



<u>Committee and Date</u>
Council
14 <sup>th</sup> May 2015
10.00 am

<u>Item</u>
<b>14</b>
<u>Public</u>

## **CARE ACT: FEES, CHARGING AND DEFERRED PAYMENTS SCHEME**

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### **1. Summary**

The Care Act is the biggest change to English adult social care law since the National Assistance Act in 1948 and it replaces a number of different pieces of legislation with a single legal framework. This new legislation has the wellbeing of individuals and carers at the heart of care and support services.

Whilst much of the Care Act is prescriptive there are a number of aspects to it that provide the Local Authority with some discretion.

These include aspects relating to Fees, Charging and the Universal Deferred Payments Scheme. The Care Act allows for Local Authorities to levy charges for areas of support and administration that has previously not been possible.

The proposals for fees and charging in Shropshire have been developed in the context of the Care Act Statutory Guidance, the need for the Council to use its resources effectively and the wish to ensure that people are treated fairly, equitably and consistently.

A consultation was carried out in relation to the proposals, the responses to which have informed the recommendations made in this report.

### **2. Recommendations**

It is recommended that Council agree:

- A) That Shropshire Council charge a care arrangement fee (for care settings other than a care home placement) from June 2015 for those people who are not eligible for Local Authority funded care. The fee

level will be set on a cost recovery basis with a cap of £1000 per arrangement

- B) That Shropshire Council charge a care arrangement fee (for care home settings) on a cost recovery basis from April 2016 for those people who are not eligible for Local Authority funded care. The fee level will be set at a later date
- C) That Shropshire Council charge for care services from the week that care starts in both residential and non-residential settings
- D) That Shropshire Council adopt a consistent approach to charging for all replacement care in both residential and non – residential settings.
- E) That Shropshire Council charge an administration fee for arranging a Deferred Payment on a cost recovery basis from June 2015. The fee level will be set at £610.
- F) That Shropshire Council charge interest on deferred payments at the maximum allowable (currently at around 2.65%) and to apply this to both mandatory and discretionary deferred payments
- G) That Shropshire Council consider on a case by case basis requests by adults to use interest in land or other property which is not their main or only home and where a first or second legal charge capable of registration as adequate security for a Deferred Payment

## REPORT

### **3. Risk Assessment and Opportunities Appraisal**

The Care Act allows for Local Authorities to levy charges for areas of support and administration that has previously not been possible.

The introduction of the Care Act has additionally provided a natural opportunity to review fees and charges to ensure a consistent and equitable approach to charging.

As a result a number of proposals were developed for consultation and these are attached in Appendix 2. An easy read version of the consultation proposals was also developed, this is attached at Appendix 6.

#### **3.1 Consultation Process /Activity**

The consultation was originally planned to run for 6 weeks from 3<sup>rd</sup> March to 14<sup>th</sup> April 2015. However following request from various groups and individuals during the consultation, the consultation period was extended by two weeks to 28<sup>th</sup> April 2015 to allow an 8 week response period.

A wide range of views were sought through representative organisations. These included advice and advocacy organisations, Age UK, Community Council of Shropshire, the Senior Citizen Forum, Shropshire Partners in Care, Shropshire Voluntary and Community Sector Assembly, Learning Disability care providers and local town councils. We also involved the Learning Disability Partnership Board, the Family Carers Partnership Board, and the Making It Real Board. A survey was made available on the council's consultation portal. Paper and easy read versions of the survey were made available. Individual letters were also sent to approximately 300 carers who, because of the service they currently receive, would be directly affected by the proposal on charging for replacement care.

Full details of the consultation activity undertaken and the supporting documentation is attached in Appendices 3,4,5 and 6.

### **Consultation Responses**

The recommendations made to Councillors in this report have taken account of the responses received during the consultation process.

Some responses focussed on matters that were outside the scope of the consultation and adult social care but which relate to other wider council decisions and activity.

Of the comments received that relate directly to adult social care some commented on the introduction of charging for an arrangement fee to people who are not eligible for Local Authority funded care.

The proposed fee does not mean that the local authority will arrange the care and make a charge for it. People, or their families, able and willing to arrange their own care may continue to do so and no fee would be payable.

Full details of the responses from the consultation are attached in Appendices 7 and 8.

### **Equality and Social Inclusion Impact Assessment (ESIIA)**

An initial Equality and Social Inclusion Impact Assessment (ESIIA) was carried out on the proposals. This indicated that in relation to the Minimum Income Guarantee, younger people with disabilities may be impacted upon more negatively than other groups. A person who receives care and support outside a care home will need to pay their daily living costs such as rent, food and utilities. Therefore the charging rules must ensure that they have enough money to meet those costs. After charging, a person must be left with the minimum income guarantee (MIG) equivalent to Income Support plus a buffer of 25%. Whilst the actual MIG amounts are fixed in the legislation, the percentage of surplus income that an authority can take in to account is discretionary. Shropshire currently takes in to account 100% of the surplus income and is not proposing any change to that arrangement. The charging ceiling of £120 is not applied in Shropshire and again we are not proposing any change to that arrangement.

However we recognise that as a direct result of legislative change that reduces the threshold for 18-24 year olds there may be some negative impact on a group of up to a maximum of 90 existing service users. We will therefore consider on a case by case basis putting in place transitional arrangements to mitigate this for up to 6 months.

The ESIIA has been updated following this consultation to inform the council decision making.

A copy is attached as at Appendix 9.

#### **4. Financial Implications**

##### **Fee levels**

Under the Care Act the fees must be set at a level that would cover only the costs incurred in arranging the care and support (a cost recovery basis).

The fees proposed have been set in line with national guidance on what constitutes 'cost recovery'. They will be reviewed on an annual basis with adjustments made in the following year as required.

Deferred Payment Administration Fee has been based on the average costs of setting up an agreement. The fee will be £610. This rate appears to be in line with other local authorities. The fee will be added to the total debt unless an individual wishes to pay it separately

Care Arrangement Fee for setting other than a Care Home Placement will be set on a cost recovery basis with a cap of £1000 per arrangement

The arrangement fee for Care Home placement will not be charged until April 2016 (when the law allows) and will therefore be set at a later date.

##### **Income Generation**

The recommendation to charge fees and interest on deferred payments offer an opportunity to generate income. Income is a key part of the Council's financial strategy.

Income generation in this context though is based on taking an equitable approach to care and support provision in both residential and non- residential settings, from when care commences and also on a person's ability to pay.

#### **5. Background**

The Care Act is the biggest change to English adult social care law in over 60 years. It replaces a number of different pieces of legislation with a single legal framework that has the wellbeing of individuals and carers at the heart of care and support services.

The majority of the changes contained within the Act take place in April 2015, with the reform of funding (including the cap on care costs) to take effect from April 2016.

Much of the Act is prescriptive but there are a number of aspects to it that provide the Local Authority with some discretion. These include aspects relating to Fees, Charging and the Universal Deferred Payments Scheme as follows:

- The ability to charge a care arrangement fee to self-funders for those people who want the local authority to arrange their care.
- The requirement to have a single charging framework as between residential and domiciliary care and the potential to modify elements of the existing charging policy
- The ability to charge Carers for support provided to them so as to bring them onto an equal footing with service users.
- The ability to charge interest and to charge a fee for the arrangement of a Deferred Payment. (The fee charged must be on the basis of what it costs the local authority to administer the Deferred Payment Agreement).

As these changes are discretionary in nature at Portfolio Holder decision making meeting on 23<sup>rd</sup> February 2015 it was agreed to

- to carry out a consultation on the proposals detailed below
- for the consultation process to be for 6 weeks
- that the results of the consultation be evaluated and taken into account when finalising any proposals
- that an initial ESIIA has been carried out and this will be updated following the consultation to inform the council decision making
- that final council approval to be sought on any changes at full Council meeting on 14<sup>th</sup> May 2015.

### **Consultation Proposals**

The proposals for consultation were developed in the context of the Care Act Statutory Guidance, the need for the Council to use its resources effectively and the wish to ensure that people are treated equitably.

### **Care Arrangement Fees and Deferred Payment Administration Fee**

The local authority could choose not to charge care arrangement fees but that would mean that the time and resources used to support 'self funders' would not be available to support those who are entitled to local authority support

and whose financial assets fall below the capital limit. Individuals who fund their own care may still make their own arrangements, in these circumstances no fee would be payable to the Council.

Similarly we could choose not charge an administrative fee for a deferred payment but in the context of the current financial challenges we are proposing to do so in order to cover the costs of the administrative work associated with putting in place a deferred payment agreement.

This approach ensures an equitable approach to an individual who may pay a solicitor for arranging care or for equity release schemes to enable capital held in property to be made available to fund care.

It is the intention that the income generated goes into Adult Services budgets as a new income stream. This was a point that was raised by some consultee groups who felt that this was important that the income generated by social care went back to support people with care needs.

Consultees were also asking what the fees would be. These have now been determined for most areas and are included in this report.

### **Charging Carers**

Under previous legislation as well as and under the Care Act if the local authority is meeting the needs of a carer by providing a service directly to that carer it has the discretion to charge the carer an assessed contribution. Previously carers have not been charged an assessed contribution in Shropshire, in keeping with most other local authorities. However as the Care Act puts services for carers on an equal basis as the cared for this has been revisited.

In considering whether or not to include the option to charge carers in the consultation proposals, we recognised the fact that carers help to maintain the health and wellbeing of the person they care for, support the person's independence and enable them to stay in their own homes for longer. In many cases carers voluntarily meet eligible needs that the local authority would otherwise be required to meet. We also took account of the likely impact of any charges on carers, particularly in terms of their willingness and ability to continue their caring responsibilities. We concluded that it would be very unlikely to be efficient or fair to systematically charge carers for meeting their eligible needs. Therefore in recognition of the significant contribution that carers make as valued partners in care we decided not to propose that carers be charged carers for services directly provided to the carer.

### **Replacement Care**

In the context of the Care Act we reviewed carers' services including how they are charged for. 'Replacement Care' is care delivered to the cared for which replaces care that is usually provided by the family carer. It is sometimes referred to as 'respite care' or 'short breaks' and is provided to enable the

carer to look after their own health, to take a break, etc. Replacement care can be charged to the adult needing that care both under the Care Act and under previous legislation.

The review highlighted the fact that for some time in Shropshire, the majority of replacement care has been charged for but not all, resulting in inequity. The element of replacement care that has not been charged for has been replacement care provided in a carers own home provided under a long standing block contract commissioned service.

Therefore in order to ensure fairness and consistency it was proposed that all replacement care should be charged for with the adult making an assessed contribution based on their ability to pay and their level of income.

For this group of up to 300 people both receiving and waiting for the service, individual contact was made via a direct mailing to ascertain their views on the proposal and on the future redesign and re commissioning of carers services.

In response to concerns raised in the consultation that charging for replacement care that was not previously charged for might deter carers from asking for support, we will not implement these new charges until 1<sup>st</sup> November 2015 when the newly commissioned cares services will be in place.

An exception to charging for replacement care is in circumstances when an emergency occurs which prevents a family carer from providing care. Subject to a care being registered with the carers emergency response service it is proposed that the first 24 hours of replacement care provided under this scheme be provide free of charge. This suggestion has come back from carers groups who feel strongly about this and have also raised it during the re-commissioning consultation.

### **Charging for care from the week it starts**

The previous regulations, now replaced by the Care Act, empowered local authorities to charge for residential care from the outset it arranged support and care for an individual. However under the previous regulations, local authorities were prevented from charging for non-residential care until the individual was notified how much their financial contribution would be.

This led to cases where some individuals, either through ill-health, or because they did not have appropriate financial representation which perhaps delayed them from providing the necessary financial information, had an extended period without having to contribute to their care. Others have provided financial information quickly, and so have been charged soon after their support started. The previous system for non-residential care therefore penalised individuals for acting efficiently.

Changes to the regulations under the Care Act allows for all care to be charged for from the start date. In order to be consistent and to be fair to all, we believe it is important to start charging everyone from the same point hence the proposal that both residential and non-residential services are charged for from the week that the support or care starts.

This may mean that some individuals could receive a large request for backdated contributions if they delay in providing the information.

In response to feedback from the consultation process we recognise that it is important people are made aware of this as well as being invoiced promptly and we will build this into the assessment process.

The majority of those who responded to the consultation agreed with this proposal.

### **Interest Rates and Security for Deferred Payments**

The Care Act allows councils to charge interest on deferred payments at between zero per cent or any rate up to a maximum set by government (currently at around 2.65%) We could choose not to charge interest or to charge interest at a rate lower than the maximum allowed by government. However in the context of the current financial pressures we are recommending to charge the maximum allowed. This rate will be applied to both mandatory and discretionary deferred payments.

Where the adult has an interest in land or other property which is not their main or only home and where a first or second legal charge capable of registration may be secured he/she may wish to use this as adequate security against a deferred payment.

We could decide not to accept any such requests but that would limit the flexibility of the scheme. On the other hand we could decide to accept all such requests but that might expose the Council to unacceptable risks for example if the equity was not adequate to cover the care costs incurred. We are therefore recommending that we consider such requests on a case by case basis to minimise the financial risk to the council.

The Care Act also allows councils to offer a deferred payment to those residents in supported living accommodation and to accept other forms of security rather than the client's property. However at this point we do not know how many people will take up the scheme and what the potential cost will be. We will therefore not be offering deferred payments to those residents living in supported living accommodation or accept other forms of security. We will review these aspects at a later date once we have assessed the overall impact of the mandatory requirements of the scheme.



## 6. Additional Information

### **List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

Portfolio Holder Decision Making Session: Care Act: Fees, Charging and Deferred Payments Scheme 23<sup>rd</sup> February 2015 Appendix 1

#### **Cabinet Member (Portfolio Holder)**

Councillor Lee Chapman Portfolio Holder for Adult Services and Commissioning (South)

Mike Owen Portfolio Holder for Resources, Finance and Support

#### **Local Member**

All – this is a countywide matter

#### **Appendices**

**Portfolio Holder Decision Making Document** - Appendix 1

**Consultation Proposals** - Appendix 2

**Consultation Activity/Timetable** - Appendix 3

#### **Consultation Documentation:**

- Consultation Document - Appendix 4
- Consultation Survey – Appendix 5
- Easy Ready Version - Appendix 6

#### **Consultation Feedback**

- Analysis of survey Appendix 7
- Comments received at meetings Appendix 8

**ESIIA** - Appendix 9