

Notice of Meeting

Overview and Scrutiny Management Commission

Tuesday, 17th April, 2012 at 6.30 pm
in Council Chamber Council Offices
Market Street Newbury

Date of despatch of Agenda: Thursday, 5 April 2012

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Elaine Walker on (01635) 519441
e-mail: ewalker@westberks.gov.uk

Further information and Minutes are also available on the Council's website at
www.westberks.gov.uk



**Agenda - Overview and Scrutiny Management Commission to be held on Tuesday, 17
April 2012 (continued)**

To: Councillors Brian Bedwell (Chairman), Dominic Boeck, Jeff Brooks (Vice-Chairman), Virginia von Celsing, Sheila Ellison, Marcus Franks, Dave Goff, David Holtby, Mike Johnston, David Rendel, Tony Vickers, Quentin Webb and Emma Webster

Substitutes: Councillors Jeff Beck, Adrian Edwards, Alan Macro, Gwen Mason, Graham Pask, Andrew Rowles, Julian Swift-Hook and Keith Woodhams

**Other Officers &
Members invited:**

Agenda

Part I

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- | | | |
|----|--|--------|
| 5. | Items Called-in following the Executive on 29 March 2012 | 1 - 36 |
| | To consider any items called-in by the requisite number of Members following the previous Executive meeting. | |

Andy Day
Head of Strategic Support

West Berkshire Council is committed to equality of opportunity. We will treat everyone with respect, regardless of race, disability, gender, age, religion or sexual orientation.

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West Berkshire
C O U N C I L

	Item Called-in following an Executive Decision
Title of Report:	Funding Arrangements Framework for Domiciliary Care and Non Residential Services
Report to be considered by:	Overview and Scrutiny Management Commission
Date of Meeting:	17 April 2012
Forward Plan Ref:	EX2320

Purpose of Report: To allow a review of the decision to approve an amendment to the Fair Access to Care Policy to introduce an upper cost parameter for the cost of domiciliary care and non-residential care services that can be used for care packages as a guide.

Recommended Action: That the Overview and Scrutiny Management Commission reviews the decision.

Overview and Scrutiny Management Commission Chairman	
Name & Telephone No.:	Councillor Brian Bedwell – Tel (0118) 9420196
E-mail Address:	bbedwell@westberks.gov.uk

Portfolio Member Details	
Name & Telephone No.:	Councillor Joe Mooney - Tel (0118) 9412649
E-mail Address:	jmooney@westberks.gov.uk

Contact Officer Details	
Name:	Elaine Walker
Job Title:	Principal Policy Officer
Tel. No.:	01635 519441
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Supporting Information

1. Executive Decision

- 1.1 The Funding Arrangements Framework for Domiciliary Care and Non Residential Services report was presented for consideration at a special meeting of the Executive on 12 April 2012. The recommended action was to agree the amendment which the Executive duly did.

2. Call-In of the Decision

- 2.1 In accordance with the Council's Constitution, five Elected Members (Councillors Jeff Brooks, Tony Vickers, Julian Swift-Hook, Roger Hunneman and David Rendel called in the Executive Decision (EX2320) on the basis that:
- (1) The decision is contrary to the views expressed by those responding to the public consultation
 - (2) The decision contradicts the Council's Strategy 2012-16
 - (3) There is no evidence that the cost to the Council of managing this policy has been evaluated

3. Role of the Overview and Scrutiny Management Commission

- 3.1 The role of the Overview and Scrutiny and Management Commission is to review the decision and determine whether it concurs with the decision (in which case it will take immediate effect) or refer it back to the Executive for further consideration.

4. Recommendation

- 4.1 It is recommended that Members of the Overview and Scrutiny Management Commission review the decision to agree the amendment to the Fair Access for Care policy.

Appendices

Appendix A – Letter calling in EX2320

Appendix B – Funding Arrangements Framework Report

Appendix C – Fair Access to Care Services, policies and procedures

Appendix D – Equality Impact Assessment, Stage 2

Appendix E – Analysis of feedback from consultation exercise on savings proposals

13 April 2012

Mr Andy Day
Head of Policy and Communication
Market Street
Newbury
Berkshire
RG14 5LD

West Berkshire Council Liberal Democrat Group
Market Street
Newbury
Berkshire RG14 5LD
Please ask for: Gillian Durrant
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Dear Andy

Part 6 of the Council's Constitution – Call In

In accordance with Paragraph 6.4.5 of the Council's Constitution, I hereby give notice that the undersigned wish to call in the Executive decision in relation to the Funding Arrangements Framework for Domiciliary Care and Non-residential Services as agreed by the Executive at its meeting on 12 April 2012. The reasons for the call in are as follows:

1. The decision is contrary to the views expressed by those responding to the public consultation
2. The decision contradicts the Council's Strategy 2012-16
3. There is no evidence that the cost to the Council of managing this policy has been evaluated

Yours sincerely


1..... Councillor Jeff Brooks
2.  ...Councillor Tony Vickers
3.  Councillor Julian Swift-Hook.....
4...  . Councillor Roger Hunneman.....
5...  . Councillor David Rendel.....

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Title of Report:	Funding Arrangements Framework for Domiciliary Care and Non-Residential Services
Report to be considered by:	Executive
Date of Meeting:	29 March 2012
Forward Plan Ref:	EX2320

Purpose of Report: To seek approval for an amendment to the Fair Access to Care Policy to introduce an upper cost parameter for the cost of domiciliary care and non-residential care services that can be used for care packages as a guide.

Recommended Action: That Executive agree the amendment.

Reason for decision to be taken: It is critical that within the context of increasing demand for social care services that resources are managed in an equitable manner to service users and that the Council achieves cost effective care provision

Other options considered: Status quo - this will not provide the policy guidance to manage the cost of care in the community.

Key background documentation: WBC Fair Access to Care Policy

The proposals contained in this report will help to achieve the following Council Strategy priority:

CSP1 – Caring for and protecting the vulnerable

The proposals will also help achieve the following Council Strategy principle(s):

Living within our means

Portfolio Member Details	
Name & Telephone No.:	Councillor Joe Mooney - Tel (0118) 9412649
E-mail Address:	jmooney@westberks.gov.uk
Date Portfolio Member agreed report:	23 February 2012

Contact Officer Details	
Name:	Jan Evans
Job Title:	Head of Adult Social Care
Tel. No.:	01635 519736
E-mail Address:	jevans@westberks.gov.uk

Implications

Policy:	The proposal is for an amendment to current policy.
Financial:	There is a £160k saving if every home care client costing in excess of £35k per annum is able to be placed in a residential care placement of £35k per annum.
Personnel:	None
Legal/Procurement:	Legal has been consulted and is quoted in the document.
Property:	None
Risk Management:	WBC is awaiting the outcome of a current Cambridgeshire case in the High court. This challenges the Council's right to take their resources into consideration in considering care options. Should this 'Gloucestershire judgment' be overturned it will have a significant impact on this policy decision.
Equalities Impact Assessment:	<p>As part of the EIA Stage 2 a briefing paper sent to West Berkshire Independent Living Network who agreed to facilitate this consultation process, They sent out the briefing to a range of local groups with an interest in Adult social care. Response co-ordinated by WBILN following a 4 week consultation period.</p> <p>West Berkshire Disability Alliance representing a range of interest groups provided a written response to the consultation process. They believe the legal case quoted in the Council's paper ie Khana 2001 is not a valid one and they 'totally reject the proposal from WBC to introduce an upper cost parameter for the cost of domiciliary care and non residential care services.'</p> <p>ASC sought further legal advice with regard this response;</p> <p>'I think that they are agreeing with what your report highlighted. We are clearly saying that the upper cost parameter should be used as a guide only, that decisions on placement are individual, specific and that resources are but one factor'.</p> <p>The WBDA took the view that the legal case of Khana 2001 was not a valid one as it was 'not concerned with affordability issues'.</p> <p>WBC legal view is ;</p> <p>'The case of Khana did acknowledge that financial pressures were of relevance in determining the extent of the independent living obligation and raised the issue of how 'independence' and 'cost effectiveness' should be balanced. The Gloucestershire judgement which you reference clearly says that in deciding how to meet need, a LA can take account of its resources when faced</p>

with 2 placements which objectively offer a real and present choice of how to meet and individual's need.

Is this item subject to call-in?	Yes: <input checked="" type="checkbox"/>	No: <input 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 <input type="checkbox"/> Delays in implementation could have serious financial implications for the Council <input type="checkbox"/> Delays in implementation could compromise the Council's position <input type="checkbox"/> Considered or reviewed by Overview & Scrutiny Commission or associated Task Groups within preceding six months <input type="checkbox"/> Item is Urgent Key Decision <input type="checkbox"/>		

Executive Summary

1. Introduction

- 1.1 This policy decision is required to support one of the Service's savings proposals in the Council's Medium Term Financial Strategy for 2012/13. The target is £25,000.
- 1.2 The Council's strategy and the usual preference of an individual in receipt of adult social care services is to remain at home. However, for those with substantial and complex needs the cost of this care at home can exceed the cost of a care home that could also meet their needs.

2. Proposals

- 2.1 That the Council add an amendment to its Fair Access to Care Policy that enables Adult Social Care to introduce an upper cost parameter for the cost of domiciliary care and non-residential care services that can be used as a guide for the cost of care packages compared to the cost of a care home that could meet the individuals needs. The council will in all cases look at the individual's needs before taking a decision.
- 2.2 Where an individual is assessed as requiring a domiciliary care package in excess of the upper-cost parameter and there is an alternative care home placement which meets the individual's assessed needs, the Council may take into account the issue of resources in determining the care provision. However, decisions on placement will always be specific to the individual, taking account of the individual's needs and whether they can be better met in a care home.
- 2.3 The service user may choose to top up the care that the Council will fund to enable them to remain in their home through the use of their cash assets or Equity Release schemes.
- 2.4 This proposal could be contentious for some individuals and may be challenged. Before using the amendment, Adult Social care needs to be sure that by its actions it does not contravene other legislation, for example The Human Rights Act 1998.

3. Conclusion

- 3.1 The Council has a key responsibility to ensure the effective use of resources both in terms of value for money and quality. There is significant demand on Adult Social Care budgets and this proposal is one measure to reduce expenditure.
- 3.2 The Council needs to ensure it provides an equitable service to its service users, taking into account each individual's needs and circumstances.
- 3.3 The Council has consulted with interested groups through the auspices of the West Berkshire Independent Living Network. Their response has been to reject the proposal and to challenge the legality of the Council's proposal. WBC's response is stated in the Equalities Impact Assessment under Implications at the start of this document. However the feedback from the public consultation indicated strong opposition to the principle that residential accommodation would be seen as appropriate for anyone who could be supported in the community. We will therefore put in place regular reporting of anonymised cases to WB ILN where a

decision has been taken to place people in residential settings under these circumstances.

- 3.4 That the attached if accepted as an amendment to the FACS Policy (para 3.1) will provide a tool and guideline to enable Adult Social Care to manage its resources more effectively.

Executive Report

1. Introduction

The Council recognises the right of an individual to choose to be cared for at home. This principle underpins a person-centred approach by acknowledging that self-determination i.e. independence, choice and control are integral to an individual's decision-making process. However, where there are 2 alternatives which meet an individual's assessed need, the Local Authority can take into account its resources when determining placement.

2. Person Centred framework

2.1 The Council seeks to provide a reasonable and equitable approach that:

- no person or group is discriminated against
- pays regard to the individual's preferences
- takes account of properly considered assessments
- focuses on the most effective way of meeting needs based on a consideration of the plurality of providers, (including carers, voluntary sector, independent providers)

3. Financial Arrangements and impacts

3.1 The Council has a key responsibility to ensure the effective use of resources both in terms of value for money and quality. As far as is practicable, affordable and sustainable within assessed resources this framework supports this responsibility by;

- the assessment of how resources are used against the outcomes that can be delivered and achieved for a service user
- choice of a service user to remain at home with appropriate support; and
- exercising other service options to ensure equitable and better use of resources for all clients.

3.2 Generally, the Council will not pay more for domiciliary and non-residential services than it would ordinarily pay to meet the assessed needs of an individual if they were placed in a residential or nursing care setting. In assessing need, account will be taken of both practical needs such as washing/bathing and social, emotional and psychological needs such as the importance of maintaining relationships with family and friends. Where it is demonstrated that an alternative package i.e. care home is available which meets assessed needs at a rate that has regard for safety, affordability, and makes good use of the Council's financial resources, the Council may take into consideration the relative costs of each option in determining placement.

3.3 The Council will only take into consideration expenses it judges to be directly relevant to a service user's needs. For example, expenses such as mobile telephones or satellite television will not be taken into consideration.

- 3.4 The Council will not allow costs where a reasonable alternative is available at lower costs. For example, the provision of take-away meals delivered by food outlets that cost more than the Council's commissioned meals on wheels service.
- 3.5 Adult Social Care currently funds 26 out of 750 older people living in their own home/sheltered living/extra care with care packages in excess of £35,000 per annum (the average cost of a nursing home placement). 2 between £50-60,000, 8 between £40-50,000 and 16 between £35-40,000 per annum. This represents a difference of approximately £160,000.
- 3.6 Should all 26 be moved into care homes the saving would be £160,000. The challenges will be finding care home provision locally as priority is given to hospital discharges to avoid fines and providing evidence that the Council can better meet their needs in a care home when they are settled and choosing to remain in their own homes.
- 3.7 Savings Plan 2012/13
The service has a target of £25,000 with regard this proposal. This is a cautious target due to the following;
- i. each situation must be viewed individually – the Council cannot apply this as a blanket policy
 - ii. the service will be moving some of these high costs service users to the new Alice Bye Court, extra care development which has a separate savings target of £50,000.
 - iii. each individual will require a review – a capacity issue for the service and it needs to be compliant with the legislation
- 3.8 Looking to future service users whose needs will increase, this amendment will give care managers the tool to have the conversation with service users and families and to possibly avoid a care package being set up in excess of £35,000. However as stated, each situation needs to be considered on an individual basis.

4. Mental Capacity and Deprivation of Liberty Safeguards

- 4.1 Where the individual is judged not to have capacity to make a decision to move to a care home the Council will in contentious situations where families disagree with a care home placement, apply to the Court of Protection to decide what is in the individual's best interests about where they should live. Several judges have been very critical of Council's who have made these decisions.
- 4.2 In such situations, the Council will need to apply for a DOLS Authorisation before making a placement as the placement would almost certainly amount to a deprivation of liberty, as the Council would (through the care home staff) be exercising complete control over the person and be refusing carers/relatives request for the person to be discharged (Bournewood).

5. Reviews

- 5.1 Eligible service users who choose to remain at home will be routinely reviewed annually or should their care needs increase. Where it is no longer cost effective or equitable to sustain high cost domiciliary care packages, consideration will be given to alternative placements in line with a re-assessment as outlined at 3.2 above.

- 5.2 Costs arising from personal lifestyle choices outside of the eligibility criteria of the individual will not be allowed. For example the provision of round-the-clock sitting service for companionship or an escort service when transportation is available.
- 5.3 In every case the Council must ensure it complies with legislation and does not reduce care services where there has been no change in need. WBC legal view is

For people already in receipt of a care package, it is very difficult to reduce/withdraw lawfully – there basically has to be a change in assessed need, which of course is not likely to happen for the better.

6. The Council's role

- 6.1 The Council will take account of the individual's desires and preferences. The Council will ascertain all relevant facts, including benefits to the service user in remaining within their own home where they wish to do so in order to meet an individual's needs and identify suitable provision.
- 6.2 The limitations on the Council's obligations to acquiesce to an individual's wishes are not intended to deny the individual choice but to ensure that the Council is able to fulfil its obligations with regard to the safeguarding of adults from abuse and neglect within the resources available for the quality of service provided.
- 6.3 As the Council moves to offering Personal Budgets to all its service users, it will be critical to ensure that there is equity between those on a Personal Budget and those in receipt of a traditional style of service provision.
- 6.4 The implementation of the RAISE finance module this year will give care managers and service users a complete cost of the care services in place and inform further funding decisions.

7. Legal Framework

7.1 The Fair Access to Care Guidance (FACS) – 2003

This states the following;

'Councils are reminded that they should consider potential outcomes for individuals, and the cost- effectiveness of providing care to them, , on the merits or each case. In doing so they should tailor services to each individual's circumstances and should only use upper-cost parameters for care packages as a guide'.

FACS Practice Guidance Q and A 2003 includes the following question;

- Q** How can councils control resources and ensure fairness on a case-by-case basis, if as the guidance says, councils should not set fixed cost-ceilings on packages at home?
- A:** If an individual is eligible for support, the councils should provide services that are cost-effective and appropriate. Cost-ceilings may be used as a guide, but they should not be used rigidly. Councils should always base their decisions on their assessment of a particular individual's needs and if spending above a cost-ceiling

can make a significant difference to an individual, then the council should consider doing so.

7.2 Caselaw – Gloucestershire judgment 1996 and Khana 2001.

The courts have held that a local authority can take into account its resources in deciding between 2 care packages which both meet an individual's needs, but that an individual's needs will be paramount.

Where an individual has been assessed as having needs which would be better met by being in residential care, the Local Authority can legitimately refuse to fund home care even where the service user and /or their family wish for the service user to remain at home.

7.3 Human Rights Act 1998

Should the Council take a decision to place an individual in a residential home as opposed to a care package within the individual's own home it could run the risk of challenge from a human rights point of view (Right to Respect for Private and Family Life – Article 8)

8 Equalities Impact Assessment

The Council has complied with its duties under the Equalities Act 2010. It has completed the Level 1 EIA and to inform the Level 2 has consulted with local interested groups through West Berkshire Independent Living Network

West Berkshire Disability Alliance representing a range of interest groups provided a written response to the consultation process. They believe the legal case quoted in the Council's paper ie Khana 2001 is not a valid one and they 'totally reject the proposal from WBC to introduce an upper cost parameter for the cost of domiciliary care and non residential care services.'

Legal advice has been sought with regard this response;

'I think that they are agreeing with what your report highlighted. We are clearly saying that the upper cost parameter should be used as a guide only, that decisions on placement are individual, specific and that resources are but one factor'.

The WBDA took the view that the legal case of Khana 2001 was not a valid one as it was 'not concerned with affordability issues'.

WBC legal view is ;

'The case of Khana did raise the issue of how 'independence' and 'cost effectiveness' should be balanced. The Gloucestershire judgement which you reference clearly says that in deciding how to meet need, a LA can take account of its resources when faced with 2 placements which objectively offer a real and present choice of how to meet and individual's need.

Further information is found on the EIA Stage 2.

9 Conclusion

Legal advice confirms that the needs of the individual are paramount and resources are but one factor. However, if there are 2 alternatives which meet an individual's assessed need, the Local Authority can take into account its resources when determining placement.

The Council has 26 service users with care packages in excess of £35,000. As these are reviewed or their needs increase this proposal can be used by staff as a tool to introduce and/or implement the cost ceiling for care, taking care that they comply with the legal advice as stated above.

Agreeing this proposal will enable higher costs to be avoided in the future in those situations where the Council can demonstrate it is acting lawfully.

Appendices

Appendix A – Fair Access to Care Policy

Appendix B – Equality Impact Assessment – Stage 2

Appendix C - Analysis of feedback from consultation exercise on savings proposals

Consultees

Local Stakeholders: West Berkshire groups through the WB Independent Living Network

Officers Consulted: Legal Services ; Leigh Hogan
Accountancy ; Andy Walker
Corporate Board

Trade Union: n/a

Fair Access to Care Services

Policies & Procedures

Ownership:	Jan Evans
Version:	Version 4.
Approved by:	Corporate Board 28 February 2012
Review Date:	December 2015
Last Updated	February 2010
Revisions:	29 May 2008 – reviewed by WBC Executive Committee Decision to retain eligibility criteria at critical February 2010 – Putting People First Policy statement related to all Adult Social Care Policies and procedures

Purpose

The Department of Health issued guidance to Councils with Social Services responsibilities on Fair Access to Care Services in July 2001 and May 2002. The purpose of this guidance was to ensure that councils could provide or commission services to meet eligible needs, subject to their resources, and ensure that within the council area, individuals in similar circumstances receive services which achieve broadly similar outcomes.

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1. Introduction

- 1.1 The need for guidance on eligibility criteria for Adult social Care was identified in the 1998 White Paper “Modernising Social Services”. This was because different councils were using different eligibility criteria, because often within councils there were different eligibility criteria for different care groups, and sometimes different criteria for different services
- 1.2 The Department of Health issued guidance to Councils with Social Services responsibilities on Fair Access to Care Services in July 2001, May 2002 and July 2002. The purpose of this guidance was to ensure that councils could provide or commission services to meet eligible needs, subject to their resources, and ensure that within the council area, individuals in similar circumstances receive services which achieve broadly similar outcomes. The guidance was issued under Section & (1) of the Local Authority Social Services Act 1970.
- 1.3 West Berkshire Council agreed the adoption and implementation of Fair Access to Care Services eligibility criteria in March 2003.

2. National Framework

- 2.1 Fair Access to Care Services (FACS) establishes that there is one national framework of eligibility criteria for all adults seeking social care services. This means that everyone irrespective of their age or disability will have the same access route to social care services and will receive broadly similar outcomes in terms of service delivery.
- 2.2 An assessment will be offered to everyone who appears to be in need of social care services. The level of assessment may vary as it progresses depending on emerging need, but the “initial” assessment will be detailed enough to determine eligibility for services and should not screen people out too early. This does not mean that everyone making an initial enquiry should be immediately offered an assessment, but it does mean that staff must be trained to ask sufficient questions to determine whether someone is simply seeking information, or have come to the wrong agency, or in fact may need some form of social care services.
- 2.3 The decision about an individual’s eligibility for social care services will be made at the end of this initial assessment (or re-assessment) and there should be no further eligibility decisions to access particular services.
- 2.4 The assessment will be made on presenting needs, and decisions about eligible needs and their priority should be based on the risks to an individual’s independence both in the short and the longer term were help not to be provided. Assessing staff in the first instance should ask themselves the following questions:-
 1. How likely is it that “something” will happen if community care services are not provided?
 2. What is that ‘something’? and
 3. How serious will that ‘something’ be?

Judgement should be evidence – based and the assessor should be able to demonstrate and record substantive grounds for believing the eligibility criteria are met based on risk to independence.

Each service area should develop a more specific risk assessment process to take account of the specific needs of the service user group with which they work.

In future self assessment could alter the way in which assessments are carried out and the self assessment process will need to be consistent with the agreed eligibility criteria.

At the assessment stage a direct payment should be offered unless the assessment has produced evidence that this is not appropriate. In future individualised budgets may offer a realistic self –directed alternative for those assessed as being incapable of managing a direct payment even with help from someone else.

- 2.5 Whilst in “FACS” terms the assessment process should be similar and equitable for all potential services users this does not mean that the assessment format must be exactly the same for each user group. Each service area will therefore develop an assessment format that is principally person centred but will also take account of the developments and requirements set out in the different National Service Frameworks e.g. Single Assessment Process, Care Programme Approach and Person Centred Planning.
- 2.6 The “Fair Access to Care Services” guidance sets out a national eligibility framework that all councils are required to use exactly as it is set out in the guidance document. The eligibility framework is graded into four bands, which describe the seriousness of the risk to independence. These four bands are Critical, Substantial, Moderate and Low.

3. Fair Access to Care Services in West Berkshire

- 3.1 Whilst councils should not alter the framework, they are allowed to take local resources into account when setting the level at which they set the local eligibility criteria. West Berkshire Council has set the local eligibility criteria at the Critical band level and therefore social care services will be provided when:-

- ف life is, or will be, threatened; and/or
- ف significant health problems have developed or will develop; and/or
- ف there is, or will be, little or no choice and control over vital aspects of the immediate environment; and/or
- ف serious abuse or neglect has occurred or will occur, and/or *
- ف there is, or will be, an inability to carry out vital personal care or domestic routines; and/or
- ف vital involvement in work, education or learning cannot, or will not, be sustained; and/or
- ف vital social support systems and relationships cannot or will not be sustained; and/or
- ف vital family and other social roles and responsibilities cannot or will not be undertaken.

* N.B. In West Berkshire all abuse or neglect is considered serious.

The Gloucestershire judgement 1996 allows Local Authorities to take into account its resources in deciding between 2 care packages that both meet an individuals needs, but that the individual’s needs will be paramount. Where an individual has been

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assessed as having needs which could be better met by being in residential care, the Council can legitimately refuse to fund home care even where the service users and/or their family wish for the service user to stay at home.

- 3.2 Fair Access to Care requires councils to consider the risk to the independence to an individual in both the short and the long term at each level of the eligibility framework. Therefore in West Berkshire services will be provided to people assessed as being at a critical level of risk both immediately and in the longer terms. A precise definition of what the longer terms means in terms of timescale has not been set as this is likely to vary with each individual but examples could be:-
- (a) an elderly person assessed as being at risk of falling who can manage most aspect of their personal care at present, but for whom some equipment/advice may help to prevent future falls and therefore the need for an intensive care package in the longer term, or
 - (b) a young man with a learning disability living independently who may be capable of managing most aspect of his life, but who requires low level support to prevent him jeopardising his tenancy and rendering him homeless in future.
- 3.3 If an individual is assessed as being eligible for community care services then a care plan or support plan will be developed with them. This plan will have a written record of:-
- ┆ the eligible needs (not services) and associated risks.
 - ┆ the intended outcomes of service provision
 - ┆ contingency plans to manage emergency changes
 - ┆ details of services to be provided and any charges the individual is assessed to pay
 - ┆ whether direct payments have been offered.
 - ┆ the needs which the individual can meet themselves, and
 - ┆ a review date.
- 3.4 If an individual does not immediately fit into any of the care groups or has multiple needs which span more than one care group then the Cross Team Working Protocol should be used to ensure that the decision about who should carry out the assessment does not delay the response to the individual.
- 3.5 It has been agreed by both the PCTs and the Health Authority that Fair Access to Care criteria form the basis of decisions about eligibility to social care services and will therefore be taken into account in the more detailed assessments required for Continuing Health Care and Free Nursing Care.
- 3.6 Fair access to care eligibility criteria do not apply to children, who are assessed within the “Framework for the Assessment of Children in Need”. However adults, who have responsibilities for a child under 18 years of age, may require help with these responsibilities and this should be considered in the:-
- ف “vital family and other social roles and responsibilities cannot or will not be undertaken” criteria.
- 3.7 Family carers’ or friends’ caring can be taken into account when considering at the care planning stage whether someone has the resources within their own networks to meet some of their needs themselves. However carers need to be willing and able to do so and consideration should be given to whether the carer is managing to cope with this

caring role. If a carer appears to have needs in their own right Fair Access to Care criteria should not be used but they should be offered an assessment in their own right within the framework of "The Carers and Disabled Children Act 2000".

- 3.8 Every care package will be reviewed annually against the agreed FACS criteria for the Council

4. Exclusions

- 4.1 Fair Access to Care Services eligibility criteria do not apply to:-
- Services provided under the Road Traffic Act 2000 (Blue Badges),
 - Services to destitute asylum seeker, or
 - Adaptations to peoples' homes under the 1996 Housing Regeneration Act (DFGs)

5. Local Guidance

Eligibility criteria standards: 'Critical'

Appendix 1: For Elderly and Physically Disabled People

Eligibility Criteria Standards for Elderly and Physically Disabled People

West Berkshire Community Care aims to meet eligible needs:-

- Where the person wants help or there is a statutory duty to help; and
- It is feasible and safe to do so; and
- The support required is the responsibility of West Berkshire Council (as opposed to Health or relatives); and
- To the following minimum 'Standards'

Personal Hygiene

Get washed all over often enough to avoid harm to your health. As a minimum, get washed over at least once a fortnight (with or without help). Wash your hands and face daily, or get them washed with help.

Toileting

Have satisfactory basic toileting arrangements that are dignified, hygienic and without risk to health.

Self Care

Carry out (or have carried out for you) as often as appropriate the basic activities needed to look after your body, such as shaving, hair combing, tooth brushing, etc. Get dressed and undressed each day.

Eating, Drinking and Cooking

Eat and drink adequately for your health. Able to prepare meals as wanted (with or without help).

Mobility

Get into and out of bed each day. Transfer between your bed and a chair and change position often enough to avoid harm to your health. Have safe means of getting into and out of the place where you live (this may only be safe when someone else is present to help).

Laundry

Get clean clothes and bedclothes when you need them.

Keeping Warm

Keep warm enough to avoid the risk of hypothermia or the aggravation of serious health problems.

Accommodation

Be able to let people into your home safely.

Getting Help

Be able to get help in a serious emergency of a kind which there is reason to believe may be likely to arise.

Cleaning

Keep the place where you live sufficiently clean to avoid serious risk of harm to your health (i.e. through food poisoning or aggravation of a respiratory problem).

Money

Have information about financial help to which you may be entitled. Manage the basics of getting and spending your money (or to get satisfactory help with this if necessary).

Communication

Be able to make your needs and views known effectively to the people whose actions most affect your life.

Appendix 2: For Mental Health

FAIR ACCESS TO CARE SERVICES

MENTAL HEALTH (FACS)

Critical

Life is or will be threatened; and/or

People suffering from a mental disorder and requiring professional intervention to reduce serious danger to life and/or currently at risk of deliberate self-injury and/or suicide and/or when the provision of services is part of a criminal justice system order.

Significant health problems have developed or will develop; and/or

Symptoms of mental illness are substantially interfering with daily living skills and/or a person's level of functioning is severely affected by their mental illness. People requiring a multi-disciplinary assessment due to a high risk of hospitalisation and where there has been three or more admissions to hospital in the past two years, or have been hospitalised for a continuous six months or longer within the past three years.

There is or will be, little or no choice and control over vital aspects of the immediate environment; and/or

People requiring statutory intervention under the Mental Health Act 1983, including a formal Mental Health Act Assessment, Section 117 Aftercare, and Section 25 Guardianship and people experiencing significant accommodation problems due to their mental disorder resulting in actual or high risk of homelessness. People who lack the capacity due to mental disorder, to make independent decisions about their environment. This would include their accommodation, day-to-day activity; relationships with family and friends and their inability to accept help and support.

Serious abuse or neglect has occurred or will occur; and/or

People currently at risk of serious neglect leading to high risk of hospitalisation and/or self-harm and/or a history of violent and/or seriously assaultive behaviour, which, in the opinion of a mental health professional is due to their mental disorder. People requiring social supervision under the Mental Health Act 1983, and people at risk of offending behaviour due to their mental disorder. People who are unable, because of their mental disorder, to manage their own finances, leading to high risk of neglect and exploitation, usually including the inability to obtain the necessary welfare benefits.

There is or will be, an inability to carry out vital personal care or domestic routines; and/or

People who are at significant risk of acute distress/deterioration because their mental disorder is leading to failure to maintain personal care and their level of functioning with domestic routines is affected to a moderate or severe degree.

Vital social support systems and relationships cannot or will not be sustained; and/or

People who suffer from severe social isolation and have impaired ability to interact socially due to their mental health problems. People who, because of their mental disorder, are unable to engage with 'social' activities, including leisure pursuits and hobbies, through which relationships with other people can be developed or sustained.

Vital family and other social roles and responsibilities cannot or will not be undertaken
Where there is severe disruption within the family due to mental health support needs and/or there is significant risk of severe deterioration of individual or carer to sustain a safe environment.

Where a carer has major mental health difficulties due to the impact of their role as a carer causing immediate life threatening harm or danger to themselves or others and they need support with their caring role. Where there is severe disruption within the family, because of a mental disorder, and that person is unable to carry out his/her family/social responsibilities or because the demands of caring for this person places others at risk. Where there is a risk to the safety of this person, their carer or other family member.

Substantial

There is, or will be, only partial choice and control over the immediate environment; and/or
People who have partial choice and control over their immediate environment, but who are able to make some informed and independent choices.

Abuse or neglect has occurred or will occur; and/or
Where abuse or neglect has occurred or is likely to occur but people are able to exercise full or partial choice and control over their behaviour.

There is, or will be, an inability to carry out the majority of personal care or domestic routines; and/or
Where there is, or will be, an inability to carry out some aspects of personal care or domestic routines indicating some risk to their independence either now or in the future, but indicating little risk to that independence.

Involvement in many aspects of work, education or learning cannot or will not be sustained; and/or
People requiring involvement in some aspects of work or education which cannot or will not be sustained, but who are able to exercise some choice and control over their situation.

The majority of social support systems and relationships cannot or will not be sustained; and/or
People who have difficulty maintaining some social support systems and/or social networks, but which indicates medium/low risk to their independence.

The majority of family and other social roles and responsibilities cannot or will not be undertaken
People whose family and/or carer is experiencing difficulty undertaking some of their caring/social roles and responsibilities due to their mental disorder, e.g. as parents and also where carers/relatives are having difficulty supporting the patient.

FAIR ACCESS TO CARE ELIGIBILITY CHECKLIST

Community Care and Housing - Learning Disability Services

Client Name: _____ Date of Birth: _____

This form must only be completed following an assessment or review to determine if a person has social care needs that are eligible for services arranged or provided by Social Services

How the Eligibility Criteria are used

- ❖ You are only eligible for social care services where needs are CRITICAL (: see WBC/FAC criteria) and where there is no one else willing/able/appropriate to assist.
- ❖ If your needs are identified below the threshold line then, we will give you information and advice about available services
- ❖ Your needs will be reviewed to see if they have changed and to see if you are still eligible for a service.

Definitions of Levels or Risk

- Critical:** The risk of major harm/danger to a person or major risk to independence.
- Substantial:** The risk of significant impairment to the health and well being of a person or significant risk to independence
- Moderate:** The risk of some impairment to the health and well being of a person or some risk to independence.
- Low:** Promoting a person’s quality of life or low risk to independence

Section 1: Needs relating to Your Health and Well Being

Critical	↑ You have major health problems which cause immediate life threatening harm or danger to yourself or others and need social care support. ↑ Serious abuse or neglect has occurred or is strongly suspected and you need protective intervention by Social Services (Includes financial abuse and discrimination).
Threshold for Services	
Substantial	↑ You have significant health problems which cause significant risks of harm or danger to yourself or others either now or in the near future and need social care support. ↑ Abuse or neglect has occurred or is strongly suspected in the near future and you need social care support
Moderate	↑ You have some health problems indicating some risks to your independence and/or intermittent distress either now or in the foreseeable future.
Low	↑ You have a few health problems indicating low risks to your independence

Section 2: Needs Relating to your Personal Care/Domestic Routines/Home Environment

Critical	آ	You are unable to do vital or most aspects of your personal care causing major and immediate harm or danger to yourself or others or major and immediate risks to your independence and you need social care support.
	آ	You are unable to manage Vital or most aspects of your domestic routines causing major and immediate harm or danger to yourself or others or major and immediate risks to your independence and you need social care support.
	آ	You have an extensive/complete loss of choice and control over vital aspects of your home environment causing major and immediate harm or danger to yourself or other or major and immediate risks to your independence and you need social care support.
Threshold for Services		
Substantial	آ	You are unable to do may aspect of your personal care causing significant risk of danger or harm to yourself or others or significant risks to your independence either now or in the near future and you need social care support.
	آ	You are unable to manage many aspects of your domestic routines causing significant risk of harm or danger to yourself or others or significant risks to your independence either now or in the near future and you need social care support.
	آ	You have substantial loss of choice and control managing your home environment causing a significant risk of harm or danger to yourself or others or a significant risk to your independence and you need social care support.
Moderate	ثفا	You are unable to do some aspects of your personal care indicating some risk to your independence either now or in the foreseeable future.
	ثفا	You are unable to manage some aspects of your domestic routines indicating some risk to your independence either now or in the foreseeable future.
	ثفا	You are unable to manage some aspects of your home environment indicating some risk to your independence either now or in the foreseeable future.
Low	ثفا	You have difficulty with one or two aspects of your personal care, domestic routines and/or home environment indicating little risk to your independence.

Section 3: Needs relating to Your Family and Social Responsibilities

Critical	آ	You are unable to sustain you involvement in vital or most aspects of work/education/learning causing a major and immediate loss of your independence and you need social care assistance.
	آ	You are unable to sustain your involvement in vital or most aspects of family/social roles and responsibilities and social contact causing major distress and/or immediate loss of your independence and you need social care support.
Threshold for Services		

	<p>You are unable to sustain your involvement in many aspects of work/education/learning causing a significant risk to your independence either now or in the near future and you need social care assistance.</p>
Substantial	<p>You are unable to sustain your involvement in many aspects of your family/social roles and responsibilities and social contact causing significant distress and/or risk to your independence either now or in the near future and you will need social care support.</p>
	<p>You are unable to manage some aspects of your involvement in work/learning/education indicating some risk to your independence either now or in the foreseeable future.</p>
Moderate	<p>You are unable to manage some aspects of your family/social roles and responsibilities and social contact indicating some risk to your independence either now or in the foreseeable future.</p>
	<p>You have difficulty undertaking one or two aspects of your work/learning/education/family and/or social networks indicating little risk to your independence.</p>
Low	

Section 4: Carers

	<p>Your carer has major physical/mental health difficulties due to the impact of their role as a carer causing immediate life threatening harm or danger to themselves or others and they need social care support.</p>
Critical	<p>There is a complete breakdown in the relationship between you and your carer and your carer is unable to continue caring or has difficulty sustaining vital or most aspects of their caring role</p> <p>Your carer is unable to manage vital or most aspects of their caring/family/work/domestic/social roles and responsibilities and needs social care support.</p>
Threshold for Services	
	<p>Your carer has significant physical/mental health difficulties due to the impact of their role as a carer significant risk of harm or danger to themselves or others either now or in the near future and they need social care support.</p>
Substantial	<p>There is a significant risk of breakdown in the relationship between you and your carer and your carer is unable to sustain many aspects of their caring role either now or in the near future.</p> <p>Your carer is unable to manage many aspects of their caring/family/work/domestic/social roles and responsibilities either now or in the near future and needs social care support</p>
Moderate	<p>Your carer is unable to manage some aspects of their caring/family/domestic/social roles either now or in the foreseeable future.</p>
Low	<p>Your carer has difficulty undertaking one or two aspects of their caring/domestic role.</p>

Glossary of Terms

Near future:	Up to three months
Foreseeable future:	Up to twelve months
Health:	Includes physical, sensory, learning, behaviour, cognitive disabilities and impairments, mental health.
Social Care Support:	May be short term, time limited or ongoing. It includes care, assistance, personal support, enabling, supervision and equipment arranged by social services.
Personal Care:	Any activity that requires close personal and physical contact or personal support from another person and which does not fulfil a medical function.
Domestic Routines:	Support required to assist a person to manage their living environment and which does not involve personal or intimate care.
Home Environment:	Includes mobility, access, accommodation, ability to manage money and so on.

Signed:

.....

Assessor

Date:

.....

Signed:

.....

Line Manager

Date:

.....

Not to be sent out to clients. To be attached to the review/assessment for inputting etc.

Equality Impact Assessment Template – Stage Two

Name of item being assessed:	Funding arrangements framework for domiciliary care
Version and release date of item:	Version 2, revised 04.04.12
Owner of the item being assessed:	Adult Social Care
Name of assessor:	Jan Evans / Margaret Goldie
Date of assessment:	4 th April 2012

1 What are the main aims of the item?

To introduce an upper cost parameter for the cost of domiciliary care.

2 What research has been undertaken to inform this assessment?

A briefing paper was sent to West Berkshire Independent Living Network (WBILN) who agreed to facilitate the consultation process in respect of WBC's proposed consultation on proposed cuts to the 2012/13 budget. The WBILN is a user led organisation representing the interests of disabled people. The response was co-ordinated by WBILN following a 4 week consultation period.

WBILN arranged an open meeting on 6th January 2012 at The Royal British Legion, Newbury at which 60 people attended. The meeting was divided into 2 parts : the first part consisting of workshops facilitated by WBILN and WB Links members where participants were asked the following questions :-

- Do you understand WBC's proposals for cuts to the 2012/13 budget that will affect local disabled people and their carers? Have you had enough information on these issues?
- How do you think the budget proposals will affect you?
- What is your overall view of the budget proposals?
- Is there an alternative to making cuts to the budget that will affect local disabled people and their carers?

The second part of the meeting was chaired by the WBILN Chairman and consisted of a Q&A session from the floor to a panel of WBC Officers and the Elected Member responsible for Adult Social Care.

Views were also sought on the proposed cuts to the 2012/13 budget via the 'It's my Life' group. This is a Learning Disability forum run by service users for service users.

There was also a meeting held of the DES (Disability Equality Scrutiny) Board regarding the proposed cuts.

Proposals were published on the council's website and all individual service users (circa 2,500) who would be potentially affected by the proposals were written to advising where to find information and response forms on the Internet and stated that if they were unable to do so, they could telephone and obtain a full consultation pack with response forms to complete.

Specific meetings were also set up with a range of stakeholder groups, for example WB LINK (Local Involvement Network), and Parent Carers for adults with a Learning Disability. Discussion took place at the Learning Disability Partnership Board meeting in November 2011 and at the WB Neurological Alliance in January 2012.

There was significant press coverage.

In relation to domiciliary care proposals, there was also a review of neighbouring authorities policies where upper cost ceilings were evident and had been implemented within the legal framework.

Legal advice was sought on this matter and confirmed that an upper cost parameter can be introduced as a guide. Local Authorities can take resources into account when presented with 2 placements which objectively offer a real and present choice of how to meet an individual's need. However, decisions on placement must always be specific to an individual.

3 What are the results of your research?

Note which groups may be affected by the item, consider how they may be affected and what sources of information have been used to determine this.

(Please demonstrate consideration of all strands – Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation.)

Group Affected	What might be the effect?	Information to support this.
Adults with disabilities and Older People	There may be more people moving into long term care homes., thereby impacting upon independence/ family life. This process may be accelerated	Consultation responses / case management records
Adults who are dependent on	Their choices may be limited compared to	Knowledge of service users and their

public funding for their care services	those who are independently funded.	circumstances / case management records
<p>An analysis of feedback received in relation to the proposal on cost ceilings for care homes and domiciliary and non-residential care together was undertaken by WBC officers. The analysis is attached to view. In relation to domiciliary care, there was strong opposition to the principle of not continuing to support people to live in their own home, even if this costs more than a residential place.</p> <p>However, some individuals accepted that it was unrealistic to expect the Council to pay significantly more to keep people in their own home, if they would be happy to take a place in residential care.</p> <p>West Berkshire Disability Alliance (WBDA) which is a member of WBILN also provided a written response to the consultation process. They stated that they totally rejected the proposal from WBC to introduce an upper cost parameter for the cost of domiciliary care and non residential care services and did not view the case of Khana (referenced in the report) as a valid one as it was not concerned with affordability issues.</p> <p>Some alternatives were suggested to the overall proposed budget cuts, including :-</p> <ul style="list-style-type: none"> - a 1% rise in council tax and /or a local referendum if a raise of more than 3% - looking at cuts to alternative council services before adult social care - cuts to staff salaries - Ensuring PCT contribute to high end cost packages - Investing more in the voluntary sector <p>Alternative suggestions in relation to upper guide prices for domiciliary care included amalgamating providers and merging back-office services to reduce overheads.</p>		
<p>Further Comments relating to the item:</p> <p>Legal advice was sought further to the WBDA response and confirmed that the case of Khana raised the issue of how 'independence' and 'cost effectiveness' should be balanced. The Gloucestershire judgment which is referenced clearly in the report says that in deciding how to meet need, a LA can take account of its resources when faced with 2 placements which objectively offer a real and present choice of how to meet and individual's need.</p>		

4 What actions will be taken to address any negative effects?			
Action	Owner	By When?	Outcome
Ensure a comprehensive needs assessment which is specific to each	ASC senior management	Ongoing	Ensure legal compliance and best outcomes for individuals and their

individual and takes account of family life where appropriate.			families.
Continue to monitor complaints to ensure policy is being implemented fairly and appropriately	Head of Service	Ongoing	Ensure lessons learned and complaints used to inform future policy and operational decisions
Ensuring the upper cost parameter is used as such, instead of a ceiling.	Head of Service	Ongoing	Decisions will be based on individual need and parameters will be used as a guide only

5 What was the final outcome and why was this agreed?

Responses from the consultation included strong opposition to the principle that residential accommodation would be seen as appropriate for anyone who could be supported in the community.

In terms of suggested alternatives, the Council has already made reductions in back office support and is continuing to seek best value in terms of domiciliary care provision. However, this needs to be considered alongside the quality of the care being provided.

Taking into account all of the mitigating actions as above, it is recommended that Executive adopt this proposal.

6 What arrangements have you put in place to monitor the impact of this decision?

Weekly Resource Panel will monitor impact of decision making

Comments and Complaints process will be used where appropriate. Lessons learned can inform the process.

Case Management supervision

7 What date is the Equality Impact Assessment due for Review?

April 2013

Signed: Margaret Goldie

Date: 4th April 2012

Please now forward this completed template to the Principal Policy Officer (Equality and Diversity) for publication on the WBC website.

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Analysis of feedback from consultation exercise on savings proposals

Savings proposal	Adult care 6 Cost ceilings for care homes and home care Saving: £50,000
Author	Nigel Owen
Detail of invitations to comment sent out – e.g. nos of letters to service users, list of organisations / representative groups etc	<p>Consultation launched on website and with press announcements, 24th Nov.</p> <p>Details of proposal was posted on West Berkshire Consultation Finder. This automatically notifies registered consultees (currently around over 340 people registered on the database).</p> <p>Press release issued outlining proposals and directing people to further information and feedback forms. Stimulated significant coverage in the local press</p> <p>Letter sent to 2,500 users of services. Open public meeting arranged by WBILN 6th Jan, plus meetings with LD service users and carers, Neurological Alliance, DES Scrutiny Board.</p>
Nos responses received	<p>3 Phone calls from concerned relatives of people currently in residential homes</p> <p>11 Completed feedback forms</p> <p>1 written response</p> <p>Plus comments on this saving within several responses covering all proposals</p>
Breakdown of responses: individual vs. organisations / representative groups	Mainly relatives of people currently in care homes, and also people currently receiving Home Care
Please list organisations / representative groups responded.	West Berkshire Disability Alliance & Neurological Alliance, West Berkshire Local Involvement Network, Princess Royal Trust for Carers
Synthesis of overall themes emerging from the comments received.	
<ul style="list-style-type: none"> • Opposition to the idea that this may lead to moving people out of residential homes which are too expensive • Concern over the possibility that people’s choice of a local home may be restricted • Strong opposition to the principle of not continuing to support people to live in their own home, even if this costs more than a residential place 	
Q1: Please distil and provide an analyse of alternatives suggestions to the savings proposals put forward	
Several people commented that the family would be willing to top up the cost, if necessary to keep an individual in their current residential place. Others pointed out that they did not have the finances to be able to do this.	

Analysis of feedback from consultation exercise on savings proposals

Some individuals accepted that it was unrealistic to expect the Council to pay significantly more to keep people in their own home, if they would be happy to take a place in residential care.

Q1b: Please provide your response to these suggestions – either accepting, or setting out reasons why this is not achievable.

If a family was able to top up the cost of a residential place, then this would be possible.

Q2: Please distil responses for further evidence of the impact of any proposals – either in isolation or as a result of other proposals.

“Most people strive to stay independent for as long as is feasible and would only go into nursing care as a real last resort. It is proven that people live longer in their own environment if they are given support with which to do so.”

“the changes you are proposing will accelerate the move of the elderly from their own homes into nursing care and this is a real worry to me and to most of the old people I have spoken to”

“It doesn’t make sense to pay significantly more for home care than provision of a nursing home”

“The proposed ceiling on home care, together with lowering the fees paid to local care home providers, is likely to result in more people having to move into care. This is inhumane and possibly would be in breach of someone’s human rights.”

Q3: Please provide an analysis of what could be done to mitigate the impact of the proposed changes on individuals.

Ensure that the cost ceiling for a residential care home place is set at an amount which can still purchase an appropriate bed in a home within the area.

Ensure that every effort is made to accommodate people’s wish to stay in their own home, and look at the possibility of releasing equity from property, family contributions, and other ways to meet additional costs.