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Deferred Payment Agreements Policy

Policy Details

What is this policy for?	Local authorities have a <u>duty</u> to arrange care and support for adults with eligible needs, and a <u>power</u> to meet non-eligible needs. In both cases the local authority has discretion to choose whether or not to charge. This policy sets out how Dorset Council has agreed to exercise that discretion, in accordance with the regulations, the guidance and the overarching principle that people should only be charged what it is reasonably practicable for them to pay. The policy also set out the circumstances under which an individual may defer the payment of charges and the process by which this would be managed.
Who does this policy affect?	Individuals eligible for adult social care and support from the Council, who are subject to financial assessment and found to be able to afford to contribute to the cost of services and/or support. Staff responsible for assessing and supporting those individuals.
Keywords	Adult social care; assessment; financial assessment; personal budgets; debt
Author	Michael Ford, Policy Officer
Dorset Council policy adopted from	Dorset County Council. This policy applies across the Dorset Council area.
Does this policy relate to any laws?	Care Act 2014 Sections 34 to 36 Care Act 2014: Care and support statutory guidance
Is this policy linked to any other Dorset Council policies?	Charging and Financial Assessment; Recovery of Debts.
Equality Impact Assessment (EqIA)	An EqIA was completed in August 2015. The EQIA will be updated when the policy is reviewed for Dorset Council.
Other Impact Assessments	N/A

Status and Approvals

Status	Live / Under review	Version	2
Last review date	July 2015	Next review date	June 2019
Approved by (Director)	Director Adult and Community Services	Date approved	May 2015
Member/ Partnership Board Approval	Executive Advisory Panel / Cabinet	Date approved	May 2015

Adult and Community Services

Deferred Payment Agreements Policy

Purpose	<p>Local authorities have a <u>duty</u> to arrange care and support for adults with eligible needs, and a <u>power</u> to meet non-eligible needs. In both cases the local authority has discretion to choose whether or not to charge. This policy sets out how Dorset Council has agreed to exercise that discretion, in accordance with the regulations, the guidance and the overarching principle that people should only be charged what it is reasonably practicable for them to pay.</p>							
Scope	<p>The scope of this policy covers:</p> <ol style="list-style-type: none"> 1. Introduction; 2. Who will be offered a deferred payment agreement? 3. Information and advice; 4. How much can be deferred?; 5. Obtaining security; 6. Interest rate and administration charges; 7. Making the agreement; 8. The Council's responsibilities whilst the agreement is in place; 9. The responsibilities of the individual whilst the agreement is in place; 10. Termination of the agreement. 							
Keywords	<p>Financial assessment; deferred payment agreement; interest, valuation, equity, 'top-ups', care costs, daily living costs, advocacy</p>							
Glossary of Terms / Definitions	<table border="1" data-bbox="523 1727 1380 2058"> <thead> <tr> <th data-bbox="531 1738 874 1794">Term</th> <th data-bbox="882 1738 1372 1794">Definition</th> </tr> </thead> <tbody> <tr> <td data-bbox="531 1805 874 1895">Dorset, the Council, we, ourselves, us</td> <td data-bbox="882 1805 1372 1895">Dorset Council (the 'local authority')</td> </tr> <tr> <td data-bbox="531 1906 874 2047">The Care Act</td> <td data-bbox="882 1906 1372 2047">The Care Act is a major reform of the law about care and support. It puts people and their carers in control.</td> </tr> </tbody> </table>		Term	Definition	Dorset, the Council, we, ourselves, us	Dorset Council (the 'local authority')	The Care Act	The Care Act is a major reform of the law about care and support. It puts people and their carers in control.
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Policy	A policy is a set of principles, rules and guidelines that help the Council make decisions and that let people know what they can expect from us.
Deferred Payment Agreement (DPA)	An agreement between the Council and the person receiving the loan.
Wellbeing	The wellbeing principle in the Care Act means that when Dorset arranges care and support for someone it must take into account a wide range of things that contribute to their physical, mental and emotional welfare.
Eligible needs	'Eligible' needs are those needs for care and support which Dorset is <u>required</u> to meet by the Care Act. Although the Council has powers to meet any other needs, the determination of 'eligible' needs is important in helping people to access care and support.
Capacity	The Mental Capacity Act protects people who are unable to make decisions for themselves. This could be for reasons such as a mental health condition, a severe learning disability, a brain injury, or a stroke.
Financial assessment	The Council carries out a financial assessment (or 'means-test) to work out how much, if anything, someone will pay for the social care services they receive. The assessment looks at someone's income and capital, compared to the cost of providing the services.
Capital	Examples of capital include, but are not limited to, property and savings.
Income	Examples of income include, but are not limited to, money received from work or benefits, or as returns from capital.
Resources	Capital and income together make up someone's resources.

	Asset/security	The property or the item against which the loan will be secured.
	Equity	The amount of capital available in the asset, which acts as security for the loan.
	Deprivation of assets	Sometimes people deliberately try to avoid or decrease payment of a contribution towards their care and support, by 'depriving' themselves of capital or income.
	Disregards	A disregard is something that is not taken into account in the financial assessment.
	Daily living costs	The amount towards which people are expected to contribute from their weekly income (which does not include the cost of providing personal care or nursing care).
	Care costs	'Care costs' are all the costs charged to a person by a care provider, including any top-ups. This includes where appropriate the costs associated with the provision of extra care.
Legislation and legal requirements	This policy relates to sections 34 to 36 of the Care Act 2014 and the Care and Support (Deferred Payment Agreements) Regulations 2014.	
Equality Impact Assessment	This policy has been considered as part of the EqIA carried out on Care Act Financial Policies.	

1.0 Introduction

- 1.1 The establishment of the universal deferred payment scheme means that people who live in Dorset should not be forced to sell their home in their lifetime to pay for their care. By entering into a deferred payment agreement, a person can ‘defer’ or delay paying the costs of their care and support until a later date. Deferring payment can help people to delay the need to sell their home, and provides peace of mind during a time that can be challenging (or even a crisis point) for them and their loved ones as they make the transition into care.
- 1.2 A deferred payment agreement can provide additional flexibility for when and how someone pays for their care and support. It should be stressed from the outset that the payment for care and support is deferred and not ‘written off’ – the costs of provision of care and support will have to be repaid by the individual (or a third party on their behalf) at a later date.
- 1.3 The scheme is universally available throughout England under the Care Act and the Council has a duty to offer deferred payment agreements to people who meet certain criteria governing eligibility for the scheme. We will ensure that adequate security is in place for the amount being deferred, to be confident that the amount deferred will be repaid in the future. We will also consider offering the scheme more widely to anyone who we feel would benefit who does not fully meet the criteria.
- 1.4 A deferral can last until death. However, many people choose to use a deferred payment agreement as a ‘bridging loan’ to give them time and flexibility to sell their home when they choose to do so. This is entirely up to the individual to decide. Further details on deferred payment agreements are set out in the sections below.

2.0 Who will be offered a Deferred Payment Agreement?

2.1 Criteria governing eligibility for deferred payment agreements

- 2.11 Deferred payment agreements are designed to prevent people from being forced to sell their home in their lifetime to meet the cost of their care. The Council will offer them to people who meet the criteria below and who are able to provide adequate security (see the later section entitled ‘Obtaining Security’). We will offer deferred payment agreements to people who have care and support arranged by us, and also to people who arrange and pay for their own care, subject to the following criteria. A deferred payment agreement will be offered to anyone who is eligible for such an agreement by meeting all three of the following criteria at the point of applying for a deferred payment agreement:
 - (a) Anyone whose needs are to be met by the provision of care in a care home. This is determined when someone is assessed as having eligible needs which the Council decides should be met through a care home placement. This will comply with choice of accommodation regulations and care and support planning guidance and so will take reasonable account of a person’s preferences;
 - (b) Anyone who has less than (or equal to) £23,250 in assets excluding the value of their home (i.e. in savings and other non-housing assets); and,

- (c) Anyone whose home is not disregarded, for example it is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support (i.e. someone whose home is taken into account in the Council's financial assessment and so might need to be sold).
- 2.12 As well as providing protection for people facing the prospect of having to sell their home to pay for care, deferred payment agreements can offer valuable flexibility, giving people greater choice over how they pay their care costs. We will exercise our discretion under the Act, to consider offering deferred payment agreements to people who do not meet the above criteria. In deciding whether someone who does not meet all of the criteria above should still be offered a deferred payment, we may also consider the following:
- (a) Whether meeting care costs would leave someone with very few accessible assets (this may include assets which cannot quickly/easily be liquidated or converted to cash);
 - (b) If someone would like to use wealth tied up in their home to fund more than just their core care costs and purchase affordable top-ups (see section titled 'How much can be deferred');
 - (c) Whether someone has any other accessible means to help them meet the cost of their care and support; and/or,
 - (d) If a person is narrowly not entitled to a deferred payment agreement given the criteria above, for example because they have slightly more than the £23,250 asset threshold. This will include people who are likely to meet the criteria in the near future.
- 2.13 The Council will also consider exercising its discretion to enter into deferred payment agreements with people whose care and support is provided in supported living accommodation, via Direct Payments (further information can be found in Dorset Council's Direct Payments Policy) and where someone continues to live in their own home but has been assessed as requiring residential or nursing care. We will not exercise this discretion unless the person intends to retain their former home and pay the associated care and accommodation rental costs from their deferred payment. Further details on precisely what qualifies as supported living accommodation are set out in the Care Act Regulations. Deferred payment agreements cannot be entered into in order to finance mortgage payments on supported living accommodation.

2.2 Permission to refuse a deferred payment agreement

- 2.21 Dorset Council will offer a deferred payment to someone meeting the criteria governing eligibility who is able to provide adequate security for the debt; and may offer a deferred payment agreement to others who do not meet the criteria, at our discretion.
- 2.22 However, there are certain circumstances in which we may refuse a request for a deferred payment agreement ('permission to refuse'), even if a person meets the eligibility criteria and we would otherwise be required to offer the person an agreement. This permission (or discretion) to refuse provides the Council with a reasonable safeguard against default or non-repayment of debt.
- 2.23 The circumstances in which we may refuse a deferred payment agreement despite someone meeting the eligibility criteria include:

- (a) Where we are unable to secure a first charge on the person's property;
- (b) Where someone is seeking a 'top-up'; and/or
- (c) Where a person does not agree to the terms and conditions of the agreement, for example a requirement to insure and maintain the property.

2.24 However, in any of the above circumstances, we will consider exercising our discretion to offer a deferred payment anyway (for example, if a person's property is uninsurable but has a high land value, we may choose to accept charges against the land as security instead).

2.3 Circumstances in which the Council may stop deferring care costs

2.31 There are also circumstances where the Council may refuse to defer any more charges for a person who has an active deferred payment agreement. In these circumstances we cannot demand repayment, and repayment is still subject to the usual terms of termination, as set out in the section of this policy entitled 'termination of the agreement'.

2.32 The Council will provide a minimum of 30 days' advance notice that further deferrals will cease; and will provide the person with an indication of how their care costs will need to be met in future. Depending on their circumstances, the person may either continue to receive our support in meeting the costs of their care, or may be required to meet their costs from their income and assets. Where we consider our power to cease deferring additional amounts we will also consider the person's individual circumstances as well as our overarching duties under the well-being principle, before a decision is taken.

2.33 Circumstances in which the Council may refuse to defer any more charges include:

- (a) When a person's total assets fall below the level of the means-test (see the Council's Charging Policy), and the person becomes eligible for our support in paying for their care;
- (b) Where a person no longer has need for care in a care home (or, where appropriate, supported living accommodation);
- (c) If a person breaches certain predefined terms of their contract (which are clearly set out in the contract) and our attempts to resolve the breach are unsuccessful and where the contract specifies that we will stop making further payments in such a case; or
- (d) If, under the charging regulations (see the Council's Charging Policy), the property becomes disregarded for any reason and the person consequently qualifies for our support in paying for their care, including but not limited to:
 - (i) Where a spouse or dependent relative (as defined in our Charging and Financial Assessment Policy) has moved into the property after the agreement has been made, where this means the person is eligible for our support in paying for care and no longer requires a deferred payment agreement; and

- (i) Where a relative who was living in the property at the time of the agreement subsequently becomes a dependent relative, we may cease further deferrals at that point.

2.34 The Council will not exercise these discretionary powers if a person would, as a result, be unable to pay any tariff income due to us from their non-housing assets.

2.35 We will also cease deferring further amounts when a person has reached the 'equity limit' that they are allowed to defer (see section on 'how much can be deferred'); or when a person is no longer receiving care and support in either a care home setting or in supported living accommodation. This also applies when the value of the security has dropped and so the equity limit has been reached earlier than expected.

3.0 Information and advice

3.1 Under the Care Act, the Council has responsibilities to provide information and advice about people's care and support. These extend to deferred payment schemes as well.

3.2 In order to be able to make well-informed choices, we will ensure that people are able to access appropriate information and advice before taking out a deferred payment agreement. We will also ensure that people are kept informed about their deferred payment agreement throughout the course of the agreement, and that they (and the executor of their estate where appropriate) receive the necessary information upon termination of the agreement.

3.3 Deferred payment agreements are often made during a time that is demanding for a person and their loved ones – a period when they are making a transition into a care home. People may need additional support during this period, and we will fulfil our role in providing this support and facilitating their transition, particularly if their transition to care is made rapidly and/or at an unexpected point. We will also provide information in a way which is clear and easy to understand, and is designed to ease the process of transition for people, their carers and their families.

3.4 Carers and families often assist people in making decisions about their care and how they pay for it. We will ensure that, as appropriate, carers and/or families are invited to participate in discussions, and will also provide them with all the information that would otherwise be given to the person they care for, subject (where required) to the consent of the person with care and support needs (if they have capacity) or someone else with appropriate authorisation. In doing this, we will also ensure compliance with mental capacity and data protection legislation, and the other duties relating to information and advice set out in the Care Act guidance.

3.5 If terminated through a person's death, the amount owed to the Council under a deferred payment agreement falls due 90 days after the person has died. After this 90 day period, if we conclude that active steps to repay the debt are not being taken, for example if the sale is not progressing and we have actively sought to resolve the situation (or we conclude that the executor is wilfully obstructing sale of the property), we may enter into legal proceedings to reclaim the amount due to us. Further information on debt recovery is included within the Council's Charging and Financial Assessment policy.

3.6 In whichever circumstance an agreement is terminated, the full amount due to the Council must be repaid to cover all costs accrued under the agreement, and the person (and/or the third party where appropriate) will be provided with a full breakdown of how

the amount due has been calculated. Once the amount has been paid, we will provide the individual with confirmation that the agreement has been concluded, and confirm (where appropriate) that the charge against the property has been removed.

- 3.7 As a deferred payment agreement can take some time to set up and agree, it is important that both the Council and the individual considers any potential issues around mental capacity. Where a person lacks capacity to request a deferred payment, a Deputy or Attorney (a person with a relevant Enduring Power of Attorney or Lasting Power of Attorney) may request a deferred payment on their behalf. If a family member requests a deferred payment and they do not have the legal power to act on behalf of the person, we will ensure that the person and the family member receive information and advice on how to obtain this, through Lasting Power of Attorney and Deputyships. Where the Council is the Deputy for a person, then the Council Deputy may apply for a deferred payment where this is in the best interests of the person. We will not enter into a deferred payment agreement with a person lacking the requisite mental capacity unless the proper arrangements are in place.
- 3.8 The Council and the person applying for a deferred payment (who has capacity) may also want to consider any potential issues around loss of capacity. Where appropriate we will provide the person with information and advice on options for deputyship, legal power of attorney and advocacy. If the Council and the person do discuss the issue, then we will confirm what would happen were the person to lose capacity and not have made their own arrangements. Further advice on capacity and financial arrangements is contained in the policy on Recovery of Debts. (A deferred payment being effectively a consensually-accruing debt to the Council).
- 3.9 If we identify someone who may benefit from or be eligible for a deferred payment agreement, or a person approaches us for information, we will tell them about the scheme and how it works. This explanation will:
- a) set out clearly that the fees are being deferred or delayed and must still be paid back at a later date, for example through the sale of the home (potentially after the individual's death);
 - b) explain the types of security that Dorset Council is prepared to accept. See the section of this policy entitled 'Obtaining Security' for further details);
 - c) explain that where a home is used as security, the home may need to be sold at a later date to repay the amount due;
 - d) explain that the total amount a person can defer will be governed by an equity limit (discussed in the section entitled 'How much can be deferred') which may change if the value of their security changes;
 - e) explain the circumstances where we may cease to defer further amounts (such as when the person qualifies for our support in paying for their care), and the circumstances where we have to stop deferring further amounts (such as when the person reaches their equity limit);
 - f) explain how interest will be charged on any amount deferred;
 - g) explain that they may be liable to pay administrative charges;
 - h) explain what happens on termination of the agreement,

- i) how the loan becomes due and their options for repayment;
 - j) explain what happens if they do not repay the amount due;
 - k) set out the criteria governing eligibility for a deferred payment agreement;
 - l) detail the requirements that must be adhered to during the course of the agreement;
 - m) explain the implications that a deferred payment agreement may have on a person's income, their benefit entitlements, and charging;
 - n) provide an overview of some potential advantages and disadvantages of taking out a deferred payment agreement, and explain that there are other options for paying for their care that they may wish to consider;
 - o) note the existence of the 12-week disregard, which will afford those who qualify for it some additional time to consider their options in paying for care; and
 - p) suggest that the person may wish to consider taking independent financial advice (including flagging the existence of regulated financial advice).
- 3.12 We will provide information and advice in formats that comply with the requirements of the Equality Act 2010 (in particular, we will ensure where appropriate that the information is accessible to the sensory impaired, people with learning disabilities, and people for whom English is not their first language).
- 3.13 Where relevant, we will provide information and advice on deferred payment agreements at the earliest appropriate opportunity during the period of the 12-week disregard. We will aim to ensure that people are able to make a smooth transition from the 12- week disregard to the deferred payment agreement if they enter into an agreement. This means ensuring as far as possible that an agreement is available by the first day of week 13, subject to the correct information being provided by the person or their representative. In the event of this information not being provided we will not guarantee that assistance with funding will continue.
- 3.14 We will advise people (where appropriate) that they will need to consider how they plan to use, maintain and insure their property if they take out a deferred payment agreement. That is, whether they wish to rent, to prepare for sale, or to leave it vacant for a period. We will also advise if we intend to place conditions on how the property is maintained whilst the agreement is in place.
- 3.15 The Council will develop basic information and advice for homeowners on how they may choose to use their property when they enter care, for example information on how they may go about renting their property, and the potential impact on other people living in the property if a sale is required after their death. We will also signpost people to more specialist organisations who can provide further advice on this issue, including information about their legal responsibilities as landlords and their obligations to any potential tenants.

4.0 How much can be deferred?

- 4.1 In principle, a person should be able to defer the entirety of their care costs; subject to any contribution that the Council is allowed to require from the person's income. We will also consider whether a person can provide adequate security for the deferred payment agreement.
- 4.2 If the person is considering a top-up, we will also consider whether the amount or size of the deferral requested is sustainable given the equity available in the security offered. A discussion regarding sustainability may take place.
- 4.3 Three elements will dictate how much a person will defer, each of which is discussed below:
- a) The amount of *equity* a person has available in their security;
 - b) The amount a person 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
 - c) The total *care costs* a person will face, including any top-ups the person might be seeking.
- 4.4 We will also satisfy ourselves that any top-up we agree to is sufficiently sustainable.

4.5 Equity Limit

- 4.51 When considering the *equity available*, we are guided by an 'equity limit' for the total amount that can be deferred and we have a responsibility to ensure that the amount deferred does not rise above this limit. The equity limit will leave some equity remaining in the security used for the agreement – this will both act as a buffer to cover any subsequent interest which continues to accrue, and will provide a small 'cushion' in case of small variations in value of the security. In almost all cases a property will be used as security, so the equity limit will provide a cushion against changes in house prices. When calculating progress towards the equity limit, we will also include any interest or fees to be deferred.
- 4.52 The Council will obtain a valuation of any property offered as security for an agreement. Initially this will be a desk-top valuation. Reasonable property valuation costs are included in the list of administration charges that we will pass on to the person. A person may request an independent assessment of the property's value (in addition to our valuation). If an independent assessment finds a substantially differing value to our valuation, then we will discuss with the person and agree an appropriate valuation prior to proceeding with the agreement.
- 4.53 The equity limit will be set at the value of the property minus ten percent, minus £14,250 (for financial year 2015/16, in line with the lower capital limit) and the amount of encumbrance secured on it. This limit provides some protection to the Council against changes in the value of the property (such as possible house price fluctuations) and the risk that we may not be able to recoup the full amount owed, but also should mean that people qualify for our support if the equity available in the property is depleted (and are consequently not at risk of having to sell their home to pay for care).

- 4.54 When someone is approaching or reaches the point at which they have deferred 70% of the value of their property, we will review with them the cost of their care, discuss when they might be eligible for any means tested support, discuss the implications for any top-up they might currently have, and consider jointly whether a deferred payment agreement continues to be the best way for them to meet these costs.
- 4.55 The Council cannot allow additional amounts to be deferred beyond the equity limit, and will refuse to defer care costs beyond this. However, interest can still accrue beyond this point, and administrative charges can still be deferred.

4.6 Contributing to care costs from other sources

- 4.61 A person may meet the costs of their care and support from a combination of any of four primary sources:
- a) Income, including pension income;
 - b) Savings or other assets they might have access to; this might include any contributions from a third party;
 - c) A financial product designed to pay for long-term care; or
 - d) A deferred payment agreement which enables them to pay for their care at a later date out of assets (almost always their home).
- 4.62 The share of care costs that someone defers will depend on the amount they will be paying from the other sources listed above.
- 4.63 The Council may require a contribution towards care costs from a person's income, but the person has a right to retain a proportion of their income (the 'disposable income allowance'). The disposable income allowance is a fixed amount (currently up to £144 per week) of a person's income which we will allow the person to retain (if the person wants to retain it). We can require the person to contribute the rest of their income, but will also allow the person to retain as much of their disposable income allowance as they want to.
- 4.64 A person may choose to keep less of their income than the disposable income allowance. This might be advantageous to the person as they would be contributing more to the costs of their care from their income and consequently reducing the amount they are deferring (and accruing less debt to the Council overall). This will be entirely the person's decision and we will not compel someone to retain less than the disposable income allowance if the person wants to retain the full amount.
- 4.65 If a person decides to let their property during the course of their deferred payment agreement, we may permit that person to retain a percentage of any letting income they acquire, depending on the circumstances and the cost incurred. The Council encourages the letting of properties. However, the final decision as to whether or not to let a property will be the person's.
- 4.66 A person may also contribute to their care costs from payments by a third party (including any contributions available from a financial product) or from their savings. Contributing to care costs from another source is beneficial for a person as it reduces the amount they are deferring (and hence will reduce their overall debt to us). We will not compel a person to contribute to their deferral from these sources.

4.7 Care costs

- 4.71 Before considering in detail how much they will be deferring, the Council and the person will have a rough idea of their *likely care costs* as a result of the care planning process. Someone may wish to vary their care package (or any top-ups they may be considering) following consideration of what they could afford with a deferred payment agreement, but should approach the process with an approximate idea of what their care costs are likely to be.
- 4.72 In principle, people should be able to defer their full care costs including any top-ups. In offering a deferred payment agreement we will allow someone to defer their ‘core’ care costs. To ensure sustainability of the deferral, we have discretion over the amount people are permitted to top-up. We will consider any request for top-ups, but also retain discretion over whether or not to agree to a given top-up. We will accept any top-up deemed to be reasonable given considerations of affordability, sustainability and available equity. We will also be mindful of the duties set out in relation to top-ups and additional costs in the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014.

4.8 Sustainability

- 4.81 When deciding on the amount to be deferred in a discretionary deferred payment agreement (particularly when considering top-ups), we will consider and will expect the person or their representative to consider a range of factors to satisfy themselves that the arrangement is *sustainable*:
- a) the likely period the person would want a DPA for (if they intend to use it as a ‘bridging loan’);
 - b) the equity available;
 - c) the sustainability of a person’s contributions from their savings (if they are making one);
 - d) the flexibility to meet future care needs; and
 - e) the period of time a person would be able to defer their care costs for.
- 4.82 Deferred payment agreements should prevent people having to sell their home in their lifetime to pay for their care. We will discuss with the person the projected limit of what their equity could cover, given their projected care costs, and how their care costs might change over time. This will also include a discussion of when they are likely to reach any of the income thresholds and may begin to qualify for our support in paying for their care. Where the person is requesting a top-up, we will discuss what might happen to any top-up requested if the person reaches the equity limit and becomes eligible for our support in paying for their care, and ensures that a written agreement is in place (see Annex A: Choice of accommodation and additional payments). In particular, we will make the person aware that once they have reached the equity limit, we may not be willing to fund their top-up, and the person may need to find other ways to pay for it or be prepared for a change in their care package.

- 4.83 We will also consider the length of time that a person's intended contribution to care costs from savings would last and will encourage the person to do the same, if they intend to contribute to their care costs from their savings. This should include consideration of the impact on their care if a person's savings are depleted (normally this would involve increasing the amount the person is deferring).
- 4.84 An important factor in the sustainability of a deferred payment agreement will be any *future care and support needs* someone might face, and we will consider this along with the person themselves, allowing flexibility for changes in circumstance, including possible escalation of needs, when deciding how much someone should defer. We will factor any potential changes in circumstances into considerations of sustainability and expect the person to consider the same.
- 4.85 The Council may use the tool developed by the Department of Health to aid the assessment of sustainability, subsequent discussions and decisions about the amount to be deferred, but we retain final responsibility for (and have discretion over) decisions taken about the agreements we enter into.
- 4.86 When we have reached agreement with a person about how much they want to defer, we will ensure that this is clearly and unambiguously set out in the deferred payment agreement.
- 4.87 The amount being deferred will be reviewed on a regular basis to ensure the deferred amount does not exceed the equity limit as discussed above. We will have particular regard to the amount deferred as it approaches the equity limit. This may involve a full valuation of the property (or other asset), the cost of which will be met by the person and can be added to the deferred payment agreement.

5.0 Obtaining security

- 5.1 The Care Act requires us to obtain adequate security for the repayment of any amount outstanding under a deferred payment agreement. The best security is a first legal charge on a property which is capable of registration at the Land Registry. We will generally require the security afforded by a first legal charge but, in cases where a first legal charge cannot be secured, we will give consideration to a subsequent legal charge if we are satisfied that would provide adequate security for the amount deferred.
- 5.2 In cases where an agreement is to be secured with a jointly-owned property, we will seek both, or all owners' consent (and agreement) to a charge being placed on the property. All owners will need to be signatories to the charge agreement, and the co-owner(s) will need to agree not to object to the sale of the property for the purpose of repaying the debt due to the Council (following the same procedure as in the case where an individual is the sole owner of a property).
- 5.3 The Council will obtain similar consent to a charge being created against the property from any other person who has a beneficial interest in the property.
- 5.4 Under the discretionary deferred payment scheme, the Council has discretion to decide what other asset may constitute 'adequate security' for an individual deferred payment agreement, where a first legal charge on a property cannot be secured. Examples may include a security offered by a third-party guarantor, or a valuable object. We will consider the merits of each application individually, although we have

discretion in individual cases to refuse to enter into a deferred payment agreement if we are not satisfied that adequate security is offered.

- 5.5 The security will be re-valued when the amount deferred equals or exceeds 50% of the value of the security to assess any change in its value. Consequently the person's 'equity limit' will also be reassessed. After this revaluation, we will revalue the security periodically to monitor any further changes in value. If in either case there has been a substantial change we will also review the amount being deferred as well.

6.0 Interest rate and administration charges

- 6.1 The deferred payment agreement scheme is intended to be run on a cost-neutral basis, with the Council able to recoup the costs associated with deferring fees by charging interest. We will recoup the administrative costs associated with deferred payment agreements, including legal and ongoing running costs, via administration charges which will be passed on to the person. Administration charges and interest will be added to the total amount deferred as they are accrued, although a person may request to pay these separately if they choose. The agreement will make clear that all fees deferred, alongside any interest and administration charges incurred, must be repaid by the person in full. The Council will also notify the individual in writing where they are liable for an administration charge.
- 6.2 The Council will charge interest on any amount deferred, including any administration charges deferred. This is to cover the cost of lending and the risks to us associated with lending, for example the risk of default. Where interest is charged this will be based on the nationally-set maximum interest rate.
- 6.3 The national maximum interest rate will be reviewed every six months (in January and June) by the Office for Budget Responsibility to reflect the cost of Government borrowing. We will ensure that any changes to the national maximum rate are applied in Dorset.
- 6.4 In extremely rare circumstances (such as a severe economic shock), the Government may need to make new regulations to change the maximum interest rate which local authorities are permitted to charge before the next January or June review date. These changes would be reflected by the Council within the deferred payment agreements, but such powers would only be exercised as a last resort.
- 6.5 We will inform people before they make an agreement the rate of interest to be charged, what interest rates are currently set at, and when interest rates will next be reviewed. This is to help people to make well-informed decisions about whether a deferred payment agreement is the best way for them to meet the costs of their care.
- 6.6 The interest charged and added to the deferred amount will be compounded. We will ensure when making the agreement that the person understands this and is told the frequency with which compounding takes place.
- 6.7 Interest can accrue on the amount deferred even once a person has reached the 'equity limit'. It can also accrue after someone has died up until the point at which the deferred amount is repaid to us. If we cannot recover the debt and we seek to pursue it through the County Court system then we may charge the higher County Court rate of interest. (See our policy on 'Recovery of Debts').

- 6.8 The Council will set an administration charge at a reasonable level, and this level will not be more than the actual costs we incur in the provision of the universal deferred payments scheme, as set out in Regulations. Relevant costs may include (but are not limited to) the costs we incur whilst:
- a) registering a legal charge with the Land Registry against the title of the property, including Land Registry search charges and any identity checks required;
 - b) undertaking relevant postage, printing and telecommunications;
 - c) spending our time in providing the service;
 - d) valuing and re-valuing the property;
 - e) removing legal charges against property;
 - f) incurring overheads, including where appropriate (shares of) payroll, audit, management costs, and legal services.
- 6.9 The Council will maintain a publicly-available list of administration charges that a person may be liable to pay. The charges will be separated into a fixed set-up fee for deferred payment agreements, reflective of the costs we incur in setting up and securing a typical deferred payment agreement - and other reasonable onetime fees during the course of the agreement (reflecting actual charges incurred in the course of the agreement).

7.0 Making the agreement

- 7.1 Where someone chooses to enter into a deferred payment agreement, the Council will aim to have the agreement finalised and in place by the end of the 12 week disregard period (where applicable) (see our policy 'Charging and Financial Assessment Annex B: Treatment of Capital), or within 12 weeks of the person approaching us regarding a deferred payment agreement in other circumstances.
- 7.2 Decisions about a person's care and support package, the amount they intend to defer, the security they will offer and the terms of the agreement will only be taken following discussion between the Council and the person. Once agreement in principle has been reached between us and the person or their representative, it is our responsibility to transpose the details agreed into a deferred payment agreement, taking the legal form of a contract between Dorset Council and the person.
- 7.3 The Council will provide a hardcopy of the deferred payment agreement to the person, and they will be provided with reasonable time to read and consider the agreement, including time to query any clauses and discuss the agreement further with us.
- 7.4 The agreement will clearly set out all terms, conditions and information necessary to enable the person to ascertain his or her rights and obligations under the agreement. These include:
- (a) terms to explain how the interest will be calculated and that it will be compounded with a specified frequency, if it is to be added to the deferred amount;
 - (b) information about administration costs the person might be liable for;

- (c) terms to explain how the person may exercise his or her right to terminate the agreement, which will also explain the process for and consequences of terminating the agreement and specify what notice should be given (see the section entitled 'Terminating the agreement' below);
- d) terms to explain the circumstances in which the Council might refuse to defer further fees (either when it is required to stop deferring, for example if the person has already deferred up to their 'equity limit', or when we have powers to stop deferring, such as when a person qualifies for our support in paying for their care; as set out in the sections above);
- (e) that the Council will secure their debt, by placing a legal charge on a property which is capable of registration at the Land Registry, or by other means agreed in individual cases at our discretion;
- (f) a term confirming that the Council will provide the person with a written statement every six months and within 28 days of request by the person, setting out how much the person owes us and the cost to them of repaying the debt;
- (g) a term which explains that the maximum amount which may be deferred is the equity limit and that this is likely to vary over time;
- (h) a term which requires the Council to give the person 30 days written notice of the date on which they are likely to reach the equity limit;
- (i) a term which requires the person to obtain the consent of the Council for any person to occupy the property; and
- (j) an explanation that the Council will stop deferring its charges and making advances under a loan agreement if the person no longer receives care and support in a care home or supported living accommodation, or if we no longer consider that the person's needs should be met in such accommodation.

If the agreement is not for the deferral of charges due to the Council (a 'loan'-style agreement), the agreement will also contain:

- a) a term to make clear that the Council will make advances of the loan to the person in instalments;
- b) a term to make clear that the purpose of the loan is to pay for costs of care and support in a care home or supported living accommodation. This will explain:
 - (i) the consequences of any failure by the person to pay those costs of care and support; and;
 - (ii) that the person must inform us if he or she no longer receives or intends to receive care in such accommodation.

The agreement will also stipulate:

- c) the value of any accrued or possible administration charges, and where possible a breakdown of their calculation;

- d) the means of redress if either party feels the other has broken the terms of the agreement;
 - e) the person's responsibilities regarding maintenance and insurance of their home;
 - f) the person's responsibility to notify us of any change to their income, home or care and support;
 - g) the person's responsibility to notify us if they intend to let or sell their property and if someone has gained or may gain a beneficial interest in their property;
 - h) our responsibility to give the person 30 days written notice if we intend to cease to defer charges (or make loan instalments) under the agreement
 - i) a clear explanation of the consequences of taking out a deferred payment agreement for the person and their property, including anybody who may reside in the property;
 - j) the equity limit of their security (as discussed above) and the scope for this to change upon revaluation of the security used for the deferred payment agreement;
 - k) the process for varying any part of the agreement; and
 - l) the process by which we can require a re-valuation of a person's chosen form of security.
- 7.7 The Council will ensure that people sign or clearly and verifiably affirm they have received adequate information on options for paying for their care, that they understand how the deferred payment agreement works and understand the agreement they are entering into; and that they have had the opportunity to ask questions about the contract. A term reflecting this will be included in the agreement itself.
- 7.8 The Council will ensure that the deferred payment agreements we enter into are regulated credit agreements to which the Consumer Credit Act 1974 (CCA) and Financial Services and Markets Act 2000 (FSMA) apply.
- 7.9 The scope of 'regulated credit agreements' is set out in article 60B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ('the RAO'). A credit agreement is regulated unless exempt, and there are a number of exemptions in articles 60C to 60H of the RAO. It is likely that most DPAs will fall within such an exemption. If the agreement is regulated, it will comply with all applicable requirements of the CCA. In addition, we will obtain a relevant permission from the Financial Conduct Authority (FCA), and comply with the FCA's rules and principles, unless the exclusion in article 72G of the RAO applies (if the credit agreement is within the scope of the Consumer Credit Directive FCA authorisation is required).
- 7.10 All deferred payment agreements will be subject to the Unfair Terms in Consumer Contracts Regulations 1999, so the terms will be written in plain, intelligible English and will not be binding if they are unfair to the borrowers. The Council will also ensure that we do not contravene the Consumer Protection from Unfair Trading Regulations 2008.

8.0 The Council's responsibilities whilst the agreement is in place

- 8.1 The Council will provide, at a minimum, six-monthly written updates of the amount of fees deferred, of interest and administration charges accrued to date, and of the total amount due and the equity remaining in the security (the 'equity limit' discussed in the section above). We will also provide the person with a statement on request within 28 days. We may also provide updates more frequently at our discretion. The update will set out the amount deferred during the previous period, alongside the total amount deferred to date, and will also include a projection of how quickly someone would deplete all equity remaining in their security.
- 8.2 The Council will reassess the value of the security once the amount deferred exceeds 50% of the security (and periodically thereafter), and adjust the equity limit and review the amount deferred if the value has changed.
- 8.3 The Council may also offer people a way to check their statement at any point in the year via an online facility.
- 8.4 The Council may also choose to develop advice and guidance around maintaining a home, letting, and income. We may also offer services/ products to help the person meet the requirements for maintenance and insurance, but will not compel a person to take on the product. We will accept reasonable alternative maintenance and insurance services.

9.0 The responsibilities of the person whilst the agreement is in place

- 9.1 The deferred payment agreement sets out various contractual requirements of the person as well as those of the Council. These are set out briefly in previous sections, but the person's consequent responsibilities are recapped in more detail in the paragraphs below.
- 9.2 If the Council exercises its right to require the person to make a contribution from income, we will include in the legal agreement provisions requiring the person to notify us of any changes in their income.
- 9.3 The agreement will also contain provisions requiring the person to notify the Council of changes in their need for care and support, if those changes are ones which will mean that we must or are entitled to stop making further instalments under the agreement or to alter the amount of the instalments.
- 9.4 Similarly if the agreement has been entered into on the basis that the person's property has not been disregarded for the purposes of the financial assessment in section 17 of the Care Act and it is a term of the agreement that the Council will cease making or reduce the amount of instalments it makes, the agreement will require the person to inform us of changes which mean that the property may be disregarded.
- 9.5 The Council will include in a contract provisions requiring the person to ensure that appropriate arrangements are in place to maintain their home whilst they are in care. The Council will also require the person to have adequate insurance for their property. If their home is to be left empty for an extended period of time, the person will need to ensure their insurance covers this adequately and that any terms required by the insurer are met.

- 9.6 The Council will include in a contract provisions which require the person to obtain our consent before allowing someone to move into the property after the agreement has been made. In these circumstances, we may (if it is reasonable to do so) require written consent from the person who has moved into the property which places the debt owed to us above any beneficial interest they may accrue in the property.

10.0 Termination of the agreement

- 10.1 A deferred payment agreement can be terminated in three ways:
- (a) At any time by the person, or someone acting on their behalf, by repaying the full amount due (this can happen during a person's lifetime or when the agreement is terminated through the deferred payment agreement holder's death);
 - (b) When the property is sold and the Council is repaid; or
 - (c) When the person dies and the amount is repaid to the Council from their estate.
- 10.2 All three scenarios for the termination of the agreement are discussed below, alongside the various options for repayment. On termination, the full amount due (including care costs, any interest accrued and any administrative or legal fees charged) must be paid to the Council.
- 10.3 If a person decides sell their home, they must notify the Council during the sale process. They will be required to pay the amount due to us from the proceeds of the sale, and we will relinquish the charge on their property.
- 10.4 A person may decide to repay the amount due to the Council from another source, or a third party may elect to repay the amount due on behalf of the person. In either case, we must be notified of the person's/the third party's intention in writing, and the Council will relinquish the charge on the property on receipt of the full amount due.
- 10.5 If the deferred payment is terminated due to the person's death, the amount due to the Council must be either paid out of the estate or paid by a third party. A person's family or a third party can settle the debt to us by other means of repayment (as may be the case if the family wanted to avoid having to sell the property), and we will accept an alternative means of payment in this case, provided their payment covers the full amount due to us.
- 10.6 The executor of the will or administrator of the estate can decide how the amount due is to be paid; either from the person's estate (usually via the sale of the house or potentially via a life assurance policy) or from a third party source.
- 10.7 The Council will wait at least two weeks following the person's death before approaching the executor with a full breakdown of the total amount deferred. However, a family member or the executor can approach us to resolve the outstanding amount due prior to this point.
- 10.8 Responsibility for arranging for repayment of the amount due (in the case of payment from the estate) falls to the executor of the will.
- 10.9 Interest will continue to accrue on the amount owed to the Council after the person's death and until the amount due to us is repaid in full.

- 10.10 If terminated through a person's death, the amount owed to the Council under a deferred payment agreement falls due 90 days after the person has died. After this 90 day period, if we conclude that active steps to repay the debt are not being taken, for example if the sale is not progressing and we have actively sought to resolve the situation (or the Council concludes that the executor is wilfully obstructing sale of the property), we may enter into legal proceedings to reclaim the amount due to it. Further information on debt recovery is included in our 'Recovery of debts' policy.
- 10.11 In whichever circumstance an agreement is terminated, the full amount due to the Council must be repaid to cover all costs accrued under the agreement, and the person (and/or the third party where appropriate) will be provided with a full breakdown of how the amount due has been calculated. Once the amount has been paid, the Council will provide the person with confirmation that the agreement has been concluded, and confirm (where appropriate) that the charge against the property has been removed.

Equality Impact Assessment



Section 1 - Context Setting

1. Care Act Financial Policies (Now known as 'the proposal')

- Transport Charging
- Charging and Financial Assessment
- Choice of Accommodation and Additional Payments
- Deprivation of Assets
- Temporary Residents in Care Homes
- Deferred Payment Agreements
- Direct Payments
- Recovery of Debts

These policies form part of the new Care Act policy framework.

2. Service and lead officers:

Adult and Community Services:

Financial policy	Lead officer ¹
Transport Charging	Julie Caswell, Financial Support Manager
Charging and Financial Assessment	Michael Ford, Policy and Projects Manager
Choice of Accommodation and Additional Payments	Gillian Lacey, Contracts Manager
Deprivation of Assets	Nikki Fowler, Team Leader
Temporary Residents in Care Homes	Gillian Lacey, Contracts Manager
Deferred Payment Agreements	Julie Caswell, Financial Support Manager
Direct Payments	Jon Parvin, Senior Financial Assessment Officer
Recovery of Debts	Julie Caswell, Financial Support Manager

3. Officers involved in the EqIA:

Officers involved in the consolidated full EqIA;

Penny Grigg, Housing and Support Project Officer,
Michael Ford, Policy and Projects Manager
Robin James, Service Development Officer
Ashleigh Enright, Project Support Officer
Julie Caswell, Financial Support Manager
Adam Fitzgerald, Service Development Officer
Gillian Lacey, Contracts Manager,
Nikki Fowler, Team Leader,
Jon Parvin, Senior Financial Assessment Officer,

Officers involved in preparing screening documents:

Transport Charging Policy

Julie Caswell, Financial Support Manager
Emma Williams, Business Manager.

Charging and Financial Assessment

Michael Ford, Policy and Projects Manager,
Penny Grigg, Housing and Support Project Officer.

Choice of Accommodation

Claire Eveleigh, Shared Lives Manager,
Debbie Dunford, Community Care Officer,
Gillian Lacey, Contracts Manager,
Nikki Fowler, Team Leader,
Diana Balsom, Service Development Officer.

Deprivation of Assets

Robin James, Service Development Officer,
Melissa Lovell-Dyer, Locality Manager,
Julie Caswell, Financial Support Manager.

Temporary Residents in Care Homes

Claire Eveleigh, Shared Lives Manager,
Debbie Dunford, Community Care Officer,
Gillian Lacey, Contracts Manager.

Deferred Payment Agreements

Claire Eveleigh, Shared Lives Manager,
Debbie Dunford, Community Care Officer,
Gillian Lacey, Contracts Manager.

Direct Payments

Marie Baxter, Project Manager,
Penny Grigg, Housing and Support Project Officer,
Jon Parvin, Senior Financial Assessment Officer,
Bev Arnold, Team Leader, Financial Support.

Recovery of Debts

Julie Caswell, Financial Support Manager
Michael Ford, Policy and Projects Manager.

4. What does the proposal assess?

The proposal and associated documents aim to ensure that the impact of changes in financial policies are identified, and if necessary mitigated, for people with protected characteristics under the Equality Act.

All the financial policies cited above have been written to comply with the Care Act 2014 and its associated Regulations and statutory guidance.

The financial policies are lengthy. They are based on statutory guidance from the Department of Health which provides local authorities with information about how they '**must**', '**should**', or '**may**', meet the legal obligations placed on them by the Act and the associated Regulations. As discussed with our elected members, our policies have been drafted in order to make sure that the County Council delivers what the statutory guidance says that it '**must**' and '**should**' do. This approach seeks to capture good social care practice, without putting the budget at unnecessary risk.

The draft policies are generally written so that the County Council's discretion or choice is not restricted further in the areas where the statutory guidance says how we '**may**' act to fulfil our legal obligations. It is planned that senior managers will write and maintain local procedures to guide staff about how to exercise their judgement in those areas. Because of this approach there is much less scope for negative impacts on groups with protected characteristics than there would be if our policies had been more 'Dorsetised'. However, we will need to ensure that our local procedures and practices underpinning the policies do not have negative impacts.

Screening documents have been submitted and this full EqIA consolidates the assessments of those documents and the possible impacts on protected groups under the Equality Act.

Existing:	<input type="checkbox"/>
New/proposed:	<input checked="" type="checkbox"/>
Changing/Update/revision	<input type="checkbox"/>
Other	<input type="checkbox"/>

5. What are the aims and objectives of the proposal?

Dorset County Council has a commitment to ensuring its financial policies comply with the Care Act 2014.

Charging and Financial Assessment Policy

The new Charging and Financial Assessment policy is intended to make charging fairer and more clearly understood by everyone. The overarching principle is that people should only be required to pay what it is 'reasonably practicable for them to pay'. Therefore some people will be entitled to financial support based on a means-test and some will be entitled to free care. The policy is based on the following principles that will inform our decisions on charging. The principles are that the approach to charging for care and support needs should:

- ensure that people are not charged more than it is reasonably practicable for them to pay;
- be comprehensive, to reduce variation in the way people are assessed and charged;
- be clear and transparent, so people know what they will be charged;
- promote wellbeing, social inclusion, and support the vision of personalisation, independence, choice and control;
- support carers to look after their own health and wellbeing and to care effectively and safely;
- be person-focused, reflecting the variety of care and caring journeys and the variety of options available to meet needs;
- apply the charging rules equally so those with similar needs or services are treated the same and minimise anomalies between different care settings;
- encourage and enable those who wish to stay in or take up employment, education or training or plan for the future costs of meeting their needs to do so; and
- be sustainable for us to offer in the long-term.

The other policies covered by this EqIA can be described as follows:

- **Transport** The purpose of the transport policy is to set out how the County Council will charge for transport services where someone is in receipt of the high rate of mobility component of Disability Living Allowance (DLA) or Personal Independence Payment (PIP) and may therefore be able to contribute towards the cost of their services.
- **Choice of Accommodation** The care and support planning process will have determined what type of accommodation will best suit a person's needs. Where

the type of accommodation is one of those specified in Regulations, the person will have a right to choose the particular provider or location, subject to certain conditions.

- **Deprivation of assets** The County Council has the power to charge for the provision of care if people have deprived themselves of assets with the intention of reducing care costs and it also has the discretion to refuse to assist with the funding of care costs.
- **Temporary Residents in Care Homes** The policy sets out how the County Council has decided to exercise its discretion under the Care Act to charge people who require care in a residential or nursing home on a temporary basis.
- **Deferred Payment Agreements** People can request that charges for the full cost of their care are loaned to them by the County Council, with a 'legal charge' placed on their property in order to secure the County Council's financial interest.
- **Direct Payments** The Care Act creates a new statutory principle designed to embed direct payments as the default method of delivering care and support, ensuring that choice and control is placed in the hands of the person receiving care. The County Council will encourage the person to assume control and will promote direct payments to enable them to do this. The purpose of the policy is to set out the responsibilities of the County Council in relation to direct payments, with a structure for their application in the provision of care and support services.
- **Recovery of Debts** The Care Act introduces a modern legal framework for the recovery of any debts that have accrued as a result of the County Council meeting a person's eligible needs. Section 22 of the Health and Social Services and Social Security Act (HASSASSA) 1983 was revoked from April 2015 and no new debts can be recovered under that provision. New powers are provided under Section 69 of the Care Act. The reason for the change was that the powers under HASSASSA were unilateral. They allowed a local authority to place a charge against a person's property but did not give the person the opportunity to seek alternative means for payment. The new powers provide equal protection for both the local authority and the person. The policy explains the need for the County Council to act reasonably at all times and includes a section about dealing with debts that have arisen as a result of a person's lack of mental capacity.

6. Who will be involved in the implementing and/or delivery of the proposal?

The proposal is far-reaching and involves a wide range of County Council staff and partners in its implementation and delivery. The main groups involved are identified below:

Transport

Day services staff; fieldworkers; finance staff; transport services staff, external providers of transport.

Charging and Financial Assessment

The policy will require the involvement of a range of staff, including staff in operations; financial support; staff providing information and advice; staff in corporate finance, legal services and Tricuro. Partners and other staff will also be involved.

For example:

- **Residential Payments – implementing the changes to the charging process**

Teams concerned with the detail of contracts, processes, how we arrange placements, undertake financial assessments, and communicate both internally and externally with service users.

- **Residential Payments – financially assessing the third party for affordability of top-up and reviewing**

Teams who communicate with third parties and confirm top-up amounts with providers; Teams who undertake staff training.

Choice of Accommodation

Operational, brokerage and finance staff; staff who have contact with third parties; and people seeking financial information and advice, including for the purposes of longer-term planning.

Deprivation of assets

Legal Services; operational staff; senior managers.

Temporary Residents

Staff who have contact with service users; families; advocates, and people who provide and seek financial information. The Business Improvement Team that updates internal communications and processes.

Deferred Payment Agreements

Financial support teams; Legal Services; Valuations and Estates; Insurance and Risk Management staff; staff who have contact with service users and their representatives; third parties.

Direct Payments

A range of teams will be involved including field work teams, financial support teams and third party organisations administering financial accounts on behalf of service users.

Recovery of Debts

A range of teams will be involved at different stages of the recovery process. Operational staff, Financial Support staff, and Accounts Receivable and Legal Services staff.

7. Who could experience an impact (either negative or positive) with the implementation of the proposal?

- Service users, carers and their families.
- County Council employees implementing the policies.
- Those with Power of Attorney and Financial Agents.
- Providers of care, including care homes; Shared Lives Providers; Extra Care providers, providers of advocacy services and informal supporters.



Forward together 

Section 2 - Information Gathering

1. What, data, information, evidence, research was used in this EqlA?

The financial policies are based on work carried out with elected members since 2012 in, first, a Policy Development Panel and then, an Executive Advisory Panel. The Panel began by assembling and analysing an 'evidence base' as follows:



Charging for
Non-Residential Social



Charging for
Residential Social



'Fairer Contributions'
Carreport to Policy Devel

More recent work has focussed on the protected characteristics:



EQIA Stats
Summary.pdf

There has also been a national impact assessment:

DH Impact Assessment Care and Support Legal Reform (Part 1 of the Care Bill) **IA No:** 6107
dated 9/10/2013



T:\Strategic Services
- Commissioning Mana

2. What data do you already have about your service users, or the people your proposal will have an impact on?

Data about our service users is included within the first four reports above.

The State of Dorset data set also refers to the evidence sources relevant to Dorset decision makers:



We know the recorded age, gender and ethnicity of existing service users on the Adult Social Care database. There is also data about:

- service users in receipt of high rate DLA Mobility Allowance;
- current cases that are being investigated under Deprivation of Assets processes. This represents a very small group that is considered to be statistically inadmissible in terms of EqIA analysis;
- current demographics for older people and people with a Learning Disability in Dorset;
- projected future demand for services to meet dementia needs and the increased numbers of older people;
- current placements in residential care by gender, including source(s) of income and financial commitments;
- young disabled people in transition.

3. What engagement or consultation has taken place as part of this EqIA?

The national, open consultation on the Care Act 2014 (Cap on Care Costs and Appeals) was published on 4 February 2015 and it closed on 30 March 2015. This was designed to inform the national direction to mitigate any negative impacts of the national policy.

The County Council consulted with the public about financial policies and the Carers' Short Breaks Service from 13 February to 16 March 2015. This extended our evidence base further and led to a report to the Cabinet recommending policy changes to take into account the outcome of the consultation:

<https://www.dorsetforyou.com/care-act-consultation>

4. Is further information broken down by Protected Characteristics required to help inform this proposal?

No, but improvements in data capture and reporting will be necessary to underpin the action plan.



Section 3 - Assessing the Impact

Section 149 of the Equality Act 2010 states that a public authority must, in carrying out its functions, have due regard to the need to:

- Eliminate all forms of discrimination; harassment and victimisation that are prohibited by the Equality Act 2010;
- Advance equality of opportunity;
- Foster good relations.

1. What does the consultation, data, evidence tell us about the likely impact on any equality group?¹

The finance policies are considered to have a neutral impact on all groups, as described below:

Protected characteristic	Positive impact	Negative impact	Neutral impact	Unclear	Please explain the impact
Age	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>Finance policies are more likely to apply to older people as this group is more likely to need services.</p> <p>The proposal to remove public subsidy will result in a minority of people paying significantly more for services. That minority will consist mainly of older people who have been means-tested as being able to afford to pay.</p> <p>In overall terms, the proposal to remove public subsidy was the result of best practice guidance to ensure a level playing field between people receiving a direct payment and people receiving a commissioned service. It was one of the issues covered in the Dorset public consultation and it is not assessed to be discriminatory.</p>
Disability	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>People who receive the high rate mobility element of Disability Living Allowance (DLA) or Personal Independence Payment (PIP) are</p>

¹ This will include impacts upon workforce including staff transferring under TUPE to a new service provider

Protected characteristic	Positive impact	Negative impact	Neutral impact	Unclear	Please explain the impact
					expected to contribute towards the mobility-related costs of their services. However, the policy affects service users regardless of whether they have a disability.
Gender Reassignment	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	The County Council's contracts are Equality Act compliant. The changes to finance policies are considered to affect transsexual people in the same way as the rest of the population that uses services.
Pregnancy and Maternity	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	The 'pregnancy and maternity' characteristic has been considered particularly in relation to people in residential care and supported housing. The incidence is very low indeed and bespoke person-centred solutions has been/would be the preferred approach.
Race and Ethnicity	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	The finance policies have been written to comply with the Care Act and its Regulations and statutory guidance, so that they affect people equally, regardless of faith or ethnicity. The Dorset evidence base shows that smaller percentages of people from ethnic minorities receive services from the County Council than the percentages of those people in the population of Dorset as a whole. This is primarily due to the fact that people from ethnic minorities are currently, on average, comparatively younger and therefore less likely to need services at the present time. The policies are underpinned by universal requirements to communicate and provide advice and information. Our Care Act Information and Advice policy and the EqIA action plan reflects our commitment to ensuring that those universal requirements are fulfilled. The County Council's contracts are Equality Act compliant.
Religion or Belief	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	The finance policies are considered to affect people equally regardless of their religion or belief. The action plan covers work to develop information and advice and 'shape the

Protected characteristic	Positive impact	Negative impact	Neutral impact	Unclear	Please explain the impact
					market' which will help to ensure that people can make choices that reflect their religious beliefs. The County Council's contracts are Equality Act compliant.
Sex	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	More female than male people will be affected due to the longevity of the female population. However, the policies are considered to apply in a way that is gender neutral.
Sexual Orientation	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	Whilst the policies themselves promote equality, there is a need to promote the benefits of disclosing sexual orientation in client records etc. Some older clients may be less willing to provide information. Non- disclosure can have a negative impact on people's rights (or their partner's rights) to income, allowances, property disregards, etc. The action plan reflects this. Where we exercise local discretion in applying policies we will seek to do so according to agreed principles and ensure that discretionary arrangements are documented and monitored.
Other socially excluded groups (Carers, rural isolation, low income, military status)	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	In autumn 2015 a review will be carried out which will consider evidence from the operation of the Care Act finance policies in practice, including on other socially excluded groups.



Section 4 - Action Plan, Monitoring and Communication

What plans do you have in place, or are developing, that will mitigate the likely identified negative impacts?

Objective / Outcome	Revised SMART Action following meeting on 6 th August 2015	Lead officer	Original Deadline	October Update	Revised Deadline
<p>1. Areas where local discretion is exercised do not adversely affect people with protected characteristics.</p>	<p>Undertake a review with the Executive Advisory Panel of the impact of the exercise of local discretion, focused on the areas that were subject to local consultation and on local practices and procedures.</p> <p>Consider evidence from the operation of the Care Act finance policies in practice, including on other socially excluded groups; and how third party contributions made under the 'Choice of Accommodation' policy are working in practice.</p>	<p>Policy & Projects Manager</p>	<p>1 April 2016</p>		
<p>2. Transport assessment processes are Care Act compliant.</p>	<p>Awareness of the Transport policy is raised among fieldworkers.</p> <p>A review is carried out of the operation of the Transport Policy.</p>	<p>Financial Support Manager</p>	<p>30 September 2015</p>	<p>Findings have shown that more needs to be done to raise awareness of the policy amongst fieldworkers and to write a procedure.</p>	<p>1 April 2016</p>

Objective / Outcome	Revised SMART Action following meeting on 6 th August 2015	Lead officer	Original Deadline	October Update	Revised Deadline
There is evidence that the Transport Charging policy meets assessed needs.				<p>Therefore the Workforce Capacity Project will develop the content and training that is provided for new staff and will ensure that key messages from all the charging policies are included.</p> <p>A re-working of Finance Training is subject to the Care Act Part 2 reforms but will include the key Transport Charging conditions specified in the policy.</p>	
3. There is evidence that the client's contribution towards transport costs is affordable and reasonable	A review is carried out to establish whether assessments take a holistic view of transport needs, including personal requirements and social care needs. This is considered and signed off by a manager and recorded on the CM54 or R1. To establish whether the client's contribution is fair, we will look to evidence from complaints and compliments as a source of substantiation.	Locality Teams	30 September 2015	A review of the operation of the policy has not taken place because there is currently no way of auditing the fair application of the charge. However the implementation of peer and management audits of assessments and reviews, under the ACCoRD programme, will encourage this review of its operation amongst workers.	1 April 2016
4. Vulnerable adults are protected from financial abuse.	Mental Capacity checks are featured throughout the assessment and reviews process which are recorded on the supported assessment and reviews form and signed by a manager. The 'Assessment of Mental Capacity form' is used to record the evidence	Locality Teams	1 April 2016	There is no overall monitoring of capacity decisions because they happen all the time across all sectors of social care. However, Dorset County Council is working to set up audits of how the MCA is used which will include looking at assessments of people's capacity.	1 April 2016

Objective / Outcome	Revised SMART Action following meeting on 6 th August 2015	Lead officer	Original Deadline	October Update	Revised Deadline
	for a decision about a person's capacity and is recorded on SHARE. In the case of a Care Act financial assessment Dorset Advocacy will provide an advocate and report quarterly to the contract monitoring team.				
<p>5. Effectively communicate the updated policies to all stakeholders and customers.</p> <p>Information is available to all, in accessible formats, and people are protected from financial abuse, including through safeguarding and advocacy arrangements</p>	<p>All finance policies, most specifically those dealing with; deprivation of assets, protection from financial abuse and deferred payments are clear, accessible and in a language and format that meet a client's needs.</p> <p>Links are made to national easy-read resources in all appropriate places.</p> <p>Information on MLMC and SAIL is reviewed every six months and is available in different formats. Customers and stakeholders can feedback via the feedback kite on the MLMC website which will evidence if improvements need to be made.</p>	<p>Care Act Programme Team/Financial Support Manager/Locality Teams and Information and Engagement Manager</p>			
<p>6. The best interests of temporary residents in care homes are protected.</p>	<p>A review is carried out to establish the extent to which advocacy services and Mental Capacity Assessments are available to people taking up temporary</p>	<p>Locality Teams/Commissioning Managers</p>	<p>1 April 2016</p>	<p>Dorset County Council is working to set up audits of how the MCA is used, which will include looking at assessments of people's capacity, and will aim to treat temporary</p>	<p>1 April 2016</p>

Objective / Outcome	Revised SMART Action following meeting on 6 th August 2015	Lead officer	Original Deadline	October Update	Revised Deadline
	residence in care homes. Evidence of this is recorded in a care plan review by the person arranging the care or, in the case of a financial assessment; the results will be recorded on AIS by the member of staff undertaking the finance assessment.			residents of care homes as a separate group for any audit.	
7. Limit the potential for conflicts of interest that arise where a provider of care is also an Appointee.	Update corporate guidance and recommend that providers of care should not be Appointees, except in very exceptional circumstances which are documented and monitored. Residential care providers have been issued with new contracts with a clause requiring them not to act as appointees.	Monitoring Team/ Heads of Service	1 April 2016	Work is underway on supported living and supported lodgings schemes to ensure that providers are not acting as appointees. The re-commissioning of support at home services is due to go live at the end of June and the condition will be built in to this which will ensure that monitoring measures are in place.	1 April 2016
8. The market is developed to ensure choices that meet needs can be offered to all client groups.	Undertake robust equality monitoring and improved identification of protected characteristics to ensure needs can be met in a range of accommodation. The use of the improved Monitoring formats would be instituted by contracting and commissioning leads which feeds corporate and market research. Commissioners will ensure equality monitoring is specified so contracts utilise them in contract reviews.	Commissioning Managers	1 April 2016	A PAN Dorset Quality Assurance contract will be looking at provider reporting, due to start in June. Commissioning will agree demarcation of the monitoring forms to ensure that the commissioning team have sight of them.	1 April 2016

Objective / Outcome	Revised SMART Action following meeting on 6 th August 2015	Lead officer	Original Deadline	October Update	Revised Deadline
9. Provide clarity about the current 'choice of accommodation' and our 'Market Shaping' plans.	If choices are currently limited for some groups due to market deficiencies this should be illustrated by examples on Dorset for You, and My Life My Care as part of the communication on the Care Act – alongside our plans for longer term 'Market Shaping'.	Commissioning Managers/ Brokerage/ MLMC editor	30 September 2015		
10. The market is developed where there are gaps in provision.	Unmet need is monitored and used to inform commissioning plans in dialogue with providers.	Commissioning Managers	1 April 2016	Commissioners are leading on a piece of work which will map the priority needs across the County. The new Engagement and Peer Support post within commissioning will facilitate more engagement with our stakeholders and explore new ways of engaging with people who have protective characteristics.	1 April 2016
11. Deferred Payment Agreements are available for all people where this is appropriate.	Deferred Payment processes are developed for those in Shared and Extra Care Housing	Financial Support Manager/ Legal Services	30 September 2015		
	Review best practice in relation to Sharia-compliant Care Act finance policy.	Financial Support Manager/ Legal Services	1 April 2016		

Objective / Outcome	Revised SMART Action following meeting on 6 th August 2015	Lead officer	Original Deadline	October Update	Revised Deadline
12. Improvements are made to the quality of management information for decision-making and commissioning.	Encourage the completion of religion, transgender and sexual orientation fields in client records to provide an evidence base to underpin policy making.	Performance and Business Improvement Teams.	1 April 2016	The requirements to capture, monitor, review and utilise this data are currently being fed in to the requirements of the new Central Management System.	1 April 2016
13. The Care Act Recovery of Debts policy operates properly alongside the corporate Debt Recovery policy.	A review of the operation of the two policies will be based on case studies and carried out by the financial support manager.	Financial Support Manager	1 April 2016	A review of the operation of the two policies has been delayed due to the financial restructure. By 1 April we will have a more robust structure in place to review the policies and to start developing our debt management strategies alongside this.	1 July 2016
14. Data is used to inform the development of policies and the design of services	Proposals for new policies or services, or changes to existing policies or services, are underpinned by a sound evidence base	Care Act Implementation Manager	1 April 2016	The Carers Survey has informed the PAN Dorset Carers Strategy. Care Act stocktakes and reports to the Executive Advisory Panel are also used to inform the development of policies and the design of services. On-going work will continue to ensure that we understand all data being collected to maximise its effectiveness.	1 April 2016

This proposal has been subject to national and local communications work. The Government has run a national campaign to launch the Care Act. In Dorset we have publicised the Care Act through our public consultation; GP surgeries; local media; 'Your Dorset' newspaper and 'My Life My Care' and Dorsetforyou websites.

A number of changes to our draft policies were made as a result of the consultation. We amended our proposed policy on refunds for 'missed attendances' so that it is more accommodating to people with personal or medical emergencies. We also amended our proposed policy on charging for the Carers' Short Breaks Service, so that the charge for this will be borne neither by the carer nor by the cared-for person, until a holistic review has been carried out of all services for carers.

We plan to continue the work to engage with the public. The outcome of the consultation will be available to the public as a report to the Cabinet on a Dorsetforyou web page. A press release may be issued.

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Section 5 - Decision Making Process

After consideration please state your final recommendations based on the findings from this EqlA. This will be used to inform the decision making process. Include any examples of good practice and positive action taken.

This EqlA was approved by:

Date:

Review date: