



**Name of meeting:** Cabinet  
**Date:** 3<sup>rd</sup> October 2016  
**Title of report:** Request for approval to consult on the proposed revised Adult Social Care Charging Policy

<b>Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b>	Yes  The expenditure is above 250k and it affects all wards
<b>Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports?)</a></b>	Key Decision – Yes  Private Report/Private Appendix – No
<b>The Decision - Is it eligible for call in by Scrutiny?</b>	Yes
<b>Date signed off by <u>Director</u> &amp; name</b>	Richard Parry, 12 August 2016
<b>Is it also signed off by the Director of Resources?</b>	David Smith, 9 September 2016
<b>Is it also signed off by the Assistant Director (Legal, Governance &amp; Monitoring)?</b>	Julie Muscroft, 9 September 2016
<b>Cabinet member <a href="#">portfolio</a></b>	Adults, Health & Activity to Improve Health AND Asset Strategy, Resources and Creative Kirklees

**Electoral wards affected:** All

**Ward councillors consulted:** None

**Public or private:** Public

## 1. Purpose of report

The purpose of the report is to gain approval for the consultation exercise to take place in respect of the proposed revised Adults Social Care Charging Policy. Cabinet will also be asked to set the timetable for the consideration and evaluation by Cabinet of the results of the consultation exercise.

For clarity, no decisions have been made about the issues that the Council will consult on, but it will be necessary for us to publish the proposed revised Adults Social Care Charging Policy before the council can start the consultation exercise.

## **2. Summary**

Adult Services provides care and support to adults assessed against national criteria as having eligible needs. Social care is not necessarily provided free of charge. Those people who have a care assessment and are eligible to receive social care support; will then receive a financial assessment to calculate how much they are required to contribute towards their care. No one is asked to pay more towards the cost of their care than they have been assessed as being able to afford.

The Care Act 2014 also brings a requirement for Councils to make sure that the provision of care is sustainable moving forward, however, the amount of funding the Council receives from central Government has drastically reduced in recent years. With public sector budgets expected to remain under pressure in the future, it is no longer possible for the Council to deliver the same services, in the same way.

The key aim of the proposed revised Adults Social Care Charging Policy is to ensure that where an adult is charged for care and support (including making a contribution to a personal budget), that they are not charged more than is reasonably practicable for them to afford and pay.

The proposed revised Adults Social Care Charging Policy changes the way in which we charge for some parts of social care and is designed to change the administration of the charging policy to be cost effective and sustainable for the Council so that it can continue to provide services for those needing care and support in the future.

Some of these changes will result in some customers paying for services that have not been charged for previously. Some changes will also result in some customers paying more for services than they have before.

The proposed revised Adults Social Care Charging Policy comprises of three separate policy documents and a charging schedule, the policy documents being: the Adult Charging Policy document; the Deferred Payment Policy document; and the Client Financial Affairs Debt Recovery Policy document.

## **3. Information required to take a decision**

The main changes are outlined in more detail in the consultation document - see Appendix 1.

The consultation questions are designed to look at the main areas of change; however, the proposed revised Adult Social Care Charging Policy consolidates a number of key changes brought about by the implementation of the Care Act 2014 (as amended).

The main areas covered by the consultation are:

1. The removal of a discounted rate for respite stays i.e (£20 per night);
2. To consider a charge for the administration of Appointeeships;
3. To consider charging for setting up Deferred Payment Arrangements and charging interest on the monies loaned under a Deferred Payment Agreement;

4. To consider a charge for arranging services for self-funders for non-residential services (i.e people who have the finances available to pay for all of their care);
5. To consider a charge for some missed services,(i.e where the service is retained for the client or where the provider passes on the charge to the council);
6. Continue not to charge for services for carers, this is to recognise the ongoing valuable contribution of unpaid carers;
7. Longer period between bills for low cost services like Carephones; and promotion of Direct Debit when paying for care services;
8. To receive public comments on the three policies: (a) Adult Charging Policy (Appendix 2); (b) Deferred Payment Policy (Appendix 3); (c) Client Financial Affairs Recovery Policy (Appendix 4).

The final question is designed to gain feedback on the proposed revised Adults Social Care Charging Policy's content along with any other possible changes to the existing charging policy.

#### **4. Implications for the Council**

Adult Social Care along with all other Council services is under ever tighter financial pressure. Without exploring all options, the service may reach a point where services may be removed, affecting some of the most vulnerable members of the community.

The Care Act 2014 gives all authorities the ability to charge for some services, as long as the charges are reasonable and appropriate and that people are not made to pay more than they can afford.

In the proposed revised Adults Social Care Charging Policy it is proposed that the Council should make use of this ability to charge for services which in turn should result in more income to the Council.

It is estimated that the changes will increase income by approx. £230k - £290k per year depending on the demand for adult social care services:

- The removal of the discounted rate of £20 per night respite charge. Expected additional revenue of approximately £90k – £110k per year.
- Charging for appointeeships. Expected additional revenue of approximately £90k - £110k per year.
- Charging for Deferred Payment Arrangements. Expected additional revenue of approximately £30k - £40k per year.
- Charging for arranging services for Self-funders. Expected additional revenue of approximately £20k - £30k per year.

In addition, there will be a financial impact of the decision to not charge for carer's services. The true picture of this is not known as we have never financially assessed carers for their services. But a rough estimate shows that we will decline to charge for income in the region of £18k. (Based on the amounts paid out in 2015/16 to carers through Direct Payments and assumes all would pay the full cost of their care).

#### Public Sector Equality Duty (PSED)

Section 149 of the Equality Act 2010 places the Council under a duty in carrying out its functions to have regard to the need to (a) eliminate unlawful discrimination; and (b)

advance equality of opportunity, and (c) foster good relations, between people with protected characteristics and those without it. These are termed the “equality objectives “. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

Appendix 6 is the Equality Impact Assessment which will be re-visited throughout the proposed changes to the policy. It explores the impact of the proposed changes on the equality objectives and will be developed further if the consultation proceeds. Members will be required to read the appendices and consider the Council’s duty under s.149 in order able to discharge the PSED in particular when making the final decision following any consultation exercise.

The impact on some customers will be higher than others, some customers may be asked to pay significantly more for services than they have in the past. These costs represent the true costs of the services received. Each of these customers will have either been financially assessed as having the required income and assets to afford the charges, or will have chosen not to divulge their financial information.

For more information on the financial impact of these changes on our customers, please see Appendix 5a.

Some of the proposed changes will likely prompt some negative public opinion. It may be seen as the Council proposing to penalise people who have no choice about their requirements for care (such as the need for respite care) but as explained above, no one will pay more than they can afford for their services.

The public consultation will commence during October 2016 and is expected to run for 6 weeks, an evaluation and analysis of the consultation will be undertaken and these findings along with a report will be presented to Cabinet for decisions to be taken on the whether the proposed revised Adult Social Care Charging Policy should be implemented in the light of the Cabinet’s assessment of the results of consultation.

## **5. Consultees and their opinions**

The draft consultation documentation is attached at Appendix 1, with reference documents included at Appendices 2 – 5. It is intended to publish these documents on the Council’s Website to allow for completion online; or to be downloaded and printed and returned to Civic Centre 1.

We will also circulate to the Adult Social Care Users Group.

Consultation has taken place with assistant directors and directors within Adults and Resources Directorates.

An Equality Impact Assessment has been completed with support from the Corporate Policy Team (attached at Appendix 6)

## **6. Next steps**

1. Proceed with the public consultation as outlined in the report.
2. Evaluate and analyse the consultation results and prepare a report on the findings.
3. Report back to Cabinet on the consultation results, which are to be considered along with any changes to the proposed revised Adults Social Care Charging Policy.

4. To publicise the results of the consultation on the Council's website.
5. Following consideration of the consultation outcomes at Cabinet on 17 January 2017, to publicise and implement any changes to the Charging Policy, Deferred Payment Policy and Schedule of Charges that Cabinet has determined.
6. Arrange for staff briefings and training as required.

## **7. Officer recommendations and reasons**

That the contents of this report are noted and that the next steps above are authorised by Cabinet.

## **8. Cabinet portfolio holder's recommendations**

The Portfolio Holder requests that Cabinet gives approval for the commencement of a consultation process as outlined in this report and supports the actions outlined in Section 6 of this report.

## **9. Contact officer**

Damian Crowther, Acting Business and Partnership Development Manager

## **10. Background Papers and History of Decisions**

- **17 April 1996** - "Charging Policy for Non-Residential Services for Adults" proposals implemented 16 June 1996
- **30 July 1997** - "Home Care Charges" charges implemented 21 September 1997
- **October 2002** - Fairer Charging for Non-Residential Services 1 October 2002
- **January 2014** – Charging Policy published
- **April 2014** – Care Act 2014 comes into effect

## **11. Assistant Director responsible**

David Hamilton, Assistant Director for Adult Social Care and Wellbeing  
Keith Smith, Assistant Director for Commissioning and Health Partnerships  
Jane Brady, Assistant Director for Customer & Exchequer

## Consultation on proposed changes to paying for Adult Social Care Services

We would like to hear what local people and those who use adult social care services think about our proposals for changes to our Adult Social Care Charging Policy. The amount of funding the council receives from central government has drastically reduced in recent years, so it is no longer possible for the council to deliver the same services, in the same way.

You can read the related policies, and complete the questionnaire below. The questionnaire has information and questions on seven proposals, followed by some space for your own comments. Your views will help us make decisions on any changes to how much people pay for these services.

### Proposal 1. Removal of a discounted rate for respite stays

We charge up to £20 per night for the first seven nights of each respite stay. This is less than the standard weekly rate and is not based on whether someone can afford to pay more. We are not required by law to offer this discounted rate.

In future, we're proposing to use the person's financial circumstances to calculate how much they should contribute per night towards their respite care, up to the full standard weekly rate. Most other councils do this.

This change means service users who are assessed as being able to afford (or those who choose not to tell us their financial details) would pay more towards their care than they do now. Those who are assessed as not being able to afford more won't be asked to contribute more.

**Q1 The proposal is that all respite stays will be calculated at the standard weekly rate and the person will pay the maximum they have been assessed as being able to afford.**

**How much do you agree or disagree that the council should make this change?**

- Strongly support
- Support a little
- Neutral
- Don't really support
- Don't support at all

### Proposal 2. Charge for the administration of Appointeeships

Appointeeship is where the council manages a person's finances where it has been deemed the person is unable to perform this task themselves, and there are no other suitable options, such as a family member or close friend. Where a referral from a social worker is made in the best interests of the person, the council performs the role of managing that person's finances. Currently there is no charge for adopting this responsibility.

**Q2 The proposal is to implement a regular charge for us to manage a person's finances.**

**How much do you support or oppose the council bringing in a fair charge for these services?**

- Strongly support
- Support a little
- Neutral
- Don't really support
- Don't support at all

## Proposal 3. Charging for setting up Deferred Payment Arrangements

Under the Care Act people who own their home and need to move into 24 hour residential or nursing care can 'offset' the cost of their care against their home. It's called a Deferred Payment Arrangement. Effectively it's a loan made against the person's home so when the home is sold the money is used to pay for their care. We don't currently charge for setting up this arrangement.

Our proposal is to introduce an administration charge for setting up these arrangements. The cost would be added to the balance of the arrangement and would be paid when the property is sold. The fee would be based on the legal and financial tasks we have to do.

We are also considering charging interest on deferred payment agreements based on a national rate that means the money is loaned at no cost to the council.

**Q3 The proposal is to introduce an administration fee and to charge interest on all Deferred Payment Arrangements that the council sets up.**

**How much do you support or oppose the council bringing in a fair charge for these services?**

- Strongly support
- Support a little
- Neutral
- Don't really support
- Don't support at all

## Proposal 4. Charging for arranging services for people who are above the financial threshold (self-funders)

We arrange social care packages for people who have been assessed as being self-funders, these are people who have resources above the financial threshold (or those who have not disclosed their financial information). Whilst these people pay the full cost of their care, we don't charge a fee for creating the package for them.

For non-residential service users, we're proposing to introduce a charge to cover our set up and administration costs.

**Q4 The proposal is to implement a charge to cover our costs of arranging social care packages.**

**How much do you support or oppose the council bringing in a fair charge for these services?**

- Strongly support
- Support a little
- Neutral
- Don't really support
- Don't support at all

## Proposal 5. Charging for missed services

We plan and book care services in advance so we can meet the ongoing needs of service users. We also refund service users who have paid (or who have part contributed to the costs) for a service where that service was not actually used for whatever reason.

The council still has to pay for these care service (including services booked in advance) even when the service is not used by the service user, this is because we are still retaining the allocated care service(s) for them to use in the future. If payments were not made the service user would lose their allocated care services.

Our proposal therefore is where the council contributes towards any proportion of the service user's care cost, or where the provider charges for clients missing a service, then the clients will receive no refund when they miss, or don't use a care service, even if the relevant notice is received.

Q5 **How much do you support or oppose charging people for services that they miss?**

- Strongly support
- Support a little
- Neutral
- Don't really support
- Don't support at all

## Proposal 6. No charge for services for carers

The Care Act allows councils to charge for services provided to people in their role as a carer. This would be means-tested in the same way we assess our service users.

We feel unpaid carers in the region provide an invaluable service. The amount of time and effort that carers put in to ensure their friends and family members are well cared for and happy in the community is enormous.

We propose to continue with our policy of not charging carers at this time. It may however be a consideration in future as we will need to consider all options to make our reduced budget work.

Q6 **How much do you support or oppose services for unpaid carers being free of charge?**

- Strongly support
- Support a little
- Neutral
- Don't really support
- Don't support at all

## Proposal 7. Longer period between bills for low cost services like Carephones, and promotion of Direct Debit

Due to the relatively small charge (under £5 per week), we only send invoices to our Carephone service users once every three months to ask for payment.

Our proposals are to send invoices less often, (moving from four per year, to either twice a year or annually) and to also promote more efficient payment methods like Direct Debit. This is because the cost for us to process invoices and payments is considerable when performed in large volumes.

The amount service users would pay overall will be the same and Direct Debit schemes would be flexible. Where someone is unable to pay by Direct Debit an alternative method would be used. Using more cost effective payment methods was supported by 71% of respondents in our 2014 consultation.

Q7 **How much do you support or oppose sending invoices out less frequently for those services that are low cost, such as Carephones?**

- Strongly support
- Support a little
- Neutral
- Don't really support
- Don't support at all



## Your comments

**Q8** Is there anything else you would like to say about the proposed changes to payment and recovery of charges for Adult Social Care services?

## About You

The information you give here will help us to understand who has responded to the consultation and if there are any differences in views between groups. As with all the questions, your answers are completely confidential and will not be used to identify you as an individual.

**Q9** Are you completing this questionnaire: (please select all that apply)

- as or on behalf of an Adult Social Care user, who contributes financially towards their care
- as or on behalf of an Adult Social Care user, who doesn't contribute financially towards their care
- as a Kirklees resident
- as a Kirklees employee
- on behalf of a local community group / organisation
- in another capacity

Thank you for taking the time to share your views,  
please click Submit to finish.

## Adult Care Charging Policy

<b>Policy reference number</b>	
<b>Version</b>	<b>Version 2.9</b>
<b>Issue date</b>	20 <sup>th</sup> Sept 2016
<b>Review date</b>	TBD
<b>Staff Affected</b>	
<b>Lead Officer</b>	Damian Crowther, Acting Business and Partnership Development Manager
<b>Approved by</b>	

### **UNCONTROLLED VERSION IF PRINTED OR E-MAILED**

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The current version of the document can be found on the Intranet.

**Always refer to documents stored on the intranet when applying policy and procedure.**

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## 2. Introduction

- 2.1. If you are eligible for support from the Council to meet your social care needs you will be given a Personal Budget to arrange your support. You can take your Personal Budget as a Direct Payment i.e. money payable into an account or have your support arranged on your behalf by the Council or take your Personal Budget as a mix of both (money and arranged support).
- 2.2. However support from Adult Social Care (unlike most health care) is not free. This policy explains how the Council will charge adults for care and support in order to sustain the delivery of care services such as home care to some of the most vulnerable members of society.
- 2.3. This policy covers care and support in community settings and in a residential home setting which includes nursing. Community based support includes services such as homecare, Shared Lives, day services and activities, short breaks, respite care and assistive technology

## 3. Policy Statement

- 3.1. This policy responds to the requirements of the Care Act 2014 and all regulations issued under the Care Act 2014, which provide a single legal framework for charging for care and support.
- 3.2. This charging policy applies to all adult social care services and support provided by the Council.
- 3.3. The policy applies from **[date to be confirmed following completion of public consultation]** and supersedes all previous adult social care charging policies and practice before this date and for the purpose of this policy; an adult is a person aged 18 and above who is eligible for a Personal Budget from the Council.
- 3.4. In determining a charging policy that complies with the Care Act 2014 the Council must also have due regard to the Care and Support Statutory Guidance and Annexes issued under the Care Act 2014.
- 3.5. The policy provides details about:
  - I. The legal and regulatory context for charging
  - II. The key aim of the policy is to ensure that where an adult is charged for care and support (including making a contribution to a personal budget), that they are not charged more than is reasonably practicable for them to afford and pay.
  - III. To be as clear, transparent and comprehensive as possible so people know what they need to pay towards the costs of their care and support and understand (with support if necessary) any charges or contributions they are asked to make;
  - IV. How different types of services and support are charged and how these may be paid for or recovered.

- V. To promote cost effective collection methods i.e. Direct Debit, recurring card payments
- VI. Prepayment cards for direct payment of services
- VII. The financial assessment process, including the review and appeals process;
- VIII. To apply charging rules so those with similar needs or services are treated the same way and minimise anomalies between different care settings and payment options.
- IX. For the administration of the charging policy to be cost effective and sustainable for the Council so that it can continue to provide services for those needing care and support in the future.
- X. To promote wellbeing, social inclusion, and support the vision on personalisation, independence, choice and control.
- XI. To encourage and enable those who wish to stay in or take up paid employment to do so;
- XII. To support carers to look after their own health and wellbeing effectively and safely, and recognising their valuable contribution to society;
- XIII. To be person-focussed, reflecting the variety of care journeys and the variety of options available to meet people's needs.

#### **4. The Legal and regulatory Context Basis for Charging**

- 4.1. Sections 14 and 17 of the Care Act 2014 (as amended) ("the Act") provide a single legal framework for charging for adult social care and support.
- 4.2. Section 14 of the Act provides a local authority with the power to charge for meeting needs under sections 18 to 20 of the Act.
- 4.3. Section 17 of the Act creates a duty for a local authority to carry out a financial assessment which would arise where the local authority thinks that if it were to meet an adult's needs for care and support, or a carer's needs for support, it would charge the adult or carer under section 14(1) of the Act.
- 4.4. The Care and Support *Charging and Assessment of Resources Regulations 2014* describe the limitations on local authority powers to make a charge for meeting needs under section 14 of the Act; and provide details about the requirements for carrying out financial assessments for the purposes of section 17 of the Act.
- 4.5. Section 2(1) of the Act requires a local authority to provide or arrange for the provision of services, facilities or resources (or take other steps) which it considers will contribute towards preventing, delaying or reducing the needs for care and support of adults or for support in relation to carers.
- 4.6. The Care and Support *Preventing Needs for Care and Support Regulations 2014* describe the rules permitting and prohibiting a local authority for making a charge for the provision of services, facilities and resources under section 2 of the Act.

- 4.7. The 'Care and Support Statutory Guidance' (CSSG), issued by the Department of Health in October 2014 and updated in March 2016 sets out how a local authority should go about performing its care and support responsibilities. This includes details about interpreting and applying the rules relating to charging and financial assessments as defined in both the Act and regulations.
- 4.8. This policy has been written in accordance with the CSSG and related primary and secondary legislation.
- 4.9. The policy will need to be revised from time to time to take into account either (i) any provisions of the Care Act 2014 that are brought into force (e.g. Cap on Costs) or new statutory instruments (e.g. the proposed increase in the capital threshold or any amending or repealing legislation).

## 5. Chargeable and Non Chargeable Services

- 5.1. A schedule of Kirklees adult social care fees and charges is published annually, which is approved by either Cabinet, or Council or the Director of Resources, (April and October increases to be published for residential care).
- 5.2. The Council operates five charging categories:-
  - I. Exempt services or care and support provided free of charge
  - II. Mean tested charging and full cost service following a financial assessment
  - III. Flat rate charges, i.e. Carephones
  - IV. Full cost charge for customers who do not wish to disclose their finances
  - V. Pass on reasonable costs involved in miscellaneous services, for example providing pet care.
- 5.3. **Exempt Services** - The Council is not allowed to charge for some types of care and support. The list below sets out what these currently are:
- 5.4. Community equipment (aids and minor adaptations): this is where a person is supplied with equipment or a minor adaptation to their property, in order to support daily living so a person can stay in their home.
  - i. An adaptation is minor if the cost of making the adaptation is £1,000 or less;
- 5.5. Reablement service can be provided to support service users to become as independent as possible in their homes; this can be from 1 day up to a maximum period of six weeks. This could be after a stay in hospital, an illness or to prevent a hospital admission. For support services following the Reablement service, charges will be applied based on a financial assessment.

- 5.6. Services provided to people suffering from Creutzfeldt Jakob Disease
- 5.7. Any service or part of service which the NHS is under duty to provide. This includes Intermediate Care, Continuing Healthcare and the NHS contribution to Registered Nursing Care;
- 5.8. Services which local authorities have a duty to provide through other legislation, including any specific services provided as After Care Services under Section 117 of the Mental Health Act 1983. There will be occasions when chargeable services are also provided to service users who are subject to Section 117 of the Mental Health Act 1983. This is usually when a service is in place that is not specifically related to their Section 117 status. If this is the case the service user will be advised of this in writing and a financial assessment will need to be undertaken in relation to such services.

## 6. Means Tested Financial Assessment

- 6.1. A financial assessment will be carried out for all care and support provided; or arranged by Kirklees Council
- 6.2. The purpose of the financial assessment is to assess if a person can afford to pay towards the cost of their care or support service(s); it is means tested.
- 6.3. The financial assessment (means test) will look at a person's financial situation to work out how much they will need to contribute to the cost of their support. It will take into account property, savings, pensions, stocks and shares.
- 6.4. The financial assessment will calculate how much, if anything, a person can afford to pay towards the cost of their care (or contribute towards their personal budget) on a weekly basis. This amount is referred to as the "maximum weekly assessed charge".
- 6.5. Charges for support will be payable from the date services or packages start; **not** the date the financial assessment is completed.
- 6.6. The Council will not charge more than the cost incurred in providing or arranging any care and support which is subject to means tested charging.
- 6.7. In the event of the person's death before a financial assessment has been completed and the person has been in receipt of services, the Council will seek full recovery of costs from the deceased's estate.
- 6.8. The technical rules for the financial assessment differ between care and support provided in a residential care setting ('care home') and care and support provided in all other settings ('non-residential'). Assessment will be carried out in accordance with Chapter 8 and Annexes B and C of the Care and Support Statutory Guidance

Chapter 8: <https://www.gov.uk/guidance/care-and-support-statutory-guidance/charging-and-financial-assessment>

Annex B and C: <https://www.gov.uk/guidance/care-and-support-statutory-guidance/annexes>

- 6.9. All documentary evidence requested by the Council to complete the financial assessment **must** be provided. The Council will only ask for documentary evidence that is necessary to complete the financial assessment accurately and comprehensively. **Where evidence is requested but not provided the Council may pass on the full cost of the service(s), an assessment may also be based on notional income.**
- 6.10. The Council will publish a list of the different types of care and support services subject to means tested charging on the annual schedule of adult social care fees and charges.
- 6.11. Communications are sent to clients informing them of the new approved fees and charges and how it affects their assessed weekly contribution. This communication gives details on how charges have changed as a result of inflationary increases, changes to services and/or how changes in benefit rules and amounts issued by the Department of Work and Pensions (DWP) affect their assessed weekly contribution.
- 6.12. Financial assessments will be completed for people as individuals and not as couples. Where capital is held and income is received on a joint basis, then it will be assumed that each party is entitled to 50% of that capital/income. The same is assumed for assets such as second properties.
- 6.13. The Council will review on a case by case basis where an individual states they can demonstrate their share is more or less of the asset and amend the assessment appropriately
- 6.14. The financial assessment will make sure a person (or both people, in the case of a couple) has money left after charges are applied for themselves in line with statutory amounts, these are known as 'Personal Expenditure Allowance' (PEA) for care in a care home and 'Minimum Income Guarantee' (MIG) for care at home. These amounts are set and reviewed annually by the Department of Health. See link for PEA:-  
  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/508653/LAC\\_DH\\_2016\\_2\\_FINAL\\_-\\_LAC\\_2016\\_A.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508653/LAC_DH_2016_2_FINAL_-_LAC_2016_A.pdf)
- 6.15. The financial assessment process will normally include a welfare benefits check to ensure the person is claiming all the benefits they are entitled to claim; or customers may be signposted to "BetterOff" Kirklees.
- 6.16. The amount a person pays towards their care will be reviewed on an annual basis. This will be in line with the increase in state pensions/benefits at the beginning of April each year, or as soon as practicable. An assessment may also be based on notional income.
- 6.17. Reviews for older cases will be dealt with as new cases under the Care Act, this will mean that charges may change in some cases as income will be individual rather than couple based.



- 6.18. A review may be requested by the client at any time where their circumstances have changed, or for people who are self-funding, if their total savings/capital has fallen to, or below the upper capital threshold.

## **7. Light Touch Financial Assessments**

- 7.1. In some circumstances, the Council may decide that a full financial assessment is not necessary or appropriate. This type of financial assessment is defined as a “light touch financial assessment.”
- 7.2. The light touch financial assessment will apply:
- I. If a person does not wish, or refuses, to disclose their financial information.
  - II. If a person says they have significant financial resources and or savings above the limit of £23,250, and does not wish to go through a full financial assessment for personal reasons.
  - III. Where the charges for the service are small and a person is able to pay and would clearly have the relevant minimum income left. Carrying out a financial assessment would be disproportionate.
  - IV. Where a person is in receipt of benefits which show they would not be able to pay towards their care and support costs.
- 7.3. In circumstances where the person has refused a financial assessment but is eligible for support the Council will assume the person can meet the full cost of the support needed and will charge accordingly. The Council will inform the person to help them to understand that they will have to pay the full cost of any support service and what that cost will be; the Council will remind them of their right to request a full financial assessment.
- 7.4. In circumstances where the person states they have sufficient financial resources to meet the cost of their support, the Council will advise the person to take independent financial advice regarding their options for meeting the cost of their care and support. The Council may offer support to enable the person to identify what support they need and how to arrange support services.
- 7.5. The Council will inform a person when a light-touch assessment has taken place and will make it clear that the person has the right to request a full financial assessment.

## **8. Online Financial Assessment and online review process**

- 8.1. The Council is currently working towards using an electronic form accessible from our website to enable anyone to process their own financial assessment.
- 8.2. This platform will be the same as that used by the teams to make the calculation and will enable customers to enter their relevant financial information to find out the maximum they will be expected to pay for social care.

- 8.3. The Council will assist service users and their families to make informed decisions about arranging social care services at an early point and provide a transparent process regarding paying for services.
- 8.4. Service users will be informed when the new arrangements are in place

## **9. Self-Funders - (full cost charging)**

- 9.1. A “Self-Funder ” financial assessment means that the person is required to pay the full amount of all qualifying charges for any means tested care and support they receive
- 9.2. The Council will treat a person as being a “Self-funder - full cost” financial assessment where they:
  - I. Have savings and other financial resources above the national upper limit, currently £23,250, it is likely they will need to pay for the full cost of support. The Council calls this “self-funding”.
  - II. choose not to disclose their financial information to enable a full financial assessment;
  - III. fail to co-operate and/or do not provide a completed financial assessment form within 28 days (14 days for Carephones) of agreeing a support plan or the commencement of chargeable services (whichever is sooner);
  - IV. sign a declaration that they are happy to pay the full cost of services received;
  - V. Receive a full financial assessment that deems they are assessed to contribute the full cost for their care and support.
- 9.3. Where a person is self-funding their support they are still entitled to ask that the Council help them arrange their services. Currently the Council do not charge service users for arranging a care package. There are a number of people who have either been assessed as being able to afford the full weekly cost of social care or have not disclosed their financial information to the Council and as such are required to pay the full charge.

These people have the choice to have the Council arrange a suitable social care package for them. The proposal is to implement a charge (including a setup cost and/or a regular administration charge) to reduce the cost to the Council to arrange these optional services.

- 9.4. Self-funders who own their own home may want to consider arranging a Deferred Payment Agreement in order to put towards the cost of their care. For more information on Deferred Payment Agreements, see section 15 below.

## **10. Support Services in the Community**

- 10.1. The Council will charge for support delivered in community settings including a person’s home or a community facility such as a day centre. The person’s

home includes tenancies within Extra Care, Supported Living and Shared Lives accommodation.

10.2. All non-residential community based support services fall within the scope of this policy and include:

- I. Personal Care Support delivered to the person in their home
- II. Sitting Services
- III. Day Services and activities, both building based and in the community
- IV. Respite breaks that are not in a residential care home
- V. Daily living support such as shopping, laundry, cleaning delivered to the person living at home
- VI. Joint funded services – service users will be required to contribute towards the cost of the services provided by the Council but not those provided by the NHS as part of a joint package of support.

10.3. Services not included within charging for care services in the community.

- I. Meals in Day Centres
- II. Cost of their transport to Day Centres

10.4. A charge will be made for meals and transport on a 'Pay as you use' basis as meals and transport are not included in the unit cost of a day centre session unless otherwise stated. This ensures people only pay for the activity and support provided at the centre.

10.5. Should the person receive more than one service per week, charges will be calculated up to the disposable income threshold. Where possible charges for services will be listed on the same invoice for customer ease and efficiency.

## **11. Carephone Home Safety Service**

11.1. The Council provides a home safety service through the provision of a personal alarm system linked to a carephone. The personal alarm can be worn as a pendant or clip on. The basic carephone can be enhanced to meet a range of potential risks to the person within the home such as escaping gas, flooding caused by taps being left on, falls. There are no charges for the provision, installation and maintenance of the equipment. Charges for this service are purely for the monitoring support. Calls are monitored and responded to by a team of officers who in turn can alert carers, the Mobile Response Team or the ambulance service. They make regular calls to users to ensure the carephone is working and to check that the person is safe and well.

11.2. Carephone charges will normally be recovered by regular direct debit; this information should be collected from the customer at the earliest opportunity i.e. first point of contact.

- 11.3. Individuals can apply for the service without the necessity of meeting the national eligibility criteria and having an assessment but they are offered a financial assessment.
- 11.4. For those who receive the service following an assessment and as part of their support plan a full financial assessment is undertaken unless the person chooses not to have a financial assessment.
- 11.5. There are two levels of charges depending on the type of package a person receives; this reflects the additional monitoring required for multiple applications.
- 11.6. The Council currently invoice for Carephone services on a quarterly basis whether or not on a Direct Debit. The period for invoicing will be reviewed in 2016-17 and may result in less frequent invoices. i.e. moved to yearly and payment by direct debit will be promoted.

## **12. Shared Lives**

- 12.1. This is a scheme (similar to Fostering) whereby adults with support needs are able to live with a family who provide board, lodgings and support. The Shared Lives person is responsible for making payments in respect of board and lodgings directly to the accommodation provider. They may be able to get some help with the lodgings element through the Housing Benefit system but will need to make payments in respect of food and utilities from their income.
- 12.2. The Shared Lives person will be financially assessed for the cost of the arrangement. This cost will be included in their personal budget (along with any other support services such as day care or home care). However in all instances the person will only pay the maximum they are financially assessed as able to contribute to the total cost, even if they receive more than one service.

## **13. Residential/Nursing Care**

- 13.1. Where the Council carries out a financial assessment for care and support provided in a care home, information and advice will be provided to enable the person to identify options of how best to pay a charge. This may include offering the person a deferred payment agreement. The Council operates a deferred payments policy where further details can be found in the attached appendix, see also section 15 below.
- 13.2. As with support delivered within the community the Council will charge for support provided in a residential/nursing home. The financial assessment will take account of the person's property, income and savings. In these circumstances as the residential home will become their main place of residence providing board and lodgings in addition to care and support.
- 13.3. If a person receives community support services in addition to their placement at a residential home such as attending a day service with another

provider the person will be financially assessed for charges towards the cost of the placement but will only pay the overall maximum they are able to afford.

- 13.4. The Council can only pay towards the cost of residential/nursing care once a person has been assessed as having needs that mean moving into residential/nursing care is the best option for them. If the person needs nursing care as part of their support within a residential home this will be delivered and/or paid for by the NHS and is excluded from the Council's charges.
- 13.5. If a person arranges to move into a residential home without having an assessment by the Council, and later asks for financial help with charges, the Council will determine whether the person meets the national eligibility for social care support. If the person does meet the criteria it will carry out assessments, both financial and personal, to establish if financial support can be provided. If financially eligible for financial support in residential care, the Council will contribute towards the cost of care from the date of the referral to the Council and not from the date the person moved themselves into the residential home.
- 13.6. For people who have funded their own care and support within a residential home and their financial resources have reached the financial threshold for support, the Council will consider payments from the date a referral is made to the Council subject to a financial assessment
- 13.7. The Council will not backdate contributions to a person's care costs to the date they entered the residential home or the date their capital dropped below the capital threshold.
- 13.8. If a person cannot afford their chosen residential home and do not qualify for help from the Council, or for a deferred payment agreement then the person will need to seek alternative arrangements such as moving to a residential home that is affordable.
- 13.9. If customers are paying for their own care, the Council strongly advises seeking independent financial advice to ensure that customers will be able to afford the care they choose for the foreseeable future.

#### **14. Administration fees**

- 14.1. The Council will charge administration fees for work which it undertakes on behalf of people who are either funding their own care and have asked the Council to make arrangements on their behalf or when the Council is administering a person's finances.

#### **14.2. Appointeeship**

Where the Council becomes the legal appointee for managing a person's finances (as there is no other person or legal representative to do so) the Council will use its power to charge an administration fee for the set up costs and an annual fee. This will be paid for from the person's financial account.

This is in line with recommendation by audit and national practice by other Councils.

#### 14.3. Deferred Payment Agreements (DPA)

A deferred payment agreement is in essence an interest bearing secured loan that self-funding eligible persons can apply for from the council for the purposes of paying residential care costs.

The loan is secured on the self-funder's house and the council releases the loan by instalments on a periodic basis each instalment being the same sum as the residential care fees that are due and payable by the person (less any personal contribution that the council shall require to be made by the person).

The Council will charge the person for the costs of setting and running the deferred payment agreement. The adult can either pay for the administration costs separately when the costs are incurred on an "as and when basis" or the adult can ask for the costs to be added to the loan and the Council's costs along with the loan will be then recouped upon completion of the sale of the home. Interest will though be charged on the costs during the term of the deferred payment agreement if the costs are added to the loan. Follow this link for more information: <https://www.gov.uk/guidance/care-and-support-statutory-guidance/charging-and-financial-assessment>.

#### 14.4. Rate Setting

The rates for the above charges can be viewed in the schedule of Kirklees adult social care fees and charges.

### **15. Property and Deferred Payment Agreements (DPA), (see also the attached Appendix for the DPA Policy)**

- 15.1. Property owned by a person is included in the financial assessment. It will not be taken into account (disregarded) when a spouse or partner continues to live there after a person moves permanently into residential care.
- 15.2. Where the property is to be included in the financial assessment, the Council will exclude from the assessed charge, its value for the first twelve weeks of a person's stay. This period is called the twelve week property disregard period and gives people time to seek financial advice and consider the options available to them to fund their support costs.
- 15.3. Providing a person and their property meet eligibility criteria, the person may be entitled to enter into a Deferred Payment Agreement with the Council. As required under the Care Act 2014 the Council can offer a Deferred Payment Agreement (DPA), which is in essence an interest bearing secured loan to enable people to pay their residential care charges without the need to sell their home. The intention of a DPA is to enable a person to get the support they need without them having to sell their home within their lifetime.

- 15.4. A DPA is a loan provided by the Council and is not a free service. The Council will charge set up costs, interest on the loan, an annual monitoring and administration fee, termination costs on all DPA's that are set up from and including the date this policy comes into effect. The loan monies, any interest (not paid by the person as it accrues) and any administration costs (that are not discharged on an as and when basis) that are at any time secured under the deferred payment agreement is known as the "Deferred Amount".
- 15.5. Where a client has entered a deferred payment agreement the agreed level of weekly contribution will be paid by the client directly to the care provider, unless otherwise agreed. The agreed level of deferred fees will be secured and collected in accordance with Council's deferred payments policy. **See the attached Appendix.**

## **16. Treatment of "Top Ups" in Residential Care**

- 16.1. In some cases, a person may choose a home that is more expensive than the residential or nursing fees the Council has set for residential or nursing care arranged on behalf of the person who is eligible for support from the Council.
- 16.2. Where they have chosen a setting that costs more than this, an arrangement will need to be made as to how the difference will be met. This is known as an additional cost or 'top-up' payment. If the person is part or fully funded by the Council, **the 'top up' must be paid for by a third party i.e. not the person or the Council.**
- 16.3. The Council must ensure that the third party is willing and able to meet the cost for the person's care and support. This includes ensuring the person has sufficient information and advice to understand the terms and conditions of the 'top up' agreement. Should the fees in the top up agreement change, the person will need to pay to the new fees. *The Council should advocate and encourage the third party payee to get independent financial advice.*
- 16.4. In the event the 'top up' arrangements fail the Council must either pay the top up, re-negotiate the fees with the home or make alternative arrangements for the person's care and support needs including moving the person to an alternative home that can meet the person's needs and is within the fees the Council has set.
- 16.5. All parties including the Provider will need to agree on the top-up prior to the person moving into the care home and sign the Placement Agreement. Failure to do so can lead to top-ups being imposed later by the home and the Council not having a signed Placement Agreement by all parties leaves the Service User in a vulnerable position.

## **17. Deprivation of Assets and or Income**

- 17.1. Deprivation of income and/or assets means a person reduces or tries to hide how much capital they have in order to avoid paying towards the cost of their

care. Examples of this are signing property, investments, or assets over to relatives or giving large monetary gifts.

- 17.2. The Council will decide whether to conduct an investigation to ascertain if deprivation of income or assets has occurred where there are indicators as noted above are present. Where the Council determines that someone has deliberately deprived themselves of an asset or income in order to reduce or avoid a charge for care and support, the Council will charge services as though they still owned the asset or income.
- 17.3. The Council will take legal action against the customer or the third party where appropriate to recover monies owed for charges. This is in line with national guidance.

## **18. Charging for short term or temporary residence (respite care)**

- 18.1. Short term care, such as respite care will be charged at the standard residential care rate. During periods of respite, the financial assessment will take into account costs from the service user's home, such as household bills.
- 18.2. As with all social care costs, the charges will be based on the amount a person has been assessed as being able to pay. If a person refused or opted out of a financial assessment they will need to pay the full cost of their stay.
- 18.3. Charges for respite care will be based on a full financial assessment, (this replaces the £20 per night fees for the first 7 nights of a stay).

## **19. Charging for Support to Carers**

- 19.1. Where a carer has eligible support needs of their own that are not met through support arrangements for the cared for person, the Council is required to undertake a financial assessment in order to provide a Personal Budget to the Carer. Under the Care Act the Council has the power to charge carers for support provided via a Personal Budget direct to the carer.
- 19.2. Informal or family carers are an invaluable source of support for many people. Through their support carers indirectly save the Council significant money as without their care and support the Council would need to provide the support at a cost.

The Council therefore will not charge carers in 2016/2017 but may need to consider introducing charges in future years. This policy will be amended to reflect any necessary changes to charging for support to carers.

## **20. Charges for services not received and refunds**

- 20.1. A key principle of the Council's charging policy is that having carried out its duties to ensure charges for support are affordable and fair that payment should be made accordingly.



- 20.2. The Council also has a duty to ensure that consistent, high quality services are maintained and in order to do this, we operate certain guarantees to providers so they can effectively maintain the service for all. This may mean that people are charged for services they did not receive, even if the absence is planned or unavoidable (such as a medical appointment).
- 20.3. If the Council incurs costs where planned services were not used or, in the case of Home Care, not cancelled in advance, these costs will be deemed to be services delivered in accordance with the person's support plan, and therefore subject to normal charging rules. i.e. no credit or refund.
- 20.4. Adjustments (credits or refunds) to charges will only be considered when the following conditions are met:
- I. A service user pays the full cost of their care, as per their financial assessment.  
**NB** - Anyone who receives financial assistance from the Council is deemed to receive a service above and beyond their contribution and will be required to contribute the full amount as per their financial assessment. i.e no credit or refund.
  - II. The Service provider has failed to deliver the service. Examples of this are the emergency closure of a Day Centre or when a Home Care provider does not attend for planned support calls.
  - III. For home care there will be no refunds unless the service has been cancelled in advance with at least 24 hours' notice.  
**NB** – please note that where the service supplier passes on a charge the council will pass this on to the service user.
- 20.5. Where the service user does not receive any service in their support package for a sustained period of time (i.e.28 days) due to holiday/hospital admission etc. the person's benefits will change and will affect what the person could afford to pay. At this point we will look to review the case to determine whether it is appropriate for the service to continue or if the person's needs should be reviewed.

## 21. Collection Debt Recovery

- 21.1. To ensure our income stream is protected and to enable us to meet our legal and financial obligations to our customers, we maintain a robust debt recovery process. This means that if necessary, we will use all measures available to recoup the charges as explained in this document.
- 21.2. Our preferred payment method is by Direct Debit and you may be asked at the initial meeting to complete a DD form, this will be used to clear all the debts you owe the council.
- 21.3. Invoices can be paid by debit card by the following methods:
- a. On the internet at [www.kirklees.gov.uk/payments](http://www.kirklees.gov.uk/payments)
  - b. Automated Telephone 01484 414818

c. Post Office (there may be a charge);

21.4. If payment is not made for an invoice a reminder process is initiated. If payment is still not forthcoming then this can result in legal action to recover the debt outstanding, using all of the recovery powers available under regulations and common law. (**see the attached appendix for debt recovery policy**)

21.5. We will work with all of our customers to help them to understand the charges and to be able to make regular payments in line with their own financial circumstances. However, if payments for care are not forthcoming through the use of these steps, legal proceedings will begin and all legal costs incurred by the Council will also be claimed from the service user.

## **22. Increases to rates**

22.1. In line with the Council's Corporate Charging Policy – Fees and Charges, all charges and the scope for charging will be reviewed at least annually within the service area. The review will include those services which could be charged for but which are currently provided free of charge.

Amendments are delegated to appropriate officers and should be approved following the completion of an appropriate business case. Where new fees or charges are to be introduced they are to be approved by Cabinet. As explained above, all changes in fees or charges are subject to individual financial assessments and all service users will only be charged what they have assessed as being able to afford.

To view the Corporate Charging Policy – Fees and Charges, [click here](#).

## **23. Direct Payments**

23.1. When an individual chooses to take their personal budget as a form of direct payment, assessed contributions are deducted from the personal budget amount and a net payment is made by the Council for contribution to the personal budget.

There are regular reviews of direct payments to ensure money is spent appropriately.

23.2. Where direct payments are being made and the service user is not spending the direct payment for the appropriate purpose, the council (Direct Payment team /CFA team) will suspend the payment and will take steps to recover or clawback any payments that have been inappropriately used. In these cases a review of the care assessment and the financial assessment will also be undertaken.

23.3. When an individual chooses for the council to provide or arrange services using their personal budget, either a 4 weekly invoice is sent to clients requesting the payment of their personal contribution or in some cases, providers may be paid net of the clients contribution. This will include any

charges associated with any other financially assessed services and/or any flat-rate charges where applicable.

- 23.4. Where a service user has a mixed service, part direct payment and part commissioned service, the council will offset the clients contribution against the direct payment.

## **24. Review and Appeals Process**

- 24.1. If an individual is unhappy about the outcome of their financial assessment, they may start the review and appeals process which is described below.

### **24.2. Stage 1 - Review**

At the review stage a different Financial Assessment Officer will review the issue(s) raised by the individual and consider any new financial information provided. The Officer will also check to ensure the Charging Policy has been applied correctly.

### **Stage 2 – Appeal**

If the individual is still unhappy with their reviewed charge or personal contribution, an appeal can be requested.

At the appeal stage the Council will organise for an independent person to look at the case.

The appeal process can take up to 28 days from the time the completed appeals form is received, to the time the individual is informed of the outcome.

### **24.3. About the review and appeal process**

Confirmation of the outcome at each stage of this process is communicated with the individual.

The individual will continue to be charged the original assessed contribution during the review and appeal process.

If after the review and appeal the Council asks the person to pay a different weekly charge or personal contribution, the difference will be backdated. Any overpaid charges or contributions will be refunded.

If an independent adjudicator makes a recommendation to waiver the assessed charge, this will need to be ratified by the Executive Director responsible for Adult Social Care

## 25. Related Documents

- The Care Act 2014
- Equality Act 2010
- Disability Discrimination Act 2005
- Data Protection Act 1998
- Human Rights Act 1998
- Mental Capacity Act 2005
- Kirklees website Adult social care and support

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## Deferred Payment Scheme

Version 1.0

September 2016

Directorate for Commissioning, Public Health and Adults

Social Care and Well-being for Adults

Procedure number: X

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## **1. Purpose of document**

- 1.1 This policy provides a clear explanation and the requirements for when a Deferred Payment can be offered.
- 1.2 The policy should be applied fully to all applications for a deferred payment to ensure compliance with our statutory requirements.
- 1.3 This guidance will affect those people who are assessed as eligible for long term care and wish to defer the sale of their property or have not yet sold their property which is taken into account as part of the financial assessment process.

## **2. Scope**

- 2.1 This policy applies to all staff involved in dealing with the deferred payment processes. Primarily this relates to staff working in the Client Financial Affairs Service.
- 2.2 The policy is of relevance to customers and carers where the customer wishes to be considered for a deferred payment agreement.
- 2.3 The policy relates to long term care services only; it is not relevant to community based services.

## **3. Legal context**

- 3.1 The Care Act 2014 makes a legislative requirement for a universal Deferred Payment Scheme to be available throughout England. Regulations made under sections 34 and 35 of the Act require local authorities to offer deferred payment agreements to people who meet certain criteria governing eligibility for the scheme.
- 3.2 The implementation of the universal Deferred Payment Scheme intends to support people so that they do not have to sell their home in their lifetime to pay for their care. Use of a deferred payment agreement allows a customer to 'defer' or delay paying the costs of their care and support until a later date.

## **4. Policy aims and objectives**

- 4.1 Kirklees Council will be able to advise customers about their eligibility for deferred payments, and apply deferred payments in a consistent manner.
- 4.2 This policy adheres to the Care Act 2014 legislation and the regulations and statutory guidance stating that no one should have to sell their home in their lifetime and to give homeowners peace of mind and additional flexibility for when and how someone pays for their care and support.

## **5. When a deferred payment can be offered**

- 5.1 A Deferred Payment Agreement must be offered to customers who fulfil all of the following criteria:

- They have liquefiable capital assets (excluding the property) of less than £23,250 (the upper capital limit)
- They have a legal or beneficial interest in a property, which has been their main or only home prior to entering permanent care and the property is not benefitting from a property disregard
- They have mental capacity to agree to a deferred payment agreement or have a legally appointed agent willing to agree this
- Their income is insufficient to meet the costs of their care
- The available equity in the property is less than the “Equity Limit” (see ‘Equity Limit’ below)
- The customer meets the Council’s eligibility criteria for provision of services and we have assessed their eligible needs should be met with a long term care home placement
- The customer has entered a registered care home or will be entering a registered care home

5.2 The Council must offer a customer the option of a deferred payment agreement in order to recover debt wherever the person could be offered a deferred payment (is eligible). Only if the customer refuses a deferred payment can the council make an application to the court. A customer’s decision to refuse a deferred payment must be fully documented.

5.3 The Council may offer the option of a Deferred Payment Agreement in other circumstances. The most likely circumstance when the Council will consider offering the option of a Deferred Payment agreement is when the customer already has a mortgage to pay on the property but otherwise meets all the other criteria set out in paragraph 5.1. The Council will though want to ensure that the customer can continue to make the any mortgage payments that are due whilst at the same time making their assessed contribution to care costs

## **6. When a deferred payment may be refused**

6.1 There are certain circumstances in which a deferred payment may be refused. This is referred to as ‘permission to refuse’. Permission to refuse can apply even if a customer meets the eligibility criteria and we would otherwise be required to offer an agreement.

6.2 An agreement may be refused where:

- a) we are unable to secure a first legal charge on the customer’s property
- b) where someone is seeking a top up<sup>1</sup>
- c) where a customer’s does not agree to the terms and conditions of the agreement, for example, the requirement to insure and maintain the property.

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<sup>1</sup> In these situations we should still seek to offer a deferred payment but should be guided by a maximum amount that is sustainable (or reflects their core care costs without any top-ups) and agree a deferral. The person can then choose whether they wish to agree.

6.3 Where a 'permission to refuse' is applied, the customer must be notified of this in writing and the reason for the refusal stated.

## **7. Making an informed choice**

7.1 To support a customer in deciding whether a deferred payment agreement is appropriate to them, they should be provided with the Deferred Payment Scheme leaflet.

7.2 The customer should also be provided with the deferred payment agreement application and the accompanying guidance and notes in advance of a home visit, so they have time to fully consider how the agreement may affect them.

7.3 If a customer wishes to consider a deferred payment agreement, they should be signposted to organisations which can provide advice on options available to them. This could include information around renting their property or selling the property after their death.

7.4 As a minimum, people should be signposted to organisations which can provide independent financial advice on taking up a deferred payment agreement.

7.5 Where relevant, information should be provided as early as possible within the 12 week disregard period, enabling a smooth transition from the disregard period to the deferred payment, should a customer wish to take up this option.

## **8. Mental capacity**

8.1 Where a customer has been assessed to lack the capacity to enter into a Deferred Payment Agreement, a Deputy or Attorney<sup>2</sup> may request a deferred payment on their behalf.

8.2 If a family member requests a deferred payment and they do not have the legal power to act on behalf of the customer, then the customer and the family member should be signposted to information and advice on how to obtain Lasting Power of Attorney and Deputyships.

8.3 Where we are the Deputy for a customer, then we may apply for deferred payments where this is in the best interests of the customer.

8.4 A deferred payment agreement must not be entered into in any of these situations without the proper legal arrangements in place.

8.5 Where the customer has capacity, consideration should be given to any potential losses of capacity in the future. Where appropriate, information on deputyship, legal power of attorney and advocacy should be provided to the customer.

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<sup>2</sup> A person with a relevant Enduring Power of Attorney or Lasting Power of Attorney



## 9. How much can be deferred?

- 9.1 When a customer is entitled to a Deferred Payment Agreement a customer has a right to defer the entirety of their “core care” costs which are those charges which the council considers to be necessary to meet the customer’s needs whilst the customer is living in a care home.
- 9.2 In principle a customer (who is entitled to a Deferred Payment Agreement) should also be able to include any top up fees within the deferred payment amount. However, the amount a customer is able to top up remains at the council’s discretion and is dependent upon affordability, sustainability and the availability equity.
- 9.3 When a customer is not entitled to a Deferred Payment Agreement the council may choose to offer the customer the option of a Deferred Payment Agreement if it is appropriate to do so and may set a limit on what may be deferred. In these circumstances and in order to determine what the limit should be the Council will consider the following factors:
- 1) The amount of equity a customer has in their property
  - 2) The amount a customer 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
  - 3) The total care costs a customer will face, including any top-ups the customer might be seeking.
  - 4) The likely period the customer would want the Deferred Payment Agreement to last for
  - 5) The period of time the customer would be able to defer their care costs for
- 9.5 In considering sustainability, this should be discussed fully with the customer and agreement reached about the amount to be deferred. This final agreement should be clearly set out in the deferred payment agreement.
- 9.6 The Department of Health is seeking to develop a sustainability tool which could be applied when calculating the deferred payment. *DoH web pages. Not currently available*
- 9.7 In every case the customer should be informed in writing what might happen to any top up if they reach their equity limit. This should include finding other ways to pay for it or a change in their care package

## 10. Equity Limit

- 10.1 We must obtain a valuation of the property before the equity limit can be confirmed. The customer can also obtain an independent valuation if they wish to do so. If the independent valuation is substantially different to our valuation, we must meet with the customer and agree an appropriate valuation prior to proceeding with the DPA. In the event of a dispute the authority will commission a third independent valuation. In this instance the average valuation will be used for the DPA equity limit.

- 10.2 The equity limit must be set at the value of the property minus 10%. Less the lower capital limit (currently £14,250). Less the amount of any mortgage or other claims already placed on the property.

For example, Paul wishes to take a Deferred Payment. His property has been valued at £165,000.

The amount of equity available will be the property value minus 10%, minus the lower capital limit.

$$£165,000 - £16,500 - £14,250 = £134,250.$$

Paul also has a mortgage on the property of £20,000.

$$£134,250 - £20,000 = £114,250.$$

This would mean the equity limit for the total amount Paul could defer is £114,250. This would leave £50,750 in equity in his home.

- 10.3 In cases where the council is not required to offer a Deferred Payment Agreement The equity in a property needs to be sufficient to cover an individual's likely care cost for a minimum period of 2 years .
- 10.4 Additional amounts cannot be deferred beyond the equity limit and the 'permission to refuse' will be applied. Interest can continue to accrue even when the equity limit has been reached.

## **11. Contributing to care costs**

- 11.1 A customer's contribution to their care costs should not result in the customer being left with less than the 'disposable income allowance'. This is a fixed amount of £144 per week.
- 11.2 A customer may choose to keep less of their disposal income and contribute more to their care costs. This decision must be entirely the customer's choice.
- 11.3 If a customer wishes to rent out their property during the course of their deferred payment agreement they are entitled to retain a proportion of the rental income. The remaining rental income should be applied to their deferred payment agreement to lower the amount accruing. The amount retained by the customer will be determined following a new financial assessment and is dependent upon their other income.
- 11.4 A customer may also contribute to their care costs by third party payments, such as financial products, or their savings. However, we should not compel a customer to contribute to their deferred payments from these sources.

## **12. Land Charges**

- 12.1 For a customer to be accepted for a deferred payment there must be adequate security in place.
- 12.2 The deferred payment scheme in Kirklees relates solely to property, no other form of security is included within the scheme.
- 12.3 To obtain adequate security, a legal charge must be placed on the property to secure the debt. Legal Services will need to be instructed to enter into the legally binding deferred payment agreement with the customer and to take a supporting legal charge from the owners of the Property.
- 12.4 Where the property is jointly owned, consent and agreement must be sought from all owners. All owners must sign the legal charge and enter into a collateral agreement whereby they acknowledge that any rights in the Property that they may have would be postponed to the council's legal charge in the event of the council exercising its powers of sale under the legal charge.
- 12.5 If another party has a beneficial interest in the property their consent to the deferred payment must also be sought and evidenced by a signed agreement in which the third party agrees to postpone any rights in the Property that they may have to the rights of the Council under the Legal Charge.

## **13. Interest rate and administrative charges**

- 13.1 Administrative charges are applied to the deferred payment amount. These charges cover the setting up of the agreement, property valuations, legal charges and the associated ongoing running costs.
- 13.2 The administrative charges are made put by the following:
- Staff time (visiting officer, finance assistant, team manager, unit manager, business support)
  - Postage, printing & photocopying the agreement
  - Valuation fee
  - Land search fee
  - Legal charge
  - Legal staffing
  - Providing statements
  - Central charges/system support costs
- 13.3 The customer can request to pay the administrative charges separately if they wish to do so or these can be added to the deferred payment amount. If the charges are added to the deferred payment, interest charges will be incurred.
- 13.4 Whenever a customer is liable for an administrative charge, they must be notified of this in writing.

- 13.5 Charges are made to the customer for the initial valuation and subsequent valuations at the appropriate equity 'trigger points'.
- 13.6 Interest is chargeable on a deferred payment agreement and is charged from the point of the deferred payment being taken.
- 13.7 The interest rate is the current conventional gilts rate (from time to time) plus 0.15%.
- 13.8 The interest rate changes every 6 months on 1 January and 1 July. This must be reflected and applied to any agreements.
- 13.9 Information on interest rates and the interest rates should be provided to the individual to assist them in making an informed choice about a deferred payment.
- 13.10 The interest charged and added to the agreement will be compounded on a daily basis. It is important that the customer taking out a deferred payment understands that the interest will accrue on a compounded basis.
- 13.11 The interest will continue to accrue, even when someone has reached the equity limit.
- 13.12 In all circumstances, the interest will continue to accrue until the deferred amount has been repaid.

#### **14. The deferred payment agreement**

- 14.1 When someone chooses to enter into a deferred payment, it is best practice for the agreement to be finalised and in place by the end of the 12 week disregard.
- 14.2 If the disregard does not apply to a customer's circumstances, the agreement should still be finalised and in place within 12 weeks.
- 14.3 Decisions on a customer's care and support package, the amount they intend to defer, their security and the terms of the agreement should only be taken once a discussion has taken place with the customer considering a deferred payment.
- 14.4 Once an agreement in principle is reached, the Council is responsible for preparing the deferred payment agreement and supporting legal charge.
- 14.5 The customer will be provided with both a copy of the Agreement a commentary upon the agreement that provides an explanation of all the terms and a sheet that sets out the key terms of the Agreement.

#### **15. Our responsibilities**

- 15.1 As a minimum, a 6 monthly statement must be provided to the customer. This should coincide with the interest rate change (January and July)

- 15.2 The statement must include the amount of fees deferred, interest and administrative charges accrued to date, the total amount due and the equity remaining in their property.
- 15.3 A customer can also request an additional statement at any time. We must provide this statement within 28 days of the request.
- 15.4 Once the amount deferred exceeds 50% of a customer's equity the council will revalue the property.
- 15.5 Revaluations of a customer's property are required at regular intervals once a customer's has exceeded 50% of their equity limit. In Kirklees the following timescales for revaluations should be applied:

<b>Amount deferred in relation to agreed equity</b>	<b>Frequency of revaluations</b>
50%	Initial revaluation
51 – 84%	Revaluations every 2 years
85 – 100%	Revaluations on an annual basis

- 15.6 When a customer reaches 70% of the equity limit, the council will review the cost of their care with them, when they might be eligible for any means tested support, the implications of any top-ups and whether the deferred payment agreement remains the best way for them to meet their care costs.

## **16. Responsibilities of the individual**

- 16.1 If the customer is making a contribution to their care they are responsible for informing the service of any changes to their income.
- 16.2 If the customer's care and support needs change they are responsible for informing the service of these changes so that the existing deferred payment agreement can be reviewed.
- 16.3 If the customer has not had the property disregarded they are responsible for informing the service of any changes which may lead to the property being disregarded.
- 16.4 The customer is responsible for ensuring that their home is adequately maintained whilst they are in care including the maintenance and adequate insurance.
- 16.5 Where the property will be empty for an extended period of time the customer is responsible for ensuring adequate insurance cover is in place and that the terms of the insurer are met.
- 16.6 Before renting out their property the customer must inform us in writing of their intention.
- 16.7 The customer must obtain the consent of the service prior to allowing someone to move into the property once the agreement for a deferred payment is in place. In

these circumstances, we require written consent from the customer that they agree to postpone any interest they may have in the property in favour of the council's right to exercise its power of sale. In practice such an interest is in any event postponed as it will have been acquired after the date of the Legal Charge but it is usual to have an agreement to postpone from the third party for evidential purposes.

16.8 The customer must notify the service if someone has gained, since the agreement was signed, or may gain (in the future) a beneficial interest in the property.

## **17. Circumstances in which we may stop deferring care costs**

17.1 In some circumstances we may refuse to defer any more charges. Examples of this can include:

- a) when a customer's total assets fall below the level of the means-test and the customer becomes eligible for local authority support in paying for their care;
- b) if a customer breaches certain predefined terms of their agreement and attempts to resolve the breach are unsuccessful and the contract has specified that the authority will stop making further payments in such a case;
- c) if, under the charging regulations the property becomes disregarded for any reason and the customer consequently qualifies for local authority support in paying for their care, including but not limited to:
  - i. where a spouse or dependent relative has moved into the property after the agreement has been made, which means the customer is eligible for local authority support in paying for care and no longer requires a deferred payment agreement;
  - ii. where a relative who was living in the property at the time of the agreement subsequently becomes a dependent. The local authority may cease further deferrals at this point.
- d) In our reasonable view the needs of the customer should no longer be met by the provision of care and support in a care home

17.2 Where it is decided that the deferment of care costs should cease, a minimum of 30 days advance notice of the cessation should be provided to the customer, with an indication of how their care costs will need to be met in future. This notification must be in writing.

17.3 We should not cease to defer care charges if the customer would, as a result, be unable to pay any tariff charges due to the local authority from their non-housing assets.

### **17A Circumstances in which we must stop deferring care costs**

17.A4 We must cease deferring care costs under the deferred payment agreement if the customer has reached the 'equity limit' that they are allowed to defer or when the customer is no longer receiving care and support in a care home setting.

## **18 Repayment of the Deferred Amount**

18.1 The specified time for the repayment of the total sum of the deferred costs interest and administration charges is the sooner of:

- (i) The date of the transfer of the Property (that is subject to the Council's Legal Charge); or
- (ii) 90 days after the date of the death of the adult or such longer time as we permit

18.2 The Council may, at their discretion, allow an extension to the 90 days. Allowances will be made in instances such as:

- i) The Property is listed to be sold but a sale has so far been unsuccessful, despite best efforts to sell the property
- ii) The Property has tenants and there is a lease in place that needs to expire before the property can be sold

## **19. Terminating the agreement**

19.1 The deferred payment agreement can be terminated in 3 ways:

- 1) at any time by the individual, or someone acting on their behalf, by repaying the full amount due. This can happen during a customer's lifetime or when the agreement is terminated through the customer's death.
- 2) when the property is sold and the debt is repaid in full
- 3) when the customer dies and the amount is repaid in full from their estate.

19.2 In order to terminate the agreement, the full amount due, including care costs, administrative and legal charges (if these were deferred) and any accrued interest, must be paid in full.

19.3 If the customer decides to sell their home they are responsible for notifying the service of the sale price. At the point of selling the property they are responsible for repaying the debt in full. The council will relinquish the charge on the property on receipt of the full deferred amount to enable the sale to proceed.

19.4 Where the property is being sold for the less than the market value, or where we are selling the property on behalf of a Court of Protection client, it is essential that we apply fair and equitable approaches to signing off the final sale value.

19.5 Where the customer or a third party elect to pay the amount due they should notify the service in writing of their intention. The council will relinquish the charge on the property on receipt of the full amount due.

19.6 In cases where the agreement is terminated due to the customer's death, the amount due must be either paid out of the estate or by a third party. An alternative means of payment is acceptable provided it covers the full amount owing.

- 19.7 The Executor of the Will or Administrator of the Estate can decide how the amount due is to be paid; either from the estate or a third party source.
- 19.8 The council should wait a minimum of 2 weeks before providing the executor with a breakdown of the amount deferred.
- 19.9 Interest will continue to accrue on the amount owed after a customer's death until the amount due is repaid in full.
- 19.10 If the agreement is terminated as a result of the customer's death, the amount owed under the deferred payment agreement falls due 90 days after the customer has died.
- 19.11 After this 90 day period if we conclude that active steps are not being taken (i.e. the house has not been put up sale, lack of communication) to repay the debt we will enter into legal proceedings in line with Section 69 of the Care Act 2014 and apply debt recovery processes as instructed by the Assistant Director for Social Care and Wellbeing for Adults.
- 19.12 If debt recovery processes are applied all reasonable costs associated with this process will be included within the amount owing under the deferred payment agreement.
- 19.13 All costs under the agreement must be repaid in full and the customer or the representative acting on their behalf must be provided with a full breakdown of how the amount due has been calculated.
- 19.14 Once the debt has been repaid in full we should provide the customer or the representative acting on their behalf with confirmation that the agreement has been concluded and either a sealed discharge of the Council's legal charge or official copy entries of the registers of the Property that show that the Council's legal charge has been removed from the property.
- 19.15 Where the deferred amount is discharged from the funds of any unrepresented third party then the council will require that third party to comply with its money laundering procedures.

## **20. Internal monitoring**

- 20.1 Each deferred payment agreement should be reviewed as identified within this procedure.
- 20.2 Deferred payment agreements should be reviewed at the Client Financial Affairs Senior Management meeting and with the Business & Partnership Development Manager.
- 20.3 Reports should be made available to EMT on a six monthly basis and include an overview on the current numbers of deferred payment agreements in place, the total outstanding debt and the number of agreements repaid.



## **21. External monitoring returns**

21.1 Reports should be made available to the Health & Social Care Information Centre (HSCIC), when requested, providing the following information:

- Total number of DPAs and the value of these
- Number of new DPAs within a set time period and the value of these
- Number of DPAs recovered during a set time period, the length of the DPAs and the values
- Number of DPAs written off during a set time period, reason of the write offs and the values

## **22. Internal recording**

22.1 Throughout all stage of the deferred payment process, full documentation should take place, recording on CareFirst, DPA module and Wisdom.

## Appendix 4

# Client Financial Affairs Debt Recovery Policy

<b>Version</b>	Version 3 approved
<b>Issue date</b>	April 2015
<b>Review date</b>	April 2016 or before as needed
<b>Staff Affected</b>	Client Financial Affairs Team, Corporate Debtors, Social Care teams, Legal Services
<b>Lead Officer</b>	Nazir Mira
<b>Approved by</b>	Dianne Green.
<b>Procedure no</b>	AS 4/06
<b>Revised</b>	Steve Bird 26 <sup>th</sup> July 2016 V3

### UNCONTROLLED VERSION IF PRINTED OR E-MAILED

If you are viewing this document from your personal drive or as a hard copy, it may not be **the latest version**.

The current version of the document can be found on the Intranet.

**Always refer to documents stored here when applying policy and procedure.**

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## 1. Purpose

The purpose of this policy is to provide staff with guidance on how to deal with recovery of sundry debtors' accounts raised on SAP following the implementation of the Care Act 2014.

The recovery of debts from those who are receiving care and support is a sensitive issue given the potentially vulnerable nature of the client group and local authority's ultimate responsibility to meet needs. There could also be a variety of reasons why the person has not paid the assessed charge, for example, there could be issues around diminishing capacity, an administrative error or they may have needed to enter hospital meaning they may not have been able to notify the local authority of the change in circumstances or are not easily able to arrange payments. Given this, local authorities will want to bear in mind the following principles when approaching the recovery of debts:

### The overall objectives of this policy are:

- Possible debts must be discussed with the person or their representative
- To take all reasonable measures to prevent debts occurring and escalating
- arrangements for debt repayments should be agreed between the relevant parties
- repayments must be affordable
- court action should only be considered after all other reasonable avenues have been exhausted
- To assist clients and third parties to maximise their income and tackle debt by providing effective welfare advice
- To treat clients and third parties as individuals and respond to their differing needs in order to provide the assistance required.
- To promptly and effectively recover debt, and to take enforcement **action at the appropriate time**
- To ensure invoicing is accurate an audit trail of communication is maintained
- To be compliant with the Care Act 2015: Recovery of debts.

## 2. Related Documents

### Internal

- Corporate Credit Management Policy v4 (Welfare and Exchequer)
- Kirklees Council Financial Procedure Rules
- CFA Write off procedure
- CFA Deprivation of Assets procedure
- CFA Deferred Payment Agreement procedure

### External

#### Statutory link to recovery guidance annex D

<https://www.gov.uk/guidance/care-and-support-statutory-guidance/annexes>

- The Care Act 2014
- Equality Act 2010
- Disability Discrimination Act 2005

- Data Protection Act 1998
- Human Rights Act 1998
- The Mental Health Act 1983
- Mental Capacity Act 2005

### 3. Scope of Policy

This policy deals with the collection and recovery of monies owed for the following services:

- Sundry Debtor Accounts – repayment of client contribution for the services received such as nursing care, residential care, self-directed support, Carephones, re-charging for kennelling and ad-hoc requests (where instructions from outside the service for unpaid social care charges at point of delivery.)
- Clinical Commissioning Group re-charges
- Direct Payments.
- Re-charge of client contributions which should have been paid to the Care Home (Net Recovery cases)
- Home reclamation of overpayments of fees.
- Other debt falling due to be collected by CFA or W&E Recovery.

This Policy applies also to:

- The recovery of monies owed where it has been established that deprivation of assets has occurred.
- The recovery of monies owed against a deferred payment agreement.
- The recovery of monies where there has been a misrepresentation or a failure to disclose information that leads to money being owed to the Council.

### 4. Definitions & abbreviations

CA	The abbreviation used for the Care Act
SDS	The abbreviation used for Self-Directed Support
CCG	The abbreviation used for Clinical Commissioning Group
DP	The abbreviation used for Direct Payments
DPA	The abbreviation used for a Deferred Payment Agreement
PoA	The abbreviation used for a Power of Attorney
CoP	The abbreviation used for a Court of Protection

### 5. Policy Statement

#### 6.1 Introduction

Effective debt control is essential so that Kirklees Council can fulfil its contractual and legal obligations to our Customers and Service Providers.

As a responsible Council, with a commitment to early intervention and prevention, it is important that we do not allow customers to accrue, unchecked, large debts; and that we provide a range of advice and support services aimed at promoting economic and financial wellbeing.

Whilst acknowledging that legal action to recover monies owed is sometimes unavoidable, this action is only taken following the issue of an invoice, reminder a summons and attempts will always be made to obtain payment based on the client's circumstances. The recovery action should be fair and reasonable.

The policy is supported by procedures which will offer staff step-by-step guidance on how to deal with debt recovery.

## **6.2 Debt prevention measures**

Drawing on recognised good practice and the Care Act 2014 principles underpinning the approach to debt recovery, we will take the following steps to minimise the risk of arrears and to deal with them effectively when they do occur.

- We will explain at the outset to the person or their representative that care and support is a chargeable service and that where the person has been assessed as being able to afford to do so, they will be required to contribute to the cost of that care.
- We will explain that where a customer has been assessed as being able to contribute to their care, that they or their representative will receive invoices to charge them.
- We will agree to whom invoices are to be sent, and if the person wishes, their agreement and authority will be obtained for the use of an agent.
- We will make early contact with customers or their representative in arrears and within a predetermined timescale;
- We will establish whether the customer has mental capacity to make financial decisions through referral and/or communications with Social Work teams
- We will provide flexible payment options and make it easy for service users to pay charges and any other debts;
- We will provide clear and concise information to customers about debt recovery;
- We will offer a range of ways for customers to contact us about their accounts either by phone, in person, in writing or electronically;
- We will carry out a financial assessment to ensure that residential care and care charges are affordable and to identify any support needs that customers and carers may have;
- We will aim to issue Financial Reassessment Statements annually to all customers;
- Our front line staff will demonstrate a wide range of knowledge about the full range of enquiries they receive regarding charging and invoices, managing debt and reducing arrears;
- We will provide our literature, where requested, in different languages, or in Braille or audio versions;
- We will actively encourage customers to take ownership of any difficulties with non-payment of invoices.
- We will signpost our customers to specialist money, debt, independent financial advice and welfare benefit advice agencies;
- We will respond quickly to crisis events that are known to precipitate debt problems;
- We will approach debt recovery in a way that is firm but fair, taking into account possible impact on a customer's wellbeing.

- We will only seek legal recovery of debt through County Courts once all other non-legal remedies have been taken to recover the debt.

### **6.3 Debt recovery**

As a first port of call, the Council must offer a person the option of a deferred payment agreement (DPA) in order to recover debt wherever the person could be offered a DPA,(is eligible) and can only make an application to the court should the person refuse.

The Care Act gives Councils some discretion in offering DPA's to others who don't meet the criteria. The Council can offer DPAs to people in residential care who do not meet the criteria.

#### **For example:**

- If someone would like to use wealth tied up in their home to fund reasonable top-ups
- If someone has other accessible means to help them meet the cost of their care and support
- If a person is narrowly not eligible e.g. because they have slightly more than the asset threshold

For further information on DPA's and eligibility staff should refer to the Councils' DPA Policy

#### **The Council will ensure that:**

- The Council will not actively chase monies where the amount of the debt is small (less than £50) and the costs of recovery would be disproportionate,
- Client Financial Affairs, Corporate debtors and Social work staff will receive appropriate levels of training to ensure that they understand and are able to implement/and or support the Debt Recovery Procedure;
- Early personal contact will be made with customer's to establish the reason for the non-payment;
- Agreements to clear or reduce arrears will only made once the customer's financial situation is fully understood;
- For All customers in arrears we will aim to undertake a check on their financial situation and if necessary refer cases for debt counselling with Advice Kirklees (Citizen Advice and law centre)
- Where a customer has mental capacity to make financial decisions we will ensure we have considered all options available. These will include negotiating an agreement, mediation and arbitration.
- Where the Council is satisfied an intentional deprivation of assets has occurred to avoid or reduce charges for care and support, the appropriate charges will be applied accordingly and the procedure for debt recovery followed.

Where assets have been transferred to a third party or parties, they will be charged the difference between what the Council would have charged and did charge the person receiving care. The third party will not be liable to pay anything which exceeds the benefit they have received from the transfer.

If a person has transferred funds to more than one third party, each of those people is liable to pay the Council the difference between what it would have

charged or did charge the person receiving care in proportion to the amount they received.

- Recovery procedures will be designed to be fair to avoid post legal debt recovery via the County Court process.
- Training on recovery process will be provided to social working teams highlighting the importance of accurate recording and invoicing which is critical for good customer service, collection and recovery
- Quality monitoring will be undertaken of cases reaching recovery stage in order to feedback good practice to social working teams and service users. Feedback to Adults EMT and individual staff level.
- The Council will be compliant with the Care Act (as amended) timescales for debt recovery. For debts prior to April 1<sup>st</sup> 2015 the Council will apply a limit of 3 years to recover monies owed. For debts accrued from the 1<sup>st</sup> April 2015 onwards the Council will apply a timescale of 6 years to recover monies owed.

In both circumstances the timescale applies from the date the debt became due to the Council. Unless recovery proceedings have been issued within these timeframes, debt will need to be progressed to write off. A letter will be sent requesting payment, and where these debts remain unpaid then cases will be passed to the Senior Manager CFA for WO approval.

- The Council currently issues 2 reminders prior to issuing a summons for legal recovery action; it is intended that this process will be phased out and the council will move to one reminder, the service will issue communications and update the web site when this change occurs.
- Where possible telephone collection will be attempted to collect debts above £250 i.e. homecare

#### **6.4 Vulnerable Clients**

- Action against customers in arrears needs to be proportionate with the level of debt, taking into account historical factors and personal circumstances.
- In some cases, customers may need support through crisis periods to prevent their situations becoming worse.
- Officers work in a multi-agency framework when managing accounts drawing upon all resources available, whilst complying with current Data Protection legislation and guidance.
- Where we have relevant mental capacity assessments on file, and where there are appointed attorneys, deputies or friends/family to support we will involve them in financial decision making in order to reduce the likelihood of debt, and where it does occur, make it easier to recover.
- Where a customer has been assessed as lacking capacity and they have no attorney or deputy and it is proportional to pursue the debt we will apply to the CoP unless there is family that can/will make the application to become a deputy.
- Where a customer has diminishing or lack of mental capacity we will not send letters demanding payment to them. We will establish who has the legal authority to make financial decisions on their behalf and engage with that person.

#### **6.5 Legal action**

Kirklees Council will take legal action and proceed cases to County Court under the following circumstances:



1. Where a DPA has been offered and refused and all other reasonable avenues to recover debt have been exhausted  
See statutory guidance on recovery of debts and DPA policy:-insert link <https://www.gov.uk/guidance/care-and-support-statutory-guidance/annexes>
2. Where a customer has been assessed as having capacity and all attempts to engage with them to set up and keep to payment agreements, attempts to engage with mediation and or arbitration have failed.
3. Where Deprivation of Assets has occurred and it has not been possible to reach agreement with the client or the transferee of said asset to repay the value of deprivation.
4. Where the amount owed is significant enough to warrant further recovery action and all attempts to recovery by other methods have failed. **The final decision to proceed to court will be the responsibility of Client Financial Affairs, advice from legal should be undertaken where appropriate.**
5. Where it appears reasonable to undertake recovery action.
6. Where a customer has passed away and it appears to the Council that there are sufficient funds available to pay any outstanding debt, then these debts should be recovered from the Executors of the deceased person i.e. from the estate.

## **6.6 Recovery of costs associated with the debt recovery process.**

The Council will seek to recover costs associated with debt recovery in order to operate as near as possible a cost neutral recovery service.

For 2015/2016 the Council will continue to seek recovery of legal fees in addition to the debt owed.

The Council will recover other costs it is legally entitled to pursue for cases where a person is deemed to pay under the charging policy ;or misrepresents or has failed to disclose information required under the financial assessment (whether fraudulently or otherwise)

Where appropriate this policy will be amended as part of policy monitoring.

## **7. Key Performance Indicators**

The setting and monitoring of Key Performance Indicators (KPIs) is an essential element of judging the effectiveness of our Debt Recovery Procedure.

The following KPIs will form part of staff's individual annual targets and are reported monthly to Resources Directorate Management team and Adults Executive Management Team. *Please note these are illustrative and may change over time*

- Average number of days taken by customers to pay their invoice (Corporate)
- % of people/invoices paying by direct debit
- % Debt collected (New compared to Debt raised)
- Debt clawed back from direct payment
- Debt Amount written off
- Outstanding Debt

## 8. Appendices: Legal Framework

Legislation	Main powers and relevance to recovery of debts
<p><b>The Care Act 2014 (As amended)</b>            The Care Act 2014 introduces a modern legal framework for the recovery of any debts that may have accrued as a result of a local authority meeting a person’s eligible care and support needs</p> <p><i>Please note this is not designed to be an exhaustive list and legislation may change over time</i></p>	<p><b>Section 69 – Recovery of charges, interest etc.</b></p> <p>1) Any sum due to a local authority under the Part is recoverable by the authority as a debt due to it.</p> <p>2) But subsection (1) does not apply in a case where a deferred payment agreement could, in accordance with regulation under section 34 (1), be entered into, unless-</p> <p>(a) The local authority has sought to enter into such an agreement with the adult from whom the sum is due, and.</p> <p>(b) The adult has refused.</p> <p>3) A sum is recoverable under this section-</p> <p>(a) in a case in which the sum becomes due to the local authority on or after the commencement of this section, within six years of the date and the sum becomes due;</p> <p>(b) In any other case, within three years of the date on which it becomes due.</p> <p>4) Where a person misrepresents or fails to disclose (whether fraudulently or otherwise) to a local authority any material in connection with the provisions of this Part, the following sums are due to the authority from the person -</p> <p>(a) any expenditure incurred by the authority as a result of the misrepresentation or failure and</p> <p>5) the costs incurred by a local authority in recovering or seeking to recover a sum due to it</p> <p>6) Regulations may</p> <p>(a) make provision for determining the date on which a sum becomes due to a local authority for the purpose of this section</p> <p>(b) Specify cases or circumstances in which a sum due to a local authority under this Part is not recoverable by it under this section</p> <p>(c) specify cases or circumstances in which a local authority may charge interest on a sum due to it under this part</p> <p>(d) where interest is chargeable, provide that it-</p> <p>(i) must be charged at a rate that exceeds the rate specified in or determined in accordance with regulations, or</p> <p>(ii) May not be charged at a rate that exceeds the rate specified or determined in accordance with the regulations.</p> <p><b>Section 70 – Transfer of assets to avoid charges</b></p> <p>This section applies in a case where an adult’s needs have been or are being met by a local authority under sections 18 to 20 and where—</p> <p>(a) The adult has transferred an asset to another</p>

	<p>person (a “transferee”)</p> <p>(b) The transfer was undertaken with the intention of avoiding charges for having the adult’s needs met, and.</p> <p>(c) Either the consideration for the transfer was less than the value of the asset or there was no consideration for the transfer. .</p> <p>(2) The transferee is liable to pay to the local authority an amount equal to the difference between—</p> <p>(a) The amount the authority would have charged the adult were it not for the transfer of the asset, and</p> <p>(b) The amount it did in fact charge the adult. .</p> <p>(3) But the transferee is not liable to pay to the authority an amount which exceeds the benefit accruing to the transferee from the transfer. .</p> <p>(4) Where an asset has been transferred to more than one transferee, the liability of each transferee is in proportion to the benefit accruing to that transferee from the transfer. .</p> <p>(5) “Asset” means anything which may be taken into account for the purposes of a financial assessment.</p> <p>.</p> <p>(6) The value of an asset (other than cash) is the amount which would have been realised if it had been sold on the open market by a willing seller at the time of the transfer, with a deduction for—</p> <p>(a) The amount of any incumbrancer on the asset, and.</p> <p>(b) A reasonable amount in respect of the expenses of the sale. .</p> <p>(7) Regulations may specify cases or circumstances in which liability under subsection (2) does not arise.</p>
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## Impact of the revised Charging Policy on existing service users

<b>APPENDIX 5</b>
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Change	No. of SU's affected	General impact	Largest impact
Removal of £20 per night for respite stays	Approximately 800 respite stays were accessed in a residential setting in 2014.	<p>Around half of service users are expected to pay less than £20 per night based on their finances.</p> <p>A third would pay more than £20 per night but not the full cost. This would amount to between £20 and £80 for each day taken.</p> <p>Around 10% would pay the full cost of the stays.</p>	Additional cost of approx £400 per week for each individual respite stay for around 10% of respite users who are assessed as paying the full amount
Introduction of charge for managing finances for appointees	Approximately 400 existing service users, plus all new service users taking up Council appointeeship	<p>Proposed charges of £10 per week (for Care in the Community Service User's) and £5 per week for Residential Service user's).</p> <p>Charges will only be implemented for people with over £1000 savings.</p>	£10 per week, (£500 per year)
Introduction of charge for arranging a Deferred Payment Agreement	Estimated that it will affect new service users at a rate of 2 per month	Charge of £1,319 for every person who takes up a DPA. Cost may be paid upfront; or may be added to the loan and paid following sale of the property	Same for everyone who takes up a DPA
Introduction of charge for arranging community based services for self-funders	Approximately 100 existing service users, plus all new service users assessed at being above the threshold for financial support	Setup charge of £250	<p>£250 if a person chooses to have the Council arrange their care service either if;</p> <p>a) they are financially assessed as being a self-funder, or</p> <p>b) they choose to not share their financial details with the Council</p>

<p>Removal of refunds for missed services</p>	<p>In 2015/16 the Council issued 659 credits for homecare service users. (215 to full cost clients, and 444 to part payers).</p> <p>In 2015/16 the Council also issued credits to 140 Day Care service users for closures.</p>	<p>The total paid out in credits to full payers in 2015/16 was £92,250.</p> <p>The average credit for full paying home care service users was £430. Dependent on the reasons for the non provision of care, some of these credits will continue to apply under the new charging policy.</p> <p>The total paid out in credits to part payers in 2015/16 was £154,500.</p> <p>The average credit for part paying home care service users was £348. Under the new charging policy, no one who is a part payer will receive a refund.</p> <p>The average credit for day care service users was £165. The total paid out in credits for day services was £23k. Under the new charging policy, these credits will only be paid if the centre is closed (i.e. Xmas).</p>	<p>Highest credit paid in 2015/16 was approximately £2,200.</p>
<p>Decision to not charge for services provided to carers</p>	<p>Based on figures from last 12 months, 27 carers each received a Direct Payment</p>	<p>27 carers received direct payments (one off payments) ranging from £50 - £1500, totalling £18.5k.</p> <p>If this was a chargeable service, income from each carer could be anything from zero up to the full amount of the Direct Payment.</p>	<p>We have never financially assessed carers before so we do not have any information on the level of disposable income available.</p> <p>The maximum the Council would have recouped for this would be £18k.</p>

## Kirklees Council - Schedule of Care Fees 2016/17

**PLEASE NOTE - this table of charges will be subject to at least annual reviews in line with inflation, however reviews may be more frequent depending on supplier cost changes.**

INDEPENDENT SECTOR RESIDENTIAL AND NURSING CARE FEES		Fee from 11 April 2016	Fee from 11 April 2016
		(Homes not participating in the Dementia Care Fee Rate Scheme)	(Homes participating in the Dementia Care Fee Rate Scheme)
		£ per week	£ per week
<b>Residential Care</b>			
Base fee	Already in place as per Care act	£455.36	£475.36
Single Room Supplement	Already in place as per Care act	£14.37	£14.37
End-Suite Supplement	Already in place as per Care act	£14.37	£14.37
Maximum Rate		£484.10	£504.10
<b>Nursing Care</b>			
Base Fee	Already in place as per Care act	£470.74	£490.74
Single Room Supplement	Already in place as per Care act	£14.37	£14.37
End-suite Supplement	Already in place as per Care act	£14.37	£14.37
Maximum Rate		£499.48	£519.48

### Notes

- 1 Care homes located within the Kirklees boundary and contracted to the Council may be eligible to join the Council's Dementia Care Fee Rate Scheme. The scheme enables Service Providers to receive an additional £20 per eligible Service User per week.
- 2 In addition to the fees set out above, in respect of Service Users who are assessed as requiring the help of a registered nurse, a nationally agreed funded Nursing Care payment is paid by the NHS.

KIRKLEES COUNCIL HOME FEES		£	
Ings Grove House	Already in place as per Care act	£667.99	per week
Moorlands Grange	Already in place as per Care act	£667.99	per week
ESMI - Claremont House	Already in place as per Care act	£707.75	per week
ESMI - Castle Grange	Already in place as per Care act	£707.75	per week
<b>RESPIRE (as per residential rates above, but charged on a nightly rate)</b>	Already in place as per Care act	See above residential rates	Weekly rates / 7 nights. Complex cases will incur additional charges

COMMUNITY BASED SERVICES	New or existing	Fee / charge	Notes
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<b>HOME CARE (STANDARD)</b>		£12.50 - £14.10 per hour	Fees to be increased to £14.10 per hour. The fees will then be subject to a yearly increase, or an increase in cost to the Council (such as to cover the Living Wage)
	Already in place as per Care act		
<b>HOME CARE (SPECIALIST SUPPORT)</b>	Already in place as per Care act	£14.50 per hour	Complex needs
		£15.50 per hour	Very complex needs
		£17.00 per hour	Extremely complex needs
<b>SHARED LIVES (ARRANGEMENT)</b>	Already in place as per Care act	£329.52 per week standard	Charge may be higher for complex needs
<b>SHARED LIVES (SHORT BREAK)</b>	Already in place as per Care act	£57 per night (standard)	
	Already in place as per Care act	£71.43 per night (emergency)	
<b>CAREPHONES</b>	Already in place as per Care act	£4.30 per week	Standard
	Already in place as per Care act	£4.60 per week	Enhanced
<b>DIRECT PAYMENT FOR A PERSONAL ASSISTANT</b>	Already in place as per Care act	£10.87 per hour	Rate to be increased to £11.55 per hour
<b>DIRECT PAYMENT FOR GENERIC DOMICILIARY CARE</b>	Already in place as per Care act	£12.50 per hour	Rate to be increased to £14.10 per hour
<b>DAY CENTRES (per Client Group):</b>			
Older People (already in place as per Care act)	Already in place as per Care act	£36 - £52 per day	Range based on level of need
Physical Disability (already in place as per Care act)	Already in place as per Care act	£35 - £46+ per day	Range based on level of need
Learning Disability	Already in place as per Care act	£35 - £95+ per day	Range based on level of need
Meals at Day Centres	Already in place as per Care act	£1.35 per meal	Payable in addition to assessed contribution
Transport to and/from Day Centres	Already in place as per Care act	£1.90 per trip	Payable in addition to assessed contribution
<b>COURT OF PROTECTION (CoP)</b>			
Set up fee	Already in place as per Care act	£670	
1st year fee	Already in place as per Care act	£700	
Subsequent year's fee	Already in place as per Care act	£585 per year	
Annual fee for CoP returns	Already in place as per Care act	£195 per year	
<b>APPOINTEESHIP FEES</b>			
Service users with care in the community	New proposed charge	£10 per week	To be confirmed pending the completion of the public consultation
Service users in residential care	New proposed charge	£5 per week	To be confirmed pending the completion of the public consultation
Property Management Fee	Already in place as per Care act	£270 per year	2nd year pro rata
Administration fee for estate management	Already in place as per Care act	£325	
<b>DEFERRED PAYMENT AGREEMENTS</b>			
Interest rate	New proposed charge	Bank of England base rate currently 1.85% + 0.15%	To be confirmed pending the completion of the public consultation
Administration charge	New proposed charge	£1,319	To be confirmed pending the completion of the public consultation
<b>SELF FUNDERS</b>			
Admin charge for commissioning services on behalf of self - funders for non residential customers.	New proposed charge	£250 per care package per year	To be confirmed pending the completion of the public consultation

This list is not exhaustive. Other support needs may be identified based on a person's needs that will incur additional charges. A person's ability to pay for services will be determined on a means tested basis, as per the Care Act 2014 charging criteria.

<b>1) WHAT IS YOUR PROPOSAL?</b>	<b>Please select YES or NO</b>
To <b>introduce</b> a service, activity or policy (i.e. <b>start</b> doing something)	NO
To <b>remove</b> a service, activity or policy (i.e. <b>stop</b> doing something)	NO
To <b>reduce</b> a service or activity (i.e. <b>do less</b> of something)	NO
To <b>increase</b> a service or activity (i.e. <b>do more</b> of something)	NO
To <b>change</b> a service, activity or policy (i.e. <b>redesign</b> it)	YES
To <b>start charging</b> for (or increase the charge for) a service or activity (i.e. ask people to <b>pay</b> for or to pay more for something)	YES
<b>Please briefly outline your proposal and the overall aims/purpose of making this change:</b>	
<p>Revision to the Adult Social Care Charging Policy.</p> <p>Revised following implementation of the Care Act 2014. The Act gives Councils permission to charge for some adult social care services. The Policy also contains some changes to existing charges that will impact on some members of the community.</p>	

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**Move to next section**



2) WHAT LEVEL OF IMPACT DO YOU THINK YOUR PROPOSAL WILL HAVE ON...		Level of Impact
		Please select from drop down
Kirklees <b>employees</b> within this service/directorate? (overall)		Neutral
Kirklees <b>residents</b> living in a specific ward/local area?		Neutral
Please tell us which area/ward will be affected:		All
<b>Residents</b> across Kirklees? (i.e. most/all local people)		Neutral
Existing <b>service users</b> ?		Negative
Each of the following <b>protected characteristic groups</b> ?		Please select from drop down
<i>(Think about how your proposal might affect, either positively or negatively, any individuals/communities. Please consider the impact for both employees and residents - within these protected characteristic groups).</i>		
...age	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Negative
...disability	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Negative
...gender reassignment	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Neutral
...marriage/ civil partnership	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Neutral

...pregnancy & maternity	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Neutral
...race	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Neutral
...religion & belief	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Neutral
...sex	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Neutral
...sexual orientation	What impact is there on Kirklees <b>employees</b> /internal working practices?	Neutral
	What impact is there on Kirklees <b>residents</b> /external service delivery?	Neutral

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3) HOW ARE YOU USING ADVICE AND EVIDENCE/INTELLIGENCE TO HELP YOU?		Please select YES or NO
Have you taken any <b>specialist advice</b> linked to your proposal? (Legal, HR etc)?		YES
Do you have any <b>evidence/intelligence</b> to support your assessment (in section 2) of the impact of your proposal on...	...employees?	NO
	...Kirklees residents?	YES
	...service users?	YES
	...any protected characteristic groups?	YES
Please list your evidence/intelligence here [you can include hyperlinks to files/research/websites]:		
<p>The Charging Policy adheres to the principles laid out in the Care Act 2014 (revised 2015).</p> <p>The proposals are in line with the majority of other Local Authorities.</p> <p>Final rates are yet to be determined but will be based on costs incurred by the Council to deliver the services.</p> <p>Any potential negative effect on an individual will be measured against that person's financial status, as determined by an optional financial assessment. All service users will only pay up to the limit of what they have been assessed as being able to afford.</p>		
		Please select from drop down
To what extent do you feel you are able to mitigate any potential negative impact of your proposal on the different groups of people outlined in section 2?		FULLY
To what extent do you feel you have considered your Public Sector Equality Duty?		FULLY

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#### 4) STAGE 1 ASSESSMENT

IMPACT	RISK
Based on scoring of 1) and 2)	Based on scoring of 2) and 3)
<b>-7</b>	<b>7</b>

You need to move on to complete a Stage 2 assessment if:  
The final Impact score is negative and/or the Risk score is negative.

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# Understanding our impact on our communities and workforce

Equality Impact Assessment (EIA)  
guidance and template

## EIA STAGE 2 – FURTHER ASSESSMENT AND ACTION PLAN

- ✓ The purpose of this further assessment is to help you consider how you will:
  - avoid, reduce or minimise negative impact
  - promote equality of opportunity
  - foster good relations between people who share a protected characteristic and those who do not

for proposals/activities that have been assessed as potentially having a negative impact on communities/protected characteristic groups.

- ✓ Considering what you will do to help address the above is your responsibility as a service and the Stage 2 EIA will help you to think this through. If you need expert advice (e.g. from Legal or HR) then this is available, but this process is ultimately about empowering you as a service to better understand and meet the needs of local people.
- ✓ Please provide the reference to your stage 1 assessment, to then complete sections
  - A) Further evidence and consultation with key stakeholders
  - B) Action planning
  - C) Publishing your EIA

<b>Directorate:</b>	<b>Senior officer responsible for service/policy:</b>
<b>Commissioning, Public Health and Adult Social Care</b>	David Hamilton, Assistant Director Adult Social Care and Wellbeing
<b>Service:</b>	<b>Lead officer responsible for this EIA:</b>
Adult Social Care and Wellbeing	Damian Crowther, Acting Business and Partnership Development Manager
<b>Specific service area/policy:</b>	<b>Date of EIA (Stage 1):</b>
<b>Adult Social Care Charging Policy 2016</b>	11/08/2016
<b>EIA (Stage 1) reference number:</b>	<b>Date of EIA (Stage 2):</b>

## A) Further evidence and consultation with employees, residents and any other stakeholders

As part of your Stage 1 EIA you identified evidence/intelligence you had available to support your assessment of the impact of your proposal on different groups.

**Stage 2 is different to Stage 1. It is a live process that needs to be your companion throughout the whole of the proposal considerations.**

At Stage 2 you need to document the evidence you **already have** to show you have undertaken consultation. You also need to document what you are **planning to do too**. This section needs to be regularly updated when you have completed a piece of consultation activity. This helps to support the work you are doing to understand the impact of your proposals.

CONSULTATION WITH KEY STAKEHOLDERS				COMPLETE THIS DETAIL WHEN YOU HAVE DONE YOUR CONSULTATION	
REF No.	Which key stakeholders have you/are you consulted/ing with?	Why have you/are you consulted/ing them (or not?) and what were you/are you looking to find out?	How did you/are you planning to consult them? Date and method of planned consultation	Actual Date of Consultation	Outcome of consultation What have you learned? Do you have actions to complete that will help mitigate any unnecessary negative impact on groups? [move to section B if you do]
1	Service Users	To inform them of the planned changes to the policy and how they will affect new and existing service users.  To provide reasons why we are recommending this action and to seek feedback in terms of agreement and general comments.	Online and paper consultation.  A representative sample of service users will be notified of the consultation.	Autumn 2016 (exact dates TBC)	

<b>2</b>	All residents	As above	Same as above. The survey will be made available to all online.	As above	
<b>3</b>					
<b>4</b>					
<b>5</b>					

## B) Action planning

If you identified that you needed to take further action after you consultation activity in section A, you need to now complete this action plan. It needs to include: a list of actions that you will take, what you think will be the projected outcome from doing this, record what you ended up doing, when you did this and what the actual outcome was.

Actions need to cover your next steps AND specific actions that you will need to take to help mitigate the impact against protected groups that is being identified through your consultation.

**THIS IS A LIVE PLAN – YOU WILL NEED TO REVIEW & CONTINUE TO UPDATE IT**

EIA - ACTION PLAN			Complete this section when you have actually carried out some actions		
REF.No [from section A]	What actions are you going to do as a result of carrying out your consultation?	What do you think these actions will achieve? Will they mitigate any adverse impact on protected groups? Will they foster good relations between people? Will they promote equality of opportunity?	What did you actually do?	When did you do this?	What was the actual outcome? Have you mitigated any negative impact? Have you ensured good relations exist? Have you promoted equality of opportunity?




## **C)Publishing Your EIA**

ALL Equality Impact Assessments must be published. They are public documents. As you update your EIA, you will need to re-publish this to show the changes you are making. This will allow stakeholders in your proposal to be more informed and talk to you in a more knowledgeable way about your proposal.