

# Individual Executive Member Decision

---

<b>Title of Report:</b>	<b>Charging Policy</b>
<b>Report to be considered by:</b>	Individual Executive Member Decision
<b>Date on which Decision is to be taken:</b>	30 March 2015
<b>Forward Plan Ref:</b>	ID2958

---

**Purpose of Report:** To review the policy to ensure we are compliant with the Care Act

---

**Recommended Action:** Accept changes to the format

**Reason for decision to be taken:** Introduction of the Care Act

**Other options considered:** none

**Key background documentation:** Current charging policies and revised policy

Portfolio Member Details	
<b>Name &amp; Telephone No.:</b>	Councillor Keith Chopping - Tel 07825 733280
<b>E-mail Address:</b>	kchopping@westberks.gov.uk

  

Contact Officer Details	
<b>Name:</b>	Jo England
<b>Job Title:</b>	Service Manager - Client Financial Services
<b>Tel. No.:</b>	01635 519006
<b>E-mail Address:</b>	jengland@westberks.gov.uk

## Implications

<b>Policy:</b>	Merging of existing policies into one policy due to the implementation of the Care Act. This new policy has no impact on how individuals are financially assessed.
<b>Financial:</b>	None
<b>Personnel:</b>	None
<b>Legal/Procurement:</b>	The Care Act replaces previous charging legislation
<b>Property:</b>	None
<b>Risk Management:</b>	None

Is this item relevant to equality?	Please tick relevant boxes		Yes	No
Does the policy affect service users, employees or the wider community and:				
• Is it likely to affect people with particular protected characteristics differently?			<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Is it a major policy, significantly affecting how functions are delivered?			<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Will the policy have a significant impact on how other organisations operate in terms of equality?			<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics?			<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Does the policy relate to an area with known inequalities?			<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Outcome</b> (Where one or more 'Yes' boxes are ticked, the item is relevant to equality)				
Relevant to equality - Complete an EIA available at <a href="http://intranet/EqIA">http://intranet/EqIA</a>				<input checked="" type="checkbox"/>
Not relevant to equality				<input type="checkbox"/>

## Consultation Responses

<b>Members:</b>	
<b>Leader of Council:</b>	N/A
<b>Overview &amp; Scrutiny Management Commission Chairman:</b>	Task Group worked on revised policy
<b>Ward Members:</b>	N/A
<b>Opposition Spokesperson:</b>	Councillor Roger Hunneman (part of the OSM task group)
<b>Local Stakeholders:</b>	N/A
<b>Officers Consulted:</b>	Jenny Matheson, Zoe Whittington, Tandra Forster & Rachael Wardell
<b>Trade Union:</b>	N/A

<b>Is this item subject to call-in?</b>	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
-----------------------------------------	-------------------------------	-----------------------------------------

If not subject to call-in please put a cross in the appropriate box:

The item is due to be referred to Council for final approval

Delays in implementation could have serious financial implications for the Council

Delays in implementation could compromise the Council's position

Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months

Item is Urgent Key Decision

Report is to note only

## Supporting Information

---

### 1. Background

- 1.1 Prior to 1 April 2015 the legislation for determining charging for care was set out as follows
- 1.2 Where residential care was provided contributions were assessed within the framework of the National Assistance (Assessment of Resources) Regulations 1992 and the Charging for Residential Accommodation Guide (CRAG) issued by the Department of Health. The Council applied these rules to people in permanent residential care.
- 1.3 Where care was provided in a non-residential setting or respite care in a residential setting, contributions were assessed within the framework of the National Assistance (Assessment of Resources) Regulations 1992 and the Fairer Contributions Guidance issued by the Department of Health.

### 2. Charging Policy

- 2.1 In December 2014 the Department of Health issued statutory guidance to Councils on charging for all types of care as part of the Care Act 2014, this is entitled The Care and Support (Charging and Assessment of Resources) Regulations 2014.
- 2.2 These new regulations replace the previous charging legislation but do not change the way in which an individual is financially assessed.

### 3. Equalities Impact Assessment Outcomes

- 3.1 The new policy does not change the way in which individuals are financially assessed so there will be no detrimental impact on individuals. The change is due to new legislation.
- 3.2 Department of Health guidance advised there was no requirement for consultation.

### 4. Conclusion

- 4.1 Accept the new policy.

## Appendices

---

Appendix A – Guidance from the Department of Health  
Appendix B – Charging Policy 2015  
Appendix C – Fairer Contribution Policy 2014  
Appendix D – Residential Charging Policy 2014  
Appendix E – Equalities Impact Assessment

## Department of Health – Briefing Note

### Implementing the Care Act: do councils need to consult locally?

This note sets out general principles to consider when a council is deciding whether to carry out a local consultation process in relation to how it intends to discharge functions under the Care Act.

This does not constitute formal guidance or advice, but is intended to set out certain points to consider in adopting an approach. The need to consult will depend on a number of factors and the decision on whether to consult is ultimately one for councils to take. Councils should always seek their own legal advice if there is any uncertainty as to whether consultation is required.

The note does not comment on the nature of public consultations (approach, length etc.), but only whether a consultation may be necessary. Councils will have established processes to ensure that consultations are adequate and sufficient.

#### Issues to consider

The following four questions are intended to address some of the principles to consider:

- *Is this a statutory requirement?*

A council would only usually be expected to consult locally where it is using its discretion in relation to the exercise of a particular function. Where the council is required by a statutory duty to perform a particular function, it is likely that further local consultation will not be necessary (unless there is a statutory duty to consult).

However, whilst the Care Act (and regulations) place duties on councils to do certain things, there is much discretion around *how* those functions are performed. For example, there is a duty to carry out an assessment, but discretion as to many of the aspects of how that assessment is undertaken. Where a council makes proposals for how a function should be carried out, then it may be necessary to consult on those proposals, depending on the answers to the questions below.

The Care Act also provides a number of broad powers for councils to carry out certain functions. Where a council chooses to exercise those powers, it may similarly be necessary to consult on how it intends to do so.

- *Is anything actually changing?*

The Care Act consolidates and updates over six decades of adult social care law. In discharging functions under the Act, therefore, councils will often be carrying out functions similar to existing ones and continuing practice that has been long-established.

It is possible that exercising a power under the Care Act will have no effect on the status quo, and where this is the case, the council may not be expected to consult locally. For example, if a council exercises its power under Section 14(1) of the Act to charge for residential care, this will be no change to the previous requirement to do so under the National Assistance Act 1948. Such a decision on its own should not normally trigger a need to consult, unless the circumstances fall within the paragraphs below.

- *To what extent are people affected?*

If the council proposes an approach that does lead to a change in policy (or is a new policy), then the need to consult locally may be triggered depending on the nature of the expected impact on people using services, carers or others, and on whether the council has promised that particular aspects of its practices will change (e.g. charging will stop) or not change.

Where the proposals impact negatively on individuals, it is likely that the council would be expected to consult locally. For example, if a group is identified as being likely to be worse

off as a result of the change (for example in terms of outcomes, services or finances), consultation would normally be expected.

If effect of the proposal is only to create “winners” – i.e. people who benefit – then it may not be necessary to consult, subject to the answer to the fourth question below.

If the council has promised that it will not change particular aspects of its practice and it proposes to do so, or if it has promised to make particular changes and it intends not to make those changes, this might give rise to a duty to consult.

- *Has the council committed to consultations in the past?*

If the council has committed to consult locally in relation to a particular issue or group, then it would normally be expected to do so, irrespective of the answers to the questions above. Some councils may have standing procedures for consultation and commitments (e.g. by way of an express promise) to consult on issues regardless of other circumstances. In other cases, councils may have established an expectation around local consultation through regular practice, even in the absence of a formal commitment. In such cases where a parallel can be drawn between implementing the Care Act and previous practice on local consultation, councils should take legal advice if they propose not to follow established practice or earlier undertakings.