

ITEM NO: 11

Report To:	EXECUTIVE CABINET
Date:	26 August 2015
Executive Member/Reporting Officer:	Councillor Brenda Warrington – Executive Member (Adult Social Care and Wellbeing) Sandra Whitehead – Interim Assistant Executive Director (Adults Services)
Subject:	ADULT SOCIAL CARE CHARGING AND DEFERRED PAYMENTS POLICIES
Report Summary:	<p>The Care Act 2014 placed a number of duties and responsibilities on local councils when considering charging for adult social care services including residential and non-residential care (such as homecare, day care and respite care). The Act continues to allow councils some discretion as to what services they can charge for and what income, savings and assets can be taken into account when calculating a person's ability to pay for their care.</p> <p>Tameside Council has had a charging policy and a deferred payments policy for many years and this report follows an extensive review of the previous policies together with two consultation exercises engaging with the general Tameside population and with current users of adult social care services.</p> <p>The report highlights the key areas for discretion that the Council has when determining a charging policy and explains why changes are required.</p>
Recommendations:	<ol style="list-style-type: none">1. To accept the proposed discretionary elements of the Charging for Adult Social Care Policy and Deferred Payments Policy2. To accept the draft Charging for Adult Services Policy3. To accept the draft Deferred Payments Policy4. That the policies be kept under review by the Executive Directors of People and Resources and Governance, and updated accordingly by them to ensure legal compliance should the legislation and guidance require their amendment.
Links to Community Strategy:	Healthy, Safe and Supportive Tameside
Policy Implications:	These policies replace the previous Charging Policy and Deferred Payments Policy
Financial Implications: (Authorised by the Section 151 Officer)	<p>A service user receives a full financial assessment if they are assessed as needing a social care service. It is appropriate and fair that service users pay the whole cost of care if their personal wealth determines they are able to.</p> <p>Conversely it is also appropriate and fair that service users only pay a proportion of their care where again their personal wealth</p>

determines this to be the case. It is recognised that all charges should be equitable regardless of whether living in residential or supported accommodation or in own homes. This ensures all service users receive a level of care and support which has been appropriately assessed.

Charging policies should be transparent, fair and reflective of the true cost of care provided together with the ability to pay for that care without personal weekly income reducing to a level below the Government's recognised minimum income level guarantee.

It is essential that associated Council charging and deferred payment policies reflect these principles and the Council maximises the level of income receivable and implements procedures to ensure income due is reviewed in line with any subsequent variation to personal wealth.

**Legal Implications:
(Authorised by the Borough
Solicitor)**

Sections 14, 17 and 69 to 70 of the Care Act 2014 govern the single legal framework around local authorities' charging regime in this area. This framework enables the Council to decide whether or not to charge a person when it is arranging to meet a person's care and support needs, and is intended to make charging fairer and more clearly understood by everyone.

Where the Council decides to charge it must follow the Care and Support (Charging and Assessment of Resources) Regulations, or whichever regulations apply at the time, and have due regard to the associated guidance, ensuring that it does not charge more than is permitted therein. Basically this means that where a local authority chooses to charge, the maximum and the way in which it does so is determined by the current regulations, and in turn, the Council must develop, agree and maintain policies setting out how they will do so in settings other than care homes, where separate rules apply.

Only where a financial assessment has been carried out in accordance with the regulations can a charge be made, and this should be fully explained within local authority policies.

Policies should be in place regarding how the Council communicates, carries out financial assessments, collects debts, and which take into consideration the capacity of the person as well as any illness, condition or if they are in prison. The wellbeing principle lies at the heart of all policy decisions.

The proposed policies, if agreed by Members, should be kept under review and amended/updated as required to ensure they comply with the legislation and guidance. The Executive Director (People) in consultation with the Executive Director (Governance and Resources) should be responsible for ensuring this happens, and that the implementation of the legislation and guidance is effective at all times, to ensure the Council is behaving lawfully and fairly, and therefore safe from successful challenge in the courts or from complaints.

Members should also ensure they have read and fully understand the attached Equalities Impact Assessment and are happy with the consultation exercise carried out when

developing the attached policies.

Risk Management:

The risks associated with this decision are highlighted in detail in section 9 of this report.

The key risks are around people's ability to pay the charges that they are assessed for and the need to have robust financial monitoring and swift reactions between Exchequer and Adult Services to ensure that if people are struggling to pay that as much help and support is available so that people are either not left with adequate weekly income or without the correct level of care and support.

The Deferred Payments Scheme if taken up by large numbers of people could place unacceptable pressures on the Council's finances and ongoing monitoring of the activity within the Scheme is essential. It isn't envisaged however that there will be a large interest in this option.

Access to Information:

Information and details of this decision can be obtained from:
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1. INTRODUCTION

- 1.1 Services that are assessed by the Council's Adult Services as being needed have been subject to charging policies for a number of years. The Fairer Charging Policy and the Charging for Residential Accommodation Guide (CRAG) have been the mechanism for charging service users until recent legislative changes implemented following the passing of the Care Act 2014.
- 1.2 This report and key decision request is in response to a number of changes made within the Care Act that allow local councils some discretion over what and how they charge for their services.
- 1.3 There has been a period of consultation with Tameside citizens following an earlier Executive Decision and the analysis of the responses is also included in this report.
- 1.4 The report also covers another policy document laying out the Council's position on deferred payments. This follows a previous consultation exercise earlier this year following the Care Act's requirement for all Councils to have such a policy.

2. BACKGROUND

- 2.1 In February 2013 the Government announced reforms to the care system to give more certainty and peace of mind over the costs of old age, or of living with a disability. The Care Bill, which became the Care Act 2014 on 14 May 2014, has established a new legal framework putting wellbeing of individuals at the heart of care and support services.
- 2.2 The Act was intended to be implemented in two parts, the first from April 2015 and the second in April the following year (2016). However following a recent Government announcement, the implementation of the second part of the Act has been postponed until 2020 in recognition of the fact that it would have added further financial burdens onto already pressurised local adult social care systems.
- 2.3 The second part of the Act focussed upon the introduction of a financial cap on the amount of money a person in receipt of services will be required to pay as well as an increase of thresholds levels that would determine at what point someone would start to pay and also become a full cost payer. These changes will not now be implemented until 2020 at the earliest.
- 2.4 Part one of the Care Act 2014 comprises of 7 different elements as follows:
 - General duties and universal provision
 - First contact and identifying needs
 - Charging and financial assessments
 - Person centred care and support planning
 - Integration and partnership working
 - Transition to Adult Care and Support
 - Adults Safeguarding
 - Moving between areas (inter local authority & cross boarder issues)
- 2.5 All of these elements have been looked at and where necessary changes have been made in operational processes to ensure that the Council remains compliant with the Act.
- 2.6 In terms of the elements of the Act that are to do with charging for services, the Department of Health published two key sets of regulations that embody the statutory requirements of the Act as well as indicating the discretionary elements that are open to local interpretation and decisions.

- 2.7 The key regulations are:
- The Care and Support (Charging and Assessment of Resources) Regulation 2014
 - The Care and Support (Deferred Payment) Regulations 2014
- 2.8 Officers from the Council's Adult Services, Exchequer Services, Finance Department and Legal Services have worked together to interpret the guidance and regulations and have tried to align the new requirements against the previous charging policy which was itself influenced by national regulations and guidance embodied within the national Fairer Charging Policy and the Charging for Residential Accommodation Guide (CRAG). The former focussing on charging for services received either in a person's own home (for example home care) or within the community (e.g. respite or day care) and the latter on charging when people were admitted to long term residential and nursing care.
- 2.9 Councils have for many years had the ability to carry out a financial assessment of someone receiving social care support and have been required to assess their ability to pay for those services and to make decisions about which services will be charged for and how much the services will cost based on a number of calculations taking into account income, assets, various welfare benefits and expenses incurred due to the nature of any disability or ill health.
- 2.10 The Care Act continues to allow councils to maintain their charging functions and as well as laying out a number of statutory expectations for charging including residential care, have also suggested a number of other areas that may be considered for charging. The remainder of this report will concentrate on those areas that are discretionary and require a decision upon implementation.
- 2.11 Included in the charging expectations that the Act lays on councils is the expectation that it must also offer a Deferred Payment scheme so that service users (usually those living in residential care) can make a decision to postpone paying for their care if they have sufficient resources until such time that is suitable for them. In most cases this relates to people who own their own property and who need to sell it before being able to realise the capital to pay for their care. In these cases a charge is put against the value of the property and any outstanding money is recouped either on the death of the service user or at such time that the user sells their property or has an ability to pay for their care.
- 2.12 Deferred payments are not a new offer and people in Tameside have been offered this option for many years. The Care Act makes the offering of deferred payments a statutory requirement but again it carries a number of discretionary elements which were part of an earlier consultation exercise and subsequent Key Decision.

3. POLICY CONTEXT

- 3.1 The Care Act 2014 was implemented in part on 1 April 2015. Crucially part 1 of the Act focussed on the assessment and eligibility of people for social care and support and with that the acknowledgement that people who had the ability to pay should indeed pay for those services that they were assessed as requiring. This principle of financial assessment and payment for services has been well established within statute over the years and most recently has been encompassed within the Fairer Charging Policy and the Charging for Residential Accommodation Guide (CRAG).
- 3.2 The Fairer Charging principles have been accepted locally for many years within Tameside Council's own Fairer Charging Policy which has been reviewed and updated as required. The CRAG regulations are nationally prescribed.

- 3.3 The Care Act repeals both these sets of regulations and in their place sets out the Governments expectations of what Councils must charge for and what they might want to consider charging for.

4. FINANCIAL POSITION

- 4.1 Tameside Council relies significantly on income from charging for adult social care services. In the financial year 2014/15 income from charging amounted to just over £13.5million. This income can be further broken down to £10,565,488 for residential care and £2,994,859 for non-residential care. Income from charges accounts for 18% of the Adult Services gross budget of £74,661,185 (pre 2015-17 savings requirements).
- 4.2 The current financial pressures placed upon Councils does mean that where possible a person's ability to pay for the services that they receive is acknowledged and a fair and equitable system is in place to ensure a thorough financial assessment is carried out and any charges levied are proportionate to their level of income and assets.
- 4.3 Continued increases in the demographics of the borough particularly of older people and younger adults with disabilities and life limiting health conditions adds further pressure to the Adult Services budget at a time when unprecedented reductions in funding is having to be made due to the Government's financial austerity measures.
- 4.4 Given the additional pressures placed on the Council it is important that all aspects of budgets are heavily scrutinised to ensure that services can be protected and maintained as much as possible and to that end charging for services continues to be a crucial element of the management of the total budget.
- 4.5 Once accepted these policies will be implemented immediately however in line with the Care Act there will be a phased approach to implementation which will allow for financial reassessments to take place at the same time as a person's annual care and support reassessment and it is envisaged that all reassessments will have been completed by the end of the current financial year. Where people are facing increases in their charges it may be necessary to look at the individual circumstances that someone is facing and a phasing of the new charges may be necessary however it is important to recognise that the new policy proposals are based on a person's ability to pay and therefore the areas of current inequality are being rectified. Any decision leading to a phasing in caused by an immediate inability to pay will be taken on an individual basis taking all relevant circumstances into account.

5. PROPOSED DISCRETIONARY ELEMENTS WITHIN THE CHARGING POLICY

- 5.1 There are a number of discretionary elements proposed within the new charging policy for adult social care. There has been a public consultation exercise using the Council's Big Conversation website and letters were also sent to over 2,500 people who are currently using adult social care services and are effected by the Council's previous Fairer Charging Policy or Charging for Residential Accommodation Guidelines.
- 5.2 The consultation ran from 29 May until 7 July 2015 and in total only 49 people responded. The full breakdown of responses can be seen in **Appendix 1**.
- 5.3 Of the 49 respondents, 9 were service users, 8 were carers, 5 were both, 26 were family member and 1 was an interested member of the public.
- 5.4 At the beginning of the consultation people were asked a few general questions about the Charging for Adult Social Care Policy as a whole.

5.5 People were asked in the consultation if they had any views on the proposed charging policy. 17 people responded and most didn't have any views on the policy however some of the main points made included:

- *"Just read the Charging policy briefly but don't see any changes as to what is in place now. The policy based on how the council can obtain more funds. Does not address saving costs by improving social care in the first place. If my mother had received the proper treatment/diagnosis she would have not needed to be in a care home."*
- *"I think some services could be charged for but I don't have that much information to be fair"*
- *"A bullet point summary of changes would be useful in helping me to understand the proposed changes to the current system"*
- *"Yes my issue is around family members not being able to claim some of Direct Payments allowance to help with family member care"*
- *"I think it should be fair across everyone"*
- *"Very long and complicated to understand"*
- *"I think careful consideration needs to be given to the impact on service users"*

5.6 The consultation then went on to ask people how the proposed policy would affect them. 18 people responded and many couldn't really say how it would affect either them or their family member however some did make comment including:

- *"By making sure we have less to live on my bills rise but my money goes down"*
- *"Not really sure as to what happens when my Mother's savings run out"*
- *"No change to current situation"*
- *"As my son is a user of Day Services and respite care I would think so"*

5.7 When asked if there was anything missing from the proposed policy most of the 14 respondents to the question couldn't think of anything however a few commented:

- *"I need to review this further over a longer period before I can sensibly comment further"*
- *"I am unable to get a deferred payment agreement on my Mothers property as I do not have power of attorney-how will the policy affect me."*
- *"Consideration for the less well off the poor get poorer and the government rip more & more off them"*
- *"Proper means of recording the process, treatment and performance by all parties including hospital, social service, consultants, GPs and care home."*

5.8 The consultation then moved on to ask some specific questions about the proposed areas for consideration with regards to the discretionary elements charging for adult social care.

5.9 **Charging for temporary or short term care up to the first 8 weeks as if the person was living in permanent residential care.**

5.9.1 The Council currently charges people if they need to move into a residential care or nursing home for a temporary or short term period. The current charging arrangements are the same as if the person was living in a permanent placement with allowances made for ongoing housing/accommodation expenses in the community and the Council now has the opportunity to consider charging as if the person was remaining at home with a home care package, up to the first 8 weeks.

5.9.2 The current approach is to charge the person as if they were in a permanent placement taking the cost of the placement into consideration when carrying out a full financial assessment. The only difference being that the value of any property that may be owned is not taken into consideration for a temporary or short term

placement, which it clearly is when someone finally moves into a permanent placement.

5.9.3 There were a number of responses to this question many of which misunderstood the issue being raised.

- *“Don't agree because any person can be in hospital for 8 weeks without having to contribute. Will just lead to bed blocking.”*
- *“just one, its a rip off the infirm and most needy”*
- *“I see no problem with this”.*
- *“If it is emergency care I don't think the person should pay for it, sometimes they go into care when there is no bed available for them in hospital you can end paying more for your care till you have had a financial assessment”*
- *“The patient may not and most cases have the money to pay for this service, then the burden falls on the relative.”*
- *“Maintaining the Status Quo on this seems a reasonable approach to me”*

5.9.4 A financial modelling exercise has been carried out on all of the proposals and will be presented against each proposal in turn.

SHORT STAYS - ASSESSING FOR THE FIRST 8 WEEKS AS IF THE PERSON WAS LIVING IN A CARE HOME OR AS IF THE PERSON WAS LIVING AT HOME - FOR THE FIRST 8 WEEKS.

THIS DATA HAS COME FROM 13 CASES - THE CARE HOME COSTS RANGE BETWEEN £419.00 - £534.00	With maximum charge in place	no With maximum charge of £214.90	Cost to authority
Weekly client contribution when assessing a person as if living in a care home.	£3,630.02	N/A	£2,465.20
Weekly client contribution when assessing as if living at home.	N/A	£1,333.83	£4,761.39
Total of 8 weeks client contribution when assessing as if living in a care home.	£29,040.16	N/A	£19,721.60
Total of 8 weeks client contribution when assessing as if living at home.	N/A	£10,670.64	£38,091.12

5.9.5 If the Council started to charge a person in a temporary care home placement using the current non-residential charging policy then the cost to the authority for the 13 people affected by this change would be £38,091.21. If the current policy is left in place then the cost to the authority reduces to £19.721.

5.9.6 Given that the current position is to charge as if the person was in permanent care and that this ensures that more of the actual cost of the care and support is paid for by the person requiring care where it is appropriate and affordable then the proposal is that the Council continues to charge as it currently does.

5.10 Income that is disregarded from a financial assessment

5.10.1 Local Councils must ensure that a person's income is not reduced below a specified level after charges have been deducted. This must be at least the equivalent of the value of the basic levels of Income Support or the Guaranteed Credit element of Pension Credit plus a minimum buffer of 25%. The amounts are set out in the

Government's Care and Support (Charging and Assessment of Resources) Regulations. However, this is only a minimum and local authorities have discretion to set a higher level if they wish. At present Tameside Council applies this minimum buffer of 25%

5.10.2 It is recognised that the Government in setting the Minimum Income Guarantee has determined the level at which it considers that people can live. In adding a further 25% buffer to this figure there is a wider acceptance that people who are in need of care and support services may have further expenditure beyond that which the general public may have.

5.10.3 Comments within the consultation include:

- *"Should increase to 50%"*
- *"Perhaps the Council could increase the minimum buffer to 30% to allow for increases in prices."*
- *"I would like to see a higher buffer"*
- *"A person should be left with sufficient finances to be able to buy clothing etc which is not provided by a care home and also to be able to continue paying upkeep on any property they own and cannot be sold- e.g. costs to maintain heating, insurance. Cases need to be looked at on an individual basis to take this into account"*
- *"I think it should be 50% that is disregarded"*
- *"Sometimes the level of support falls outside the guidelines, what does the patient do then?"*
- *"It would depend on which level income support and independent living allowance is received. As the money coming in not much charges should be minimal or none."*
- *"I believe this is an equitable approach to adopt"*

5.10.4 As well as the 25% buffer the Council also includes other opportunities for people to identify areas of expenditure which are directly related to their condition or disability and which may be able to be disregarded when carrying out a financial assessment.

5.10.5 It is proposed to continue to disregard the value of Income Support/Guaranteed Credit element of Pension Credit plus the buffer of 25%.

5.11 Upper and Lower Capital Limits

5.11.1 The Care Act states that local councils set an upper and lower capital limit when determining how much someone will pay towards their care and support costs. This basically means that any savings or investments above the lower capital limit will count as income when calculating the charges that the Council will ask the person to pay. If someone has savings or investments above the upper capital limit then they will be expected to pay the full cost of their care package. The Care Act currently has set the lower capital limit at £14,250 and the upper capital limit at £23,250. The Council currently does not operate an upper capital limit for charging people when living at home.

5.11.2. When someone has to move into permanent residential care there has always been an upper capital limit so if someone has savings and assets above £23,250 they will be deemed to be able to afford the full cost of their care and support in a care home and as such will be required to pay the full cost. People living in their own homes are not currently treated in the same way and potentially could have the same amount of savings and assets as someone living in a care home but may not be paying the full cost of their care because an upper capital limit is not in place.

5.11.3 The responses to this specific question in the consultation were:

- *“Upper limit should be raised or reduced the amount of contributions to be expected to 50%”.*
- *“Perhaps the upper capital limit could be increased to say £30,000 to take into account the fact that when people are paying for care from their savings the amount of their savings will soon fall.”*
- *“As my Mother is getting close to the £23,250 threshold I would like to see her savings go much further.”*
- *“I understood an upper limit was already in force with Tameside council”*
- *“There should be no upper limit”*
- *“I think the limit should be at least £23,250 some people are quiet concerned about losing their home”.*
- *“Sounds ok”*
- *“Why should someone who has worked hard all their lives, paid a mortgage, got savings have most of it taken away from them when others who have probably lived off the state all their lives contribute nothing?”*
- *“Upper limit seems fair”*
- *“Do not do it.”*
- *“I would like to know how many other Local Authorities have adopted an upper Capital Limit?”*

CAPITAL LIMIT FOR NON-RESIDENTIAL

PLEASE NOTE THE NUMBER OF CASES ARE 91 AND THESE ARE ALL CURRENTLY NOT PAYING A FULL COST CHARGE BUT HAVE SAVINGS OVER THE UPPER CAPITAL LIMIT OF £23,250.00	With Maximum Charge of £214.90 but no upper capital limit (current position)	With Maximum Charge of £214.90 and an upper capital limit in place of £23,250.00	With Maximum Charge of £419.00 and an upper capital limit in place of £23,250.00 (new proposals)
Total of current weekly client contribution for service users who have over £23,250.00	£5,898.90	£9,715.72	£11,294.10

5.11.4 The current position is that there are 91 people who have savings over the upper capital limit of £23,250 (not taking their home property value into consideration) living in their own homes and they are currently paying a combined total of £5,898.90 per week towards their care costs. If the Council were to introduce an upper capital limit with the current maximum charge of £214.90 then then the charge to those individuals would increase to £9,715.72 which would be a fairer reflection of the person’s ability to pay and the true cost of the care and support they would be receiving. If a maximum charge for services was increased to the residential care rate level of £419.00 per week then the client contribution would increase to £11,294.10 per week for the 91 people who would currently be affected.

5.11.5 The Council believes that the setting of an upper capital limit in line with the residential care limit (not including the property value of the home that the person is living) demonstrates a fair and equitable solution also acknowledging that disability related expenses will be taken into account within any financial assessment and could be disregarded.

5.11.6 The proposal is that a lower capital limit is set at £14,250 and an upper capital limit is introduced at £23,250.

5.12 Charging for care and support outside of a care home setting

5.12.1 The Care Act gives local councils the discretion to set a maximum charge for care and support outside of a care home setting in their local authority areas.

5.12.2 The Council has previously set a maximum charge of £214.50 irrespective of a person's financial position and ability to pay.

5.12.3 Currently if someone moves into residential care then the Council has agreed a series of maximum amounts depending upon whether the care is in an on or off framework home and what level of care is to be provided (residential, nursing, residential EMI or nursing EMI). The minimum of these amounts is currently £419.00 per week. Following a financial assessment if it is determined that a person has the means to pay the full cost of the care then they are required to do so.

5.12.4 If a person remains in their own home and receives care and support then currently a maximum charge is set at £214.50 so even if the cost of someone's care is in excess of the £419.00 that they would have to pay if they were in residential care they are still only required to pay no more the £214.50.

5.12.5 The current practice is felt to be inequitable and results in people with the means to pay the true cost of their care not being required to do so and consequently needing the Council to subsidise the cost.

5.12.6 If a person's income and savings doesn't allow them to pay the cost of care then, as is the case now, following a financial assessment the appropriate level of charge will be determined.

5.12.7 Comments from the consultation to the suggestion that a maximum charge is introduced include:

- *“Good but need to focus on the quality of care.”*
- *“At the present time this question does not apply to our situation.”*
- *“No charge is fair”*
- *“Yes I think this is a good idea”*
- *“I think it should be on an individual means”*
- *“I would prefer the lower rate to be kept and increased with inflation if applicable”*
- *“Sounds like a positive move”*
- *“How many can afford a minimum? How many can afford a maximum? “*
- *“I would need further information about exactly how this would be implemented, in order to be able to express an informed view”*

INCREASING THE MAXIMUM NON-RESIDENTIAL CHARGE

THESE CASES ARE TAKEN FROM OUR CURRENT CASE LOAD WHO ARE CURRENTLY PAYING UP TO THE MAXIMUM CHARGE OF £214.90. THERE ARE 28 PEOPLE.	Total of weekly assessed contribution
Maximum Charge of £214.90 as at present.	£6,017.20
Maximum Charge of £419.00	£8,604.94
No Maximum Charge At All	£10,561.11

5.12.8 Looking at the current 28 people who are paying the maximum charge then if this was increased to £419.00 then this would result in a maximum increase in charges from £6017 per week to £8605, however it is not anticipated that everyone currently paying the maximum amount would necessarily be required to pay the full £419.00 charge as it will be dependent upon the actual cost of their care and many will not be receiving care packages that cost £419.00 or in excess of £419.00. People whose care package is less than £419.00 will only be expected to pay for the actual cost of their care if it is deemed that they have the resources to pay the full cost.

5.12.9 If the option not to have a maximum charge but charge the person the full cost of their care then the current people affected would have to pay £10,561.11 per week. This includes one person whose current care package costs in excess of £2,000. Given that people in residential care have a borough wide agreed figure for the type of care home they are in it would be inequitable to have an open ended charging policy with no maximum figure.

5.12.10 The Council is therefore proposing to raise the maximum charge so that it is in line with the residential care rate currently charged in the borough which is £419.00. Not all people who are currently paying the existing maximum charge will necessarily have to pay the new maximum as the financial assessment will determine the correct levels of charging.

5.12.11 In order to reduce the immediate impact of any significant increase in charges it is proposed that increases will be reassessed in line with a person's annual care reassessment and that sufficient notice of any increases will be given to allow for people to ensure that the charges are correct and they are able to pay for the care that they have been assessed as requiring

5.13 Disability related expenses - standard disregard

5.13.1 The Care Act states where disability-related benefits are taken into account, the local council should make an assessment and allow the person to keep enough benefit to pay for necessary disability related expenditure to meet any needs which are not being met by the local authority towards someone's care and support needs.

5.13.2 The Council recognises that people may have specific additional expenditure as a result of their condition or disability and that would affect their total weekly expenditure. The Council currently applies a standard disregard (reviewed annually) towards any disability related expenses someone may have which is currently set at £13.24 per week with the opportunity for a full assessment if required. That is to say the £13.24 of any income is automatically disregarded before any financial assessment is carried out on the rest of someone's income and savings.

5.13.3 These are the comments from the consultation that relate to the question that was posed asking if people felt that the Council should keep its current standard disregard.

- *“Far too low.”*
- *“I do not feel £13.24 is sufficient to allow a person to cover expenses they will still incur whilst living in a care home. The amount the person retains should be enough to allow them to purchase clothing , toiletries etc which are not provided by the care home, allow them to pay for any outings arranged by the home and cover other necessary expenses”*
- *“This must be kept for a person’s disability needs”*
- *“I think that’s fine”*
- *“Keep the standard disregard”*
- *“Continue to apply a standard disregard.”*
- *“Maintaining the status quo in relation to this seems equitable to me”*

5.13.4 Generally people responding were in favour of keeping the disregard however some confused the issue with the living allowance for people living in residential care which is a separate issue.

STANDARD DISABILITY RELATED EXPENSE	
	Total weekly amount disregarded
Service users who have the standard disregard amount for disability related expenses in their financial assessment (1295 CASES AT PRESENT)	£17,461.08

5.13.5 There are currently 1295 people who are having the standard figure of £13.24 disregarded from their financial assessment and if this were to be discontinued it would mean that a further £17,461 could be taken into account when calculating someone’s charging requirements.

5.13.6 The standard disregard is a basic but effective way of recognising a persons increased costs incurred as a result of their disability and condition.

5.13.7 The Council proposes to continue to apply the standard disregard.

5.14 Maximum percentage of disposable income

5.14.1 The Care Act suggests local Councils consider whether it is appropriate to set a maximum percentage of disposable income (over and above the guaranteed minimum income) which may be taken into account in charges. Currently Tameside Council takes 100% of the net disposable income into account for the purpose of levying a charge following a full financial assessment.

- *“Unjustified”*
- *“Perhaps this should be on an individual basis.”*
- *“There should be some leeway.”*
- *“I feel there could be some flexibility because one partner goes into care and the other one is at home and then has to learn to live on less which is not easy”*
- *“Everyone’s needs and income are different, how can 100% be right?”*

- *“This seems to have worked OK in the past, but it would be helpful to know what alternative approaches may have been considered?”*

5.14.2 In answer to the question do you feel that 100% of the net disposable income is fair 56% of the 16 people that responded said no with the other 44% stating that they felt it was fair.

5.14.3 When asked what people felt would be a fairer percentage the numbers ranged from 2% up to 90% with people suggesting 50%, 75% and a sliding scale between 50% and 100%.

DISPOSABLE INCOME ALLOWANCE

	At present with 100% net disposable income	90% of Disposable Income	80% of Disposable Income
Total weekly assessed client contribution	£54,513.49	£52,739.06	£48,207.50

5.14.4 If the Council were to take a lesser percentage of a person’s disposable income when all relevant disregards and expenses have been taken into consideration then clearly this would mean a smaller amount of income coming into the Council to pay for the care and support being provided. Given the current financial pressures that the Council face less income would inevitable mean that services would have to be reduced and possibly even ceased.

5.14.5 The Council proposes to continue to set the maximum percentage of disposable income at 100%.

5.15 Personal Independence Payments

5.15.1 When carrying out a financial assessment the Council has the discretion to consider all or part of this benefit as income. The Council currently takes the whole Disabled Living Allowance (DLA) benefit into account if a person needs both night and day support, it disregards the night rate if no night support is provided. Personal Independence Payments (PIP) is a benefit paid to people in recognition of additional needs arising from their disabilities. It is anticipated that PIP will replace DLA and at the moment PIP although the total benefit is the same rate as a combined higher and lower rate DLA it does not distinguish daytime and night time needs in the same way.

- *“Again everyone is an individual and everyone should be judged on their own individual circumstances.”*
- *“I thought that’s what these payments were for?”*
- *“PIP should be excluded”*
- *“Is there any point in paying this to a person if it is then going to be taken away? Surely they should be allowed to retain this amount”*
- *“That’s fine “*
- *“Just how much do you think is left out of PIPs and Income Support from day to day living?”*
- *“I don’t feel I know enough about the algorithm used when calculating these charges?”*

DLA HIGHER and PIP ENHANCED RATE

PLEASE NOTE THAT ALL DLA CASES WILL EVENTUALLY BE TRANSFERRED OVER TO PIP.		Total Weekly Amount Currently Disregarded for Night Care Element
Number of service users with DLA High (£27.20 disregarded for night care element.)	435	£11,832.00
Number of service users with PIP enhanced rate (£27.20 disregarded)	4	£108.80

5.15.2 Given that Personal Independence Payments do not distinguish between day time and night time needs it would be unfair to take the whole of the PIP payment into consideration when calculating a person's charges when the Council currently disregards the night time rate of DLA if the person does not receive any night time care and support from the Council.

5.15.3 The Council proposes to only take the full PIP benefit into account if the person has both daytime and night time needs and if there are no night time needs requiring a service to be provided then an amount equivalent to the night time part of DLA will be disregarded so that people will be fairly treated.

5.16 Severe Disability Premium

5.16.1 Severe Disability Premium is another benefit paid to people with disabilities living in their own home. This can also be taken into consideration when carrying out a financial assessment. Currently Tameside Council disregards £10.00 of a person's Severe Disability Premium but could take the whole benefit into account when calculating how much a person will pay towards their care and support.

- *"Again everyone has different disabilities and needs, this should be done on an individual basis according to their needs."*
- *"No inclusion of any welfare benefits at all"*
- *"Remain at £10.00 not full amount"*
- *"I don't feel that's fair as that kind of person has complex needs"*
- *"The £10.00 of a person's Severe Disability Premium should still be disregarded."*
- *"Leave it as it is".*
- *"This is the first time I have come across the Severe Disability Premium, and don't know who qualifies for it, or on what basis, so don't feel able to comment"*

DISREGARD OF £10.00 OF SDP	
TOTAL NUMBER OF SERVICE USERS CURRENTLY WITH A £10 OR LESS DISREGARD	500
TOTAL WEEKLY AMOUNT BEING DISREGARDED	£4,953.48

5.16.2 It is proposed to take the whole of the Severe Disability Premium into account when calculating a person's charge.

6. DEFERRED PAYMENTS POLICY

6.1 Deferred payments is a key element within the Care Act allowing people to make a choice as to when they decide to pay their care costs. If a person has capital and assets that they do not want to use immediately when they move into residential care they can postpone making the payment to such a time as they feel able or on their death where their estate will be used to pay off any outstanding debt the person may have accrued.

6.2 Although until now the provision was a discretionary one Tameside Council has operated a Deferred Payments Scheme for many years. The Care Act now requires all Councils to have a scheme and allows a number of discretionary elements which have been consulted on separately and have been subject to a separate key decision earlier this year. There was however another few discretionary elements that required consultation and these are set out below.

7. PROPOSED DISCRETIONARY ELEMENTS WITHIN THE DEFERRED PAYMENTS POLICY

7.1 Deferring Third Party Top-ups

7.1.1 The Council has a duty to offer people in residential and nursing care the option of deferring paying for the full cost of the person's care and support until either they sell their property or on their death. The Council has the discretion of only allowing people to defer the basic cost of the residential placement and not additional costs, known as third party top-ups. These are payments above the standard charge for a care home and are usually for enhanced services or accommodation, not to meet the cost of care needs.

7.1.2 There were mixed responses to the question regarding allowing deferred payments in the consultation with some people feeling that it should be taken on individual circumstances whilst another didn't agree with the concept of deferred payments at all.

- *"I think party top up charges should be allowed to be deferred in the same way as basic costs. Not allowing them to be deferred may create real financial hardship for individuals & their families and also impact on the quality of care that they receive."*
- *"Do not agree with deferred payments."*
- *"Depends on personal income from pensions"*
- *"Will it result in movement for residents who will have to go to a place that falls within the scope of the LA funding, otherwise debt recovery will be invoked which will be stressful for the person and their family?"*
- *"I think it should be on an individual needs as everyone is different"*

7.1.3 The current position in Tameside is that there is an agreed fee structure with the homes who are either on or off the care homes framework. People who choose to access a home or room within a home that attracts a top up are made aware that they or their family would be required to pay the top up themselves. The top up is a private arrangement between the user/family and the care home and the Council is not involved in that transaction (other than noting that there is one in place).

7.1.4 The Council is proposing to use its discretion on a case by case basis and only allow top ups to be deferred if it can be shown that the deferred payment agreement can be sustained.

7.2 Extending Deferred Payments to Supported Living Schemes

7.2.1 The Care Act gives councils the discretion to extend the option of deferring paying for care costs using the deferred payments scheme to other forms of care settings such as supported accommodation. This would allow people moving into a supported accommodation scheme from their own property to delay selling their property until a later date or until their death when the accrued costs of their care would be recouped from the sale.

7.2.2 Within the consultation 14 people answered the question about extending the Direct Payments Scheme to Supported Living Schemes and 10 (70%) felt that it should be.

7.2.3 When asked why they felt it should there were a number of comments including:

- *“Because it might only be a temporary situation and their health may improve to a point where they may want to move back into their own home.”*
- *“it will be fair all-round”*
- *“This helps to maintain consistency of care for service users without the need transition to another accommodation.”*
- *“Some of these people have no other help than the Council and therefore need all the deferred payments they can get.”*
- *“It would support the LA's principle of fairness”*
- *“People should have a choice”*
- *“It would relieve pressure and stress from individuals requiring such a move into Supported Accommodation, and allow time to optimise the proceeds of sale from their property. It would minimise any negative impact from their having to move into supported accommodation.”*

7.2.4 Of those suggesting that it shouldn't be extended only 2 made comment. The first being that the respondent did not agree with the principle of deferred payments under any circumstances and the second saying

- *“Costs must be met for Council budgetary purposes”*

7.2.5 Whilst supported living is different to residential care it is acknowledged that people moving into supported living could be in the same position financially as if they were moving into residential care and therefore it would be inequitable to treat them differently.

7.2.6 It is proposed that the Deferred Payments Scheme is extended to those people living in supported living schemes.

7.3 Renting out a property that is subject to a Deferred Payments Agreement

7.3.1 The Care Act says that if a person decides to rent out their property during the course of their Deferred Payments Agreement, the Council may allow the person to retain a percentage of any rental income they possess. The decision as to whether or not to rent a property must be the person's and theirs alone.

7.3.2 Of the 16 people that responded to the question in the consultation 13 people (81%) agreed that people should be allowed to keep a percentage of any rental income, although only one person suggested what that percentage should be and said 50% of the rental income.

7.3.3 Given that this a new discretionary power it is uncertain how many people may request this option within the Deferred Payments scheme and it is proposed to allow

people to retain 25% of any rental income from their property but a constant review of this proposal will be made to ascertain its popularity and effectiveness.

8. EQUALITIES

- 8.1 An equalities impact assessment has been completed taking into account the proposed changes to the previous charging policy and recognises that whilst charging for services does inevitably have an impact on people as it reduces their income there is a recognition that the way that charges are made should be equitable for everyone whether they are living in residential or supported accommodation or in their own homes in the community.
- 8.2 The key foundation of any charging policy is that it is transparent and fair in that it takes into account the true cost of the care being provided and the person's ability to pay for that care without leaving them with a weekly income below the Government's recognised minimum income guarantee.
- 8.3 The proposed changes are in line with these key principles and in some cases are eliminating some inequalities that have existed before in the previous charging policy. For example the maximum charge element. This has been set at £214.90 for a number of years (only with annual uplifts in line with inflation) and does not reflect the actual cost of care and indeed an individual's ability to pay and is over half the amount the same individual would have to pay if they were in residential care.
- 8.4 The charging for adult social care services is based on a person's ability to pay and a full financial assessment is carried out on anyone assessed as needing a social care service. If the savings and assets they have means that they are able to pay the full cost of their care then this would be appropriate and fair. If on the other hand a person is unable to pay for their care then it is right and proper that the Council pays all or a proportion of the cost of the care so that everyone is able to receive the correct level of care and support that has been assessed as being needed.

9. RISK MANAGEMENT

Risk	Consequence	Impact	Likelihood	Action to Mitigate Risk
People are unable to afford the charges	Either they would decide not to receive the care or get into debt.	4	2	Full financial assessment of all service users and clear determination of an ability to pay will be established. If someone cannot afford to pay then further assessment may be required to ascertain the situation. The policy shouldn't leave people without adequate funds for daily living.
People accrue large debts once a charge has been set	Added anxiety to service user and family. Council unable to receive the full amount of the charge	4	2	Close scrutiny of the debts being accrued by exchequer and early warning system to be in place between Exchequer and Adult Services so that early

				intervention and support can be put in place.
Non-payment of charges	Council's budget negatively affected and services may need to be stopped	4	2	Effective debt recovery will be in place together with an early alert system allowing adult services to intervene and ensure that the person is aware of the consequences of non-payment and also is able to afford the charges.
People refuse to pay the charges	Potential for services to be stopped	4	1	Importance of explaining the charging policy from the start of the assessment process so that people are aware that they will be charged. Charges will be based upon an ability to pay and so if they are correct and the person refuses to pay then the consequences will be explained and inevitably services may need to be withdrawn.
Withholding or giving incorrect financial information	This could lead to an inaccurate financial assessment and the wrong charge being calculated	3	2	Clear explanation given to the user from the start of the assessment process explaining the consequences of withholding or giving inaccurate financial information.
Financial Pressures for the Council – acting like a bank and the ability to fund	If numbers of people requiring deferred payments increases then the Council will be expected to fund care placements in the short or medium term placing further financial pressure on the budget.	4	3	Charges for taking a deferred payment will reflect the true cost of administering the scheme. Close monitoring of the scheme will be maintained.

10. CONCLUSIONS

- 10.1 Councils have been charging for adult social care services for many years and the Care Act 2014 has reiterated the expectation that many services will continue to be charged for as well as giving council's the discretion on a number of elements of charging.
- 10.2 Tameside Council has had a charging policy in place for a number of years and whilst most of the changes suggested or determined in the Care Act have always been the practice in the Borough the previous charging policy was in need of reviewing and updating and the Care Act has given an opportunity to revisit the areas of discretion with a view to ensuring that they remain fair and equitable. In some cases this was found not to be the case and this key decision report gives the opportunity to regain more equity when charging for both residential and non-residential care.
- 10.3 The same is true of the Deferred Payments policy which again although Tameside Council has had one in place for many years was in need of reviewing and the changes contained within the Care Act have now been incorporated together with the discretionary elements highlighted in this report.

11. RECOMMENDATIONS

- 11.1 As detailed at the front of the report.