum.

[AS/20022015/S]

8.0 Legal implications

- 8.1 Any change to existing, or introduction of new charges are permitted or mandated by the Care Act 2014.
- 8.2 Whilst there is no statutory duty to consult on proposals to change the way in which a Council carries out its duties, there is an expectation enshrined in case law that any

Council making decisions affecting the public will do so fairly and in a way that cannot to be said to be an abuse of power. A number of 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.

- 8.3 A consultation exercise is underway which ends on Thursday 26th February 2015. The outcome will be reported verbally to the Cabinet (Resources) Panel.

[RB/17022015/S]

9.0 Equalities implications

- 9.1 The initial equalities analysis has been completed. The current policies for charging and contributions are being confirmed rather than substantially changed. The proposed increase to banded contributions for non-residential care and support will be an inflationary increase only which matches the inflationary increase proposed for social security benefits and therefore there will be no impact.
- 9.2 The introduction of new administrative charges, interest charges and arrangement fees will affect people who wish to enter a deferred payment agreement or have assets above the threshold and wish the Council to arrange for their care and support. This service will only be available for disabled people with eligible needs and there will be no adverse impact on any other protected characteristics.

10.0 Environmental implications

- 10.1 There are no direct environmental implications of this report.

11.0 Human resources implications

- 11.1 There are no direct human resource implications of this report.

12.0 Corporate landlord implications

- 12.1 There are no direct Corporate Landlord implications of this report.

13.0 Schedule of background papers

- 13.1 The following are documents that have relevance to the subject matter:

- Deferred Payment Agreements and Loan Policy under the Care Act 2014

Non-residential Banded Contributions			APPENDIX A
Table 1: Light-touch Financial Assessment for Sessional Support			
MAXIMUM AMOUNTS FOR THOSE WITH LESS THAN £23,250			
YOUR BAND	GETTING A MEANS-TESTED BENEFIT	YOUR WEEKLY CONTRIBUTION	
		April 2014	April 2015
A	You (or your partner) receive a means-tested benefit* and you do not receive Attendance Allowance**	No Contribution	No Contribution
B/C	You (or your partner) receive a means-tested benefit* and <u>you</u> receive Attendance Allowance**	£8.00	£8.08
D/E	You (or your partner) receive a means-tested benefit* and <u>you</u> receive Attendance Allowance** <u>and</u> an additional amount or premium for severe disability is paid for you	£64.20	£65.61
NOT GETTING A MEANS-TESTED BENEFIT			
F	You (or your partner) do not receive a means-tested benefit* and <u>you</u> do <u>not</u> receive Attendance Allowance**	£54.20	£55.40
G/H	You (or your partner) do not receive a means-tested benefit* and <u>you</u> receive Attendance Allowance **	£74.20	£75.84
AMOUNT FOR THOSE WITH MORE THAN £23,250			
J	Any income	Full Cost	Full Cost

Non-residential Banded Contributions			
Table 2: Light-touch Financial Assessment for Day and Night Support for People living in Very Sheltered Housing, Supported Living or 'Shared Lives' accommodation			
MAXIMUM AMOUNTS FOR THOSE WITH LESS THAN £23,250			
YOUR BAND	Amount of Attendance Allowance or Disability Living Allowance Care Component or PIP Daily Living Component	YOUR WEEKLY CONTRIBUTION	
		April 2014	April 2015
Lower	You receive Attendance Allowance at the lower rate or DLA middle rate care component or PIP standard rate Daily Living component	£76.10	£77.03
Higher	You receive Attendance Allowance at the higher rate or DLA higher rate care component or PIP enhanced rate Daily Living component	£89.53	£90.63
AMOUNT FOR THOSE WITH MORE THAN £23,250			
Full Cost	Any income	Full Cost	Full Cost

Non-residential Banded Contributions

Table 3: Light-touch Financial Assessment for Pocklington Supported Living

MAXIMUM AMOUNTS FOR THOSE WITH LESS THAN £23,250			
YOUR BAND	GETTING A MEANS-TESTED BENEFIT	YOUR WEEKLY CONTRIBUTION	
		April 2014	April 2015
A	You (or your partner) receive a means-tested benefit* and you do not receive Attendance Allowance**	No Contribution	No Contribution
B	You (or your partner) receive a means-tested* benefit and you receive lower rate Attendance Allowance**	£8.00	£8.08
C	You (or your partner) receive a means-tested* benefit and you receive higher rate Attendance Allowance**	£18.00	£18.08
D	You (or your partner) receive a means-tested benefit* you receive lower rate Attendance Allowance** and an additional amount or premium for severe disability is paid to you	£64.20	£65.61
E	You (or your partner) receive a means-tested benefit* you receive higher rate Attendance Allowance** and an additional amount or premium for severe disability is paid to you	£74.20	£75.61
NOT GETTING A MEANS-TESTED BENEFIT			
F	You (or your partner) do not receive a means-tested benefit* and <u>you</u> do <u>not</u> receive Attendance Allowance**	£54.20	£55.40
G	You (or partner) do not receive a means-tested benefit* and you receive lower rate Attendance Allowance**	£74.20	£75.84
H	You (or partner) do not receive a means-tested benefit* and you receive higher rate Attendance Allowance**	£84.20	£85.84
AMOUNT FOR THOSE WITH MORE THAN £23,250			
J	Any income	Full Cost	Full Cost

* The means-tested benefits are Pension Credit (Guarantee Credit) but not Pension Credit (Savings Credit), Income Support, Income-related Employment & Support Allowance (ESA) (but not Contributory ESA), Income-based Jobseeker's Allowance (but not contribution-based JSA) and/or Housing Benefit and/or Council Tax Reduction.

** Attendance Allowance or an equivalent rate of the Disability Living Allowance or Personal Independence Payment.

The April 2015 proposed rates reflect the 1% increase in basic working age benefits (as per the Welfare Reform cap) and a 1.2% increase in AA/DLA/PIP. A 1% rise has been applied for Band B/C and 2.2% for all other bands.