

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 20 May 2015	<b>Decision Taker:</b> Cabinet Member for Adult Care and Financial Inclusion
<b>Report title:</b>		Fees and Charges for Adult Social Care – incorporating 2014 Care Act Requirements	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Strategic Director of Children’s and Adults Services	

## RECOMMENDATIONS

Cabinet Member notes that the Care Act 2014 brings together and consolidates legislation relating to charging and agrees to the following:

1. a) To acknowledge the change to a *power* instead of a *duty* to charge for residential care and, pending wider consultation for the introduction of a fairer contributions policy, continue with the current charging policy for charges for adult social care (ASC).  
b) To agree to update the current level of charges in line with the current policy as set out in Appendix 1.
2. Introduce charges for arranging care and support for adults with care needs whose financial resources are above the financial limit (i.e. self funders) at the level of costs incurred by the council in making the arrangement.
3. Introduce charges for new DPAs (deferred payment agreements) set up under the 2014 Care in accordance with the Care and Support (Deferred Payments) Regulations 2014 (section 9 for interest and section 10 for administration costs).
4. To note that the proposals in this report are interim measures pending consultation and subsequent development of a fairer contributions policy that will be brought to Cabinet in the 2015/16 financial year.

## BACKGROUND INFORMATION

### Charging for Social Care under the Care Act 2014

5. The Care Act, which received Royal Assent in May 2014, encompasses various elements relating to adult social care that were previously contained in a number of different Acts. The elements include charging matters that have been brought together into the Act. Apart from consolidating the various pieces of legislation into one overarching statute, it also brings about various material changes. A significant change within this 2014 Care Act is a new discretion to charge for residential care. Previously Council’s had a duty to charge people for residential care - if they had sufficient means as defined in regulations.

6. The duty has been replaced with a power and thereby local authorities are not now bound to charge for residential care services. However, the Government especially in allocating funding to local government will continue to assume that local authorities will receive an element of income from charging users.
7. The Care Act, however, provides an opportunity to review the charging policy area and proposals for a consultation on fairer charging policy are currently being developed.
8. Taking into account the central government assumption of local authorities receiving income for charges for residential care and, pending wider consultation on proposals for a fairer contributions policy, this report recommends continuing with the current policies for charging as an interim measure. It also covers charging considerations for a number of new areas relating to Carers, self funders and the universal deferred purchase agreement that come into force from April 2015.

## KEY ISSUES FOR CONSIDERATION

### Charging Legislation

9. The legislative basis for charging for adult social care is now contained in the 2014 Care Act. Prior to the Act the legislative basis for charging was contained in the National Assistance Act 1948 and, Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 (HASSASSA).
10. Under the National Assistance Act 1948 all adult residential accommodation placements made by local authorities require a charge for the accommodation. If a resident cannot pay the full charge, the local authority is required to assess his or her ability to pay in accordance with the National Assistance (Assessment of Resources) Regulations 1992. The Charging for Residential Accommodation Guide (CRAG) supports these 1992 regulations by providing detailed provisions for charging for residential accommodation.
11. Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 gave councils a discretionary power to charge adult recipients of non-residential services. This was supplemented in 2003 with FACS (Fair Access to Care Services), which provided charging guidance for community services. FACS sets out the broad framework and minimum standard to be followed by councils when designing their charging policies. Both of the documents FACS and CRAG have been superseded by the Care Act; however, on closer examination the contents of the two documents have essentially been incorporated into the Care Act statutory regulations

### Policy implications

12. The significant change in the Care Act relates to charging for residential care; non residential care charging has broadly remained the same - a local authority has a power to charge for non residential care services. From April 2015 there will be similarly a *power* to charge for residential care instead of the previous *duty* to charge. So for residential care this represents significant change as currently all local authorities, subject to a means test, have to charge users using rules set out in CRAG. The change from a duty to a power to charge for residential care requires consideration within the wider context of a charging policy for adult social care that takes account of the overall financial context of the Council as a whole.
13. This report proposes to continue charging for both residential (and non-residential) based services pending wider consultation on a fairer contributions policy covering

both residential and community based services for adult social care. Such a decision is in keeping with the Council's general policy to charge for services in order to maximise income generation and collection whilst ensuring a fair price for all services reflecting the ability of the community to pay. The report also includes an update of current charges, pending the development of a more comprehensive fairer contributions policy, as set out in Appendix 1.

### **Charging for Carers**

14. The Care Act entitles carers to services appropriate to their needs from April 2015. Some carers could have financial resources at level that would require them to contribute towards the cost of any services provided. For such people with sufficient means, charging for carers services has to be considered. Carers, however, provide an invaluable service and help to extend local authority capacity to provide care services. The provision of services for carers will prolong existing arrangements whereby people who may need substantial support from the Council are instead looked after in the community by carers. Providing these people with appropriate support could sustain such existing arrangements whereas any charges may have a counter effect. Taking all of this into account this report proposes not to charge carers for any services that are provided to them under the Care act.

### **Self Funders**

15. Self Funders may choose to approach the Council for an assessment in 2015/16 in preparation for the care cap when it comes into operation. A major unknown is how many of these self funders will present themselves and when. Given that the care cap comes into operation in 2016/17, it is unlikely that many self funders will present themselves for an assessment in the early part of 2015/16.
16. However, self funders are likely to present themselves to the Council for assessment of their care and support needs from October 2015 onwards. Some of these may also request the Council to arrange their care and support for which they will pay themselves. The Care Act allows the Council to charge the costs incurred by the Council for arranging the care and support. The regulations require the charges to be limited to the costs incurred by the local authority in arranging the care for self funders. In line with this this report proposes charging self funders on the basis of full cost recovery, which essentially involves recovering direct cost plus an allowance for overheads.

### **DPA**

17. Currently local authorities including Southwark have local deferred payment agreements (DPA). The agreements entered into as part of these existing local schemes will be expected to continue until they run their course. However, the Care Act contains a national scheme which will come into force from April 2015 and will apply to all new cases from this point onwards. The Care Act Regulations set out the general framework for the national DPA scheme. Under the Act, DPA's must be offered to anyone who is eligible for such an agreement. They may also be offered to others who do not meet the nationally set criteria.
18. There will be associated charges for the new scheme and these will need to be included within the charging arrangements. The DPA scheme is intended to be run on a 'cost neutral basis' so local authorities will only be able to recoup costs for both administration and lost interest. Charging arrangements need to be in place for the first of the people who may take up a DPA under the new scheme.

20. Charges for DPA's will include components to recover interest and administration costs including the legal costs of setting up charges on properties. The actual charges will be set up in line with the Care and Support (Deferred Payments) Regulations 2014. Section 9 sets out the regulations for determining the interest element. Section 10 sets out the elements to be taken into account for administration costs. This report proposes introducing charges for DPA in line with section 9 and 10 of the Care and Support (Deferred Payments) Regulations 2014 as set out in the local Southwark Council Deferred Payments Policy (Appendix 2).

### **Community impact statement**

21. The Public Sector Equality Duty, at section 149 of the Equality Act, requires public bodies to consider all individuals when carrying out their day to day work – in shaping policy, in delivering services and in relation to their own employees. It requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between different people when carrying out their activities. The council's Approach to Equality ("the approach") commits the council to ensuring that equality is an integral part of our day to day business.
22. As this report involves a proposal to largely carry on with the current charging policy, there is no adverse impact relating to equality upon the community as a whole or in particular in relation to race, gender, disability, sexual orientation and gender identity, religion and faith, marriage, pregnancy and child care responsibilities, alongside that of age.
23. The proposed charges for the national scheme for Deferred Payments Agreements will be mainly relevant for small proportion of people from among the 620 or so older people in residential accommodation. However, the scheme as a whole should benefit anyone who wishes to take up the national scheme as it will provide them with an option of not having to sell their home to pay for their care. This should be especially helpful at the time people come into care when there is a potential for considerable stress.
24. Charges for Self Funders for the arrangement their care and support for which they will pay themselves will potential impact on up to around 300 people. Traditionally self funders have made such arrangements without assistance from the Council. They may continue to do so in the future. However, as these Self Funders will need to come to the Council for assessment if they are to benefit from Care Cap, some of them may wish to take advantage of the Council's brokerage resources. The charges will be limited to the costs incurred by the Council and in return self funders will save time and effort and potentially money through prices that have been negotiated by specialists. An individual charge for a self funder will be determined on the basis of an assessment of time spent in providing the service.

### **Resource Implications**

25. The charges for both the self funders and DPA agreement are required to be broadly neutral. However, to the extent that some of the fixed costs that can be charged for are being currently incurred anyway, there will be a small income benefit. If any additional costs have to be incurred, for example through increased staffing in either of the areas - self funders support or for deferred purchase agreements - then these will be fully covered by the proposed charges.

## Consultation

26. The Government did not envisage a need for individual local authorities to carry out a consultation in incorporating the Care Act requirements for charging. Legal advice in this area obtained by the National Association of Financial Assessment Officers (NAFAO) suggests that a local authority continuing with its existing practice does not have a duty to consult. The same advice also does not consider there to be a duty to consult where the local authority proposes to change its existing practice to make use of its new power for residential care by exempting some people from a charge as there is no detriment to existing service user resulting from the change.
27. Similarly the new DPA provisions would not apply to any person who has an existing deferred payment agreement. As people with existing deferred payment agreements will not be adversely affected by any changes, there is no requirement for consultation according to the legal advice from NAFAO.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Annual Fees and charges for non-statutory adults' services <a href="http://moderngov.southwark.gov.uk/ie/DecisionDetails.aspx?ID=4338">http://moderngov.southwark.gov.uk/ie/DecisionDetails.aspx?ID=4338</a>	Southwark Council website	Maqsood Sheikh 020 7525 2270

## APPENDICES

No.	Title
Appendix 1	Annual Fees and Charges - Adults
Appendix 2	Deferred Payments Agreement Policy

## AUDIT TRAIL

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<b>Version</b>	Final	
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<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Legal Services	Yes	No
Strategic Director of Finance and Corporate Services	Yes	No
<b>Cabinet Member</b>	Yes	No
<b>Date final report sent to Constitutional Team</b>	20 May 2015	

## APPENDIX 1

### Annual Fees and Charges - Adults

Adult Social Care – Fees and Charges 2014/15 and Proposed Fees and Charges 2015/16

<b>Division/ Income Stream</b>	<b>Charges 2014/15 £</b>	<b><i>Uplift</i></b>	<b>Proposed Charges 2015/16 £</b>
Home Care (per Hour)	13.46	1.00	14.46
Day Centre Attendance (per day)	33.80	0.47	34.27
Welfare Meals – hot home delivery	1.71	0.02	1.73

Note that these proposals are interim pending the development of a more comprehensive fairer contributions policy that will be consulted on early in the new financial year (2015/16).

# Deferred Payments Agreement Policy

This document sets out the Council's Deferred Payments Scheme, which conforms with the 2014 Care Act.

## 1. Introduction

Sections 34-36 of the Care Act 2014 introduced a national Deferred Payments Scheme, which came into force from April 2015. The Council is consequently required to ensure that service users considering entering residential care are made aware of the ability to defer charges against their property for their care along with the criteria that is attached to eligibility for this Deferred Payments Scheme.

The general framework for the national scheme is set out in the related Care Act Regulations and the Council has to offer a Deferred Payments Agreement (DPA) to anyone who is eligible. However, the Council is also required to advise people wishing to take advantage of the scheme that they may wish to seek independent financial advice especially to be made aware any relevant alternatives.

The scheme allows local authorities to recoup costs as well as apply interest charges. In addition, the Council is also required to advise the service user or their representative that there is an administration charge when entering into a DPA and; that interest will be applied from day one of the agreement.

## 2. Local Policy Areas

The Care Act and the associated regulations provide the overall framework. However, the Council has scope to determine local policy on various discretionary aspects including extending or varying national guidelines. The local policy areas include:

- eligibility matters;
- assets used as security and valuation related matters;
- interest and other charges;
- other conditions included in the formal agreement.



This policy meets this need for local discretion and is set within the overall framework of the regulations including sections 9 and 10 of the Care and Support (Deferred Payments) Regulations 2014.

### 3. The DPA Offer

The Council will offer a DPA to anyone who meets the eligibility criteria and make them aware of the costs involved including the on-going interest charges. The DPA offer will be made on the proviso that the Council is able to obtain adequate security.

In addition, the Council will also consider deferring top up payments on the basis of the Assessment of Applicants as set out in Appendix 1.

The deferred payments will take effect when a formal agreement is entered into and this will be after the 12 week property disregard period. Before entering into a formal agreement a service user eligible for a DPA should be encouraged to seek independent legal and financial advice so that they may be made aware of alternatives such as renting of their properties.

### 4. Eligibility

In order to be able to apply for the Deferred Payment Scheme a service user must:

- have capital assets (excluding the property) of less than £23,250.
- be assessed by the Council's Adult Social Care section as requiring and be entering permanent residential / nursing care in a registered care home;
- own or have part legal ownership of a property, which is not benefitting from a property disregard, and have their property registered with the Land Registry (if the property is not, you must arrange for it to be registered at your own expense);
- have mental capacity to agree to a deferred payment agreement or have a legally appointed agent willing to agree to this

For a DPA request to be accepted there can be no other beneficial interests on the property, for example outstanding mortgages or equity release schemes, unless this is approved by the Council. Subject to being eligible and meeting the other conditions, a service user requesting a DPA or their legal representative, must sign an agreement confirming that they wish to take advantage of the Deferred Payment Scheme and that all implications have been explained.

Whilst the agreement is active, the service user will also need to:

- have a responsible person willing and able to ensure that necessary maintenance is carried out on the property to retain its value, you are liable for any such expenses;
- insure the property at the his/her expense;
- pay any client contribution in a timely and regular manner; if the service user fails to pay the client contribution on a regular basis the council will add this debt to the loan amount.

### 5. Assets used as Security for DPA

Where the Council is able to secure a first legal mortgage charge then this will be accepted as adequate security. However, the Council will decline a request for a deferred payment agreement if it is not satisfied that its interest is secure. Whatever

security is provided, the Council's legal team would have to be satisfied that the Council could gain ownership of this asset on the death or sale of the asset.

If a spouse or dependent relative moves into the property following entry into the deferred payment scheme, the Council will review eligibility.

If the property is subsequently disregarded (and the service user qualifies for local authority support as a consequence) then the deferred payment will be frozen and interest will continue to accrue.

In most cases the service user's current property will be used for security; however, the Council may exercise discretion and take other forms of security instead of a service user's property. The Council will decide on this on an individual case basis.

## 6. Deferred Payments Scheme Costs

In line with national regulations the Council will charge costs normally arising from a DPA. As a result, people seeking a DPA should be encouraged to seek independent financial and legal advice to help them decide which course of action will be financially better for them. Alternatives will, for example, include renting out their property and using the rental income towards their care costs.

The costs associated with the DPA scheme include:

- legal costs, which will be based on the time needed for this activity;
- a land search in line with the prevailing Land Registry fee ;
- the prevailing Land Registry fee for putting the charge on the property;
- an administration charge, which will be based on the time needed for this activity.

The actual charges covering these administrative areas will be itemised in the annual schedule of DPA charges.

## 7. Interest Charges

The Council will also charge interest on the value of the deferred cost. This will also follow the guidelines set out in the regulations. The rate that will be charged by the Council is the 'relevant rate' plus 0.15% as defined in section 9 of the Care and Support (Deferred Payments) Regulations 2014. This 'relevant rate' is based on the cost of government borrowing, and will change on 1<sup>st</sup> January and 1<sup>st</sup> July every year. The accrued interest will be compounded biannually on these dates. However, three months after the service user's deceased date the interest rate will be applied on a daily basis. The interest will apply from the day a service user enters into the Deferred Payment Scheme.

## 8. Information, Monitoring and Review

The Council will provide information and advice about deferred payments during the care and financial assessment process as well as during the 12 week disregard period. If a service user expresses an interest in taking up a DPA then the Council will write to the relevant service user informing them about the interest charges as well as the administrative, legal and land related costs if the service user decides to take out an agreement. The written document will also outline the process, timescales and include the Council policy for the Deferred Payment Scheme.

A regular statement will be sent out every 3 months advising people in the DPA scheme how their charge is being calculated and what the outstanding sum on their deferred payment account is.

The Council will also review the DPA and monitor the accumulated deferred payments against the asset value. Periodically and especially during times of depreciating values, a revaluation may be needed to ensure the Council's interest are safeguarded. The cost of the re-valuation exercise will be passed on to the relevant service user.

## 9. Refusal of a DPA

The Council can refuse a request for deferred payment. A refusal will normally result in situations where a person does not meet the eligibility criteria. The Council will also refuse a deferred payment where a service user does not agree to the terms and conditions of the agreement, for example, a requirement to insure and maintain the property. In such circumstances the decision will be notified in writing to the service user and/or their representative. The decision will set out the grounds for refusal and provide information on how to appeal.

## 10. Appeals Procedure

A service user may appeal against a decision to refuse a deferred payment or about the valuation of the service user's property.

An appeal should be made within 20 working days of being notified of the outcome of the application for a deferred payment agreement. This period can be extended if there are exceptional circumstances.

The appeal will be considered by the Director of Finance (or his delegated representative) and the appropriate Head of Service within Adult Social Care.

If the service user is dissatisfied with the outcome of the appeal then the service user may request that the matter is dealt with under the Council's Adults Social Care Complaints procedure.

### ASSESSMENT OF APPLICATIONS

All applicants for a deferred payment must complete the Council's DPA application form disclosing full information about their circumstances and finances, as set out in the form.

When assessing applications for a deferred payment the Council will have consideration of the sustainability of the deferred payment. This will include an assessment of the following:

- the likely duration of the deferred payment;
- equity available in the property;
- contributions which may be made from the service user's savings;
- contributions which may be made from any rental income;
- contributions which may be made from a third party;
- the period of time the service user would be able to defer weekly care costs-taking account of the available equity .

#### How Much Can Be Deferred

The deferred amount will be determined in accordance with statutory guidance and this would normally include the actual cost of care less any financially assessed contribution.

Where the service user wishes to include a third party top up the Council will consider whether the amount or size of the deferral requested is sustainable given the equity available from their property.

The following elements will dictate how much can be deferred:

- i. The amount of *equity* the service user has available in their property;
- ii. The amount the service user is *contributing to their care costs from other sources*, including income and (where they choose to) any contribution from savings, a financial product or a third-party; and
- iii. The total *care costs* the service user will face, including any top-ups they wish to include.

When considering the equity available, the Council will be guided by an 'equity limit' for the total amount that can be deferred and ensure that the amount deferred does not rise above this limit.

The equity limit is set at the value of the property minus ten per cent, minus £14,250 (for financial year 2015/16, this is in line with the lower capital limit) and the amount of liability secured on it.

This equity limit will leave some equity remaining in the property and will act as a buffer to cover any subsequent interest which continues to accrue, and will provide a small 'cushion' in case of small variations in the value of the property.

Where the deferred amount is approaching 70% of the value of the service user's property the Council will review the deferred payment agreement with the service user or their representative and consider whether a deferred payment agreement continues to be the best way to meet the care costs. The implications for any top-up that may be included in the deferral amount will be discussed.

The Council will not allow additional amounts to be deferred beyond the equity limit. However, interest can still accrue beyond this point, and administrative charges can still be deferred.

The Council may also refuse to defer any more care costs in the following circumstances:

- when the service user's total assets fall below the level of the means-test and becomes eligible for local authority support in paying for their care;
- where the service user no longer has need for care in a care home ;
- if the service user breaches the terms of the agreement and any attempt to resolve them are unsuccessful.

The Council will give a minimum of 30 days' notice that further deferrals will cease; and will provide an indication of how their care costs will need to be met in future. This could include:

- receiving local authority support in meeting the care costs, or
- meeting the costs from the service user's income and assets.