

Report to:	EXECUTIVE CABINET
Date:	24 April 2019
Executive Member/Reporting Officer:	Councillor Brenda Warrington – Executive Leader Sandra Whitehead, Assistant Director Adults
Subject:	DEFERRED PAYMENT POLICY REVIEW
Report Summary:	<p>The report describes the powers and discretions the Care Act 2014 gives to councils with regards to operating a Deferred Payment scheme. The existing policy has been in place since August 2015. The Policy has now been reviewed and it has been identified that the policy is vague on some material points and its transparency could be improved by detailing the intentions to offer members of the public a Deferred Payment according to the discretionary elements of the Care Act.</p> <p>The report sets out the proposed amendments to the Deferred Payment Policy that will detail when and how the Council will exercise the power to offer a Deferred Payment and will also include the necessary clarification on the duty to offer a Deferred Payment.</p>
Recommendations:	<p>That Executive Cabinet be recommended to agree:</p> <ul style="list-style-type: none"> (i) Support the updates and inclusions in the revised Deferred Payment Policy; (ii) Give permission to consult on the powers that require a decision on their implementation as identified in section 4. (iii) Approves the revised administration for 2019-20 of £615.00 as detailed in section 4.3.
Corporate Plan:	Aligned with the Corporate Plan
Policy Implications:	The Adult Social Care Deferred Payments Policy has been in place from August 2015. It is appropriate to review the operation of any charging policy from time to time to ensure that it continues to reflect the duties and responsibilities placed on local councils under the Care Act 2014.
Financial Implications: (Authorised by the statutory Section 151 Officer & Chief Finance Officer)	<p>Section 4 of the report details the proposed additions and amendments to the current Deferred Payment Policy.</p> <p>Members should note that the proposed administration fee for 2019/20 of £615 explained in section 4.3 of the report was excluded from Appendix 21 of the 2019/20 Council Budget Report that will be presented at the 26 February 2019 Council meeting. The appendix provides details of the various fees and charges levied by the Council with proposed levels for 2019/20. The administration fee was excluded pending the outcome of decisions associated with this report.</p> <p>The interest charge levied on the deferred payment debt balance as detailed in section 4.4 is currently allocated to the Adult Services revenue budget as the interest charge is levied.</p> <p>The associated financial implications of the proposed additions and amendments will be evaluated further as appropriate following</p>

consideration at SLT and prior to any formal consultation on the confirmed details.

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

A deferred payment agreement is an agreement with a person where the sum or part of the sum owed to the Local Authority for care does not have to be repaid until a certain time. The Care Act 2014 and the Care and Support (Deferred Payment) Regulations 2014 (2014/2671) impose a duty on councils to offer a deferred payment option if certain criteria are met and a discretionary power to offer this option in other circumstances. The Council considered its powers and decided to exercise some of them at an Executive Cabinet meeting on 26 August 2015. It is now timely to review the policy, as set out in the attached report.

As the revision of the policy is to ensure clarity and transparency and not to materially change the scheme, public consultation is not required at this stage, although future changes on the discretionary powers granted to local authorities under the Care legislation are also to be reviewed and they will attract a consultation exercise, an equality impact assessment in due course and a further Cabinet decision.

Risk Management:

The risks are outlined in Section 8 of this report.

Background Information:

The background papers relating to this report can be inspected by contacting Sandra Whitehead.



Telephone: 0161 342 3414



e-mail: Sandra.whitehead@tameside.gov.uk

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 in accordance with legislation contained in the Care Act 2014 and subsequent regulations. The Care Act allowed local councils some discretion over what and how they charge for their services and prior to this charging was subject to an entirely statutory regime.
- 1.2 The Department of Health has made two key sets of regulations, pursuant to its powers contained in the Care Act, regarding charging for care and support provided under the Act, setting out statutory requirements and the discretionary elements that are open to local interpretation and decisions.
- 1.3 The key regulations are:
- The Care and Support (Charging and Assessment of Resources) Regulations 2014;
 - The Care and Support (Deferred Payment) Regulations 2014.
- These regulations are subject to amendments.
- 1.4 The Regulations require councils to 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
- 1.5 This report considers the Council's statutory duties and local discretion which may be applied on the matter of Deferred Payment Regulations. The current Deferred Payment Policy has been in place since August 2015 following approval at Executive Cabinet and after consultation with service users had taken place.

2. BACKGROUND

- 2.1 For many years councils have carried out a financial assessment of someone receiving social care support. To do this councils have been required to undertake the following:
- Make decisions to set the level of charges based on local agreed rates;
 - Assess service users' ability to pay those services, taking into account their income, assets, various welfare benefits and expenses incurred due to the nature of any disability or ill health in accordance with national policy guidance.
- 2.2 These decisions were set out in the Council's Charging Policy under the direction of Adults Services. Exchequer Services currently carry out the financial assessments based on information provided by social workers and service users to determine a service users' ability to pay for services based on the policy.
- 2.3 Deferred Payments are a key element within the Care Act allowing people to make a choice as to when and how they wish 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, when their estate will be used to pay off any outstanding debt the person may have accrued. The Council's interests are protected by way of a registered charge against the service user's property.

- 2.4 A cross-service review of the current Direct Payment Policy, Contract and process has been undertaken to ensure that the Council is fulfilling its statutory duties. This has included Audit, Exchequer Services, Legal and Finance.

3. DEFERRED PAYMENTS POLICY IN OPERATION

- 3.1 In considering the effectiveness of the current policy it is appropriate to consider its operation in terms of statutory duties and powers placed on the Council. There are currently 13 Deferred Payment Agreements (DPA) in place. If a person wishes to enter into a DPA, they apply to the Council, the Council assesses whether the criteria in the Policy is met and carries out checks, contract is drawn up, signed by the service user and the Council and then a legal charge is placed on the service user's property. The legal charge ensures that the property cannot be sold until the care fees are paid. Interest at the rate of 2.5% is accrued annually on any debt deferred and the Council produces six monthly statements to keep the service user informed of the amount accrued and monitors this to ensure that the terms of the agreement are adhered to and that the charges accrued do not exceed the equity remaining in the property.
- 3.2 The regulations require local councils to offer a Deferred Payment to anyone who meets the statutory criteria, for example, where a service user has less than £23,350 in assets other than a property.
- 3.3 In addition to this duty, councils have various powers to offer the Deferred Payment Scheme in other circumstances. A number of these powers are currently stated in the current policy but a review of the policy document has highlighted that this is not made clear. It has also been determined that some of the powers the Council has decided to exercise are not currently set out in the policy document. This report is seeking permission to expressly include these powers in the revised policy, as set out in the draft attached.
- 3.4 The Care Act and subsequent legislation was introduced to stringent timescales. At that time local councils faced unprecedented changes to how care services were provided, statutory and discretionary duties in how services were delivered and charged, resulting in revisions to, and implementation of a number of new policies. The Deferred Payment Policy was one of a number of policies revised in quick succession to incorporate all of the legislative changes.
- 3.5 In terms of the discretionary elements that the Council has the power to offer, these are explained in further detail below.

4. ADDITIONS & AMENDMENTS TO THE POLICY

- 4.1 The following additions and amendments are proposed to the current Deferred Payment Policy:
- 4.2 Power to offer a Deferred Payment Agreement where a person has more than £23,250 in assets other than their home – this is not stated explicitly in the current Policy, though it is offered to individuals who are in this situation. Inclusion will regularise the practice. This will require a review of the Deferred Payment process and paperwork and will require staff briefings.
- 4.3 To charge reasonable administrative costs – The Council has the power to charge reasonable administrative costs to set up and manage the Deferred Payment. Following consultation and consideration of local conditions in March 2015, the Council determined that it would charge a one-off fee of £600. The service user can choose to pay the administration fee upfront or choose to defer the payment which will accrue interest.

The level of administrative costs, and the methodology for calculating the annual uplift of the administrative costs needs to be reviewed to reflect any increase in system costs must be clearly stated in the revised policy. It is proposed that any uplift in the administrative fee is included in the annual Fees and Charges Report in future years to ensure the review and uplift is applied.

The administrative cost as set for 2019-20 is proposed to be £615.00.

Should there be a change in the methodology to calculate the fee going forwards this will require approval in the future review of the Policy.

- 4.4 To determine if interest is to be charged, and if so the rate of interest to be charged – The Council does currently charge interest on the DP debt balance. Executive Cabinet agreed to charge interest at a maximum rate of 2.5% on its Deferred Payment Scheme in March 2015. The law sets a maximum rate that can be charged, which is 0.15% above the market gilt rate set bi-annually by the Office of Budget Responsibility. It follows, therefore, that the rate actually charged must be regularly reviewed to ensure compliance. The interest rate is to cover the costs associated with lending as well as the risk to the Council which is associated with the lending (i.e. risk of default) as set out in the Care Act regulations. In arriving at this rate the Council can also demonstrate cost neutrality.
- 4.5 It is proposed that the interest rate be set within the statutory limit which is 0.15% above the market gilt rate as defined by the Deferred Payment Regulations. This will be included in the consultation exercise.
- 4.6 The Council has purchased new software to potentially streamline this administration function and keep costs to a minimum and ensure accuracy. However this has yet to be fully tested and implemented so at this time it is proposed that we continue with the current manual system for calculations and the service will re-visit the issue when further testing has been completed and a report will be submitted for a decision.
- 4.7 Lending limit to be set, including a maximum overall lending limit — It is proposed that a lending limit is set at the value of the equity in the assets of the individual less 10%, less £14,250 (lower threshold), less the value of any encumbrances such as mortgage restrictions.
- 4.8 Requirement to pay from income – The current Policy and DPA do not describe the 4 options available to an individual by law sufficiently clearly. The options an individual has when they decide to enter into a DP are:
- To defer the whole assessed weekly care home cost;
 - To pay a contribution that has been determined through the financial assessment process as the maximum amount a service user can afford allowing for a minimum income guarantee;
 - To pay a level of contribution, as defined by the individual, with the remainder being deferred;
 - To allow for ad hoc payments to be made against deferred amounts.

The Council is proposing that it offers 2 options:

- To pay a contribution that has been determined through the financial assessment process as the maximum amount a service user can afford allowing for a minimum income guarantee;
- To allow for additional agreed ad hoc payments to be made against deferred amounts.

This will form part of the consultation exercise.

- 4.9 Allow DPAs on properties to be rented out - Where a person decides to rent out their property during the course of their Deferred Payments Agreement, the Council has the power to allow the person to retain a percentage of any rental income they earn. The decision as to whether or not to rent a property must be the person's and theirs alone. At this time the Council is proposing to continue allow people to retain 25% of any rental income from their property. This will continue to be reviewed by the Council.
- 4.10 LA to provide insurance if necessary and re-charge proprietor – It is proposed that this power is included in the DP Policy, following consultation, to ensure that the property is insured and maintained by the proprietor.
- 4.11 Maintenance and repairs to be carried out by LA and re-charge proprietor – It is appropriate that the proprietor arranges annual insurance and regular maintenance of the property. Should this not be in place the Council has the right to put this place and re-charge the individual the full cost of this. Consultation would be required to seek the views of the public with regards any proposed scheme. At this time a decision to carry out maintenance and repairs on a property that would then be rented out, would be considered on an individual basis.
- 4.12 DPA for top-ups - The current position in Tameside is that there is an agreed fee structure with the care homes for the variety of bed/support types that are commissioned. People who choose to access a home or room within a home that attracts a top up of care fee 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 service user/family and the care home and the Council is not involved in that transaction (other than noting that there is one in place). The Council has the power to allow a top up payment to be included in the DPA. At this time it is proposed that this practice will continue to be available in the revised Policy.
- 4.13 DPA for those in supported living rather than a care home - This allows people moving into a supported accommodation scheme, rather than a residential care setting, 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. The Council proposes that it continues to exercise this discretion on an individual, case by case basis. This power needs to be clarified in the revised DP Policy.
- 4.14 Up front loan/instalment loan - It is proposed that this power is included in the DP Policy and will be considered on a case by case basis, therefore the Policy will not go into any further detail.
- 4.15 Reasonable notice to terminate agreement to be set – The current Policy does not specify the period of notice that should be given to an individual for the repayment of the DP on their death. It is proposed statutory requirement that the amount due is required to be repaid 90 days after the death of the individual or on the sale of their property. The Policy does not specify what notice a service user should give the Council to terminate the agreement and it is proposed that this now be specified in the policy as 90 days.
- 4.16 Any other reasonable terms to be included – At this time there are no other reasonable terms that the Council has identified that should be included in the revised DP Policy. This will be reviewed periodically

5. NEXT STEPS

- 5.1 The revised Deferred Payment Policy is appended to this report at **Appendix 1**. Following approval of the inclusions in the Policy updated documents will be finalised and circulated to all staff with guidance notes on the changes and the revised process.

- 5.2 Following approval by Executive Cabinet the revised Policy will be applied from 1 May 2019.
- 5.3 In order to ensure that the revised Policy is available to the public and is understood and applied appropriately by Council officers a range of actions must be undertaken on approval of the revised Policy. This will include:
- Update the information on the Citizen Portal on the Council website;
 - Update the DP leaflet that is shared with service users;
 - Training update for staff to ensure they are clear about the available options with service users and their families from the outset of the process.
 - To test the software that has been purchased to support the calculation of the interest due.
 - Consideration of the Council offering a maintenance and repairs service to be worked up.
 - Prepare and carry out consultation on the application of the powers identified in section 4 that require consultation prior to inclusion in a further revised policy:
 - The increase and frequency of administration charge – see 4.3
 - Removal of the 2.5% interest rate cap – see 4.4
 - Options of payment from income – see 4.6
 - Payment of insurance and a re-charge – see 4.8
 - The offer of a repair and maintenance service that will be charged to the individual – see 4.9
 - To prepare and present a report to Executive Cabinet following evaluation on consultation to inform a further revised Policy.

6. CONSULTATION

- 6.1 Consultation will be undertaken via the Big Conversation. The individuals who currently have a DPA in place will also be consulted through a direct approach. The consultation will be open for six weeks.
- 6.2 Following the consultation exercise a further report will be presented to Executive Cabinet to seek approval for a further revised Policy.

7. EQUALITIES

- 7.1 The Equality Act 2010 makes certain types of discrimination unlawful on the grounds of:
- Age;
 - Gender;
 - Race;
 - Gender reassignment;
 - Disability;
 - Maternity;
 - Sexual orientation;
 - Religion or belief.
- 7.2 Section 149, of the Equality Act 2010, the public sector equality duty (PSED) requires that a public authority must, in the exercise of its functions, have due regard to the need to:
- Eliminate unlawful discrimination;
 - Promote equal opportunities between members of different equality groups;

- Foster good relations between members of different equality groups including by tackling prejudice and promoting understanding.

7.3 Having due regard to these involves:

- Eliminating harassment on the grounds of membership of an equality group;
- Removing or minimising disadvantages suffered by members of a particular equality group;
- Taking steps to meet needs of people who are members of a particular equality group;
- Encouraging people who are members of an equality group to participate in public life; and
- Taking steps to take account of disabled persons' disabilities

7.4 The Act therefore imposes a duty on the Council which is separate from the general duty not to discriminate. When a public authority carries out any of its functions it must have due regard to the matters within the section of the Act outlined above. The Courts have made it clear that a public authority is expected to rigorously exercise that duty.

7.5 A new Equalities Impact Assessment (EIA) has been considered but it is not anticipated that the clarity that will be offered in the reviewed Deferred Payment Policy and the inclusion of the Council's proposed position with regards to its powers as described in the Care Act will impact negatively on any of the groups with protected characteristics.

7.6 An EIA was undertaken in 2016 on the Charging and Deferred Payment policies and no material changes have been made to the Deferred Payment Policy to require an updated EIA. The original EIA is available at **Appendix 2**.

8. RISKS

8.1 The risk with any deferred payment is that the Council must fund the care service provided for an unknown number of years until the debt is paid upon sale of the property, which is usually upon the death of the service user. The deferred amount is in effect a 'loan' for care fees.

8.2 The number of deferred payments in the future has the potential for a significant financial impact; there is an increasing demographic resulting in more people living longer, not necessarily in good health, requiring care and support. In 2017 older people (+65s) made up 17.7% of the local population (18% of England); by 2030 this is estimated to be 22% of the Tameside population (20% England) according to Projecting Older People Population Information (POPPI).

8.3 In terms of amending the Policy, more service users may wish to defer their care service fees and increase the 'loan' value to service users. However the Policy must reflect the intentions of the Care Act and be transparent in its offer to residents.

9. CONCLUSION

9.1 The Care Act states that local councils have a duty to offer a Deferred Payment to anyone who meets the criteria and the person has less than £23,350 in other assets.

9.2 The Council also has powers to offer a range of other services as detailed in section 4. It is proposed that these powers, and the Council's application of these, are stated clearly in the Deferred Payment Policy and applied consistently in the process to ensure transparency.

- 9.3 The updated Policy and process will be published on the Council's website and will be shared with relevant staff and teams to ensure all apply the Policy consistently to ensure transparency.

10. RECOMMENDATIONS

As set out at the front of the report.

TAMESIDE COUNCIL'S DRAFT DEFERRED PAYMENT SCHEME POLICY

Deferred Payments Agreement Guidance

Contents

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1. INTRODUCTION

- 1.1 The Care Act 2014 requires local authorities to set up a 'Universal Deferred Payment Scheme'. This means that people should not be forced to sell their home in their lifetime to pay for the care and support that they require in a residential care setting. By entering into a Deferred Payment Agreement (DPA) with the Council, this means that the person who requires care can delay the selling of their home, or 'defer' paying the costs of their care and support until a later date. This will help to provide peace of mind for people during a particularly challenging time or crisis point in their lives, and will help them and their loved ones during the transition into care.
- 1.2 A DPA provides flexibility for when and how someone pays for their care and support. Payment for care and support is deferred and not 'written off' – the costs of provision of care and support will have to be repaid by the individual (or a third party on their behalf) at a later date.
- 1.3 Deferred payments are not new – local authorities were given discretionary powers to start deferred payment schemes in the Health and Social Care Act 2001. From April 2015 the scheme will become universally available throughout England and local authorities will be required to offer deferred payment agreements to people who meet certain criteria governing eligibility for the scheme.
- 1.4 This policy sets out Tameside Council's Deferred Payment Scheme which is in accordance with the Care and Support (Deferred Payment) Regulations 2014.

2. ELIGIBILITY CRITERIA

- 2.1 A Local Authority is required to enter in to a Deferred Payment Agreement with an adult if three criteria are met:
- (a) A person has care needs that require the provision of accommodation in a care home, whether arranged by the Council or not;
 - (b) A service user must have less than (or equal to) £23,250 in assets excluding the value of their home (i.e. in savings and other non-housing assets); and
 - (c) A service user's home is not disregarded for the purposes of a financial assessment.
- 2.2 The Council will use its discretion to offer a Deferred Payment Agreement to people who do not meet the above criteria. Considerations that will be taken into account include (but are not limited to):
- (a) Whether meeting care costs would leave someone with very few accessible assets (this might include assets which cannot quickly/easily be liquidated or converted to cash);
 - (b) If someone would like to use wealth tied up in their home to fund more than just their core care costs and purchase affordable top ups;
 - (c) Whether somebody has any other accessible means to help them meet the cost of their care and support and/or
 - (d) If a person is narrowly not entitled to a DPA given the criteria above, for example, because they have slightly more than the £23,250 asset threshold. This should include people who are likely to meet the criteria in the near future.
- 2.3 The Council may also, at its discretion, enter into DPA with people whose care and support is to be provided in supported living accommodation. However, DPAs cannot be entered into to finance mortgage payments on supported living accommodation.

3. PERMISSION TO REFUSE A DEFERRED PAYMENT AGREEMENT

- 3.1 Where the Council has a duty offer to a Deferred Payment or has chosen to make an offer according to its discretionary powers as set out above, the person will need to consent to the agreement terms and allow the Council to secure the debt by obtaining a Land Registry charge on their property. The law requires that the Council must be able to secure a first charge on the property, which may mean seeking permission from an existing lender. If this is not possible the Council may not be able to proceed with an offer of a Deferred Payment.
- 3.2 The Council will also decline to offer a DPA if a person does not agree to the terms and conditions of the Agreement, for example a requirement to insure and maintain the property, despite someone meeting the eligibility criteria.

4. INFORMATION AND ADVICE

- 4.1 The Council recognises that information and advice is fundamental to enabling people, carers and families to take control of, and make well-informed choices about, their care and support and how they fund it. The Council will provide clear information and advice about the Deferred Payment scheme it offers.

- 4.2 Easy read formats will be made available upon request, other languages, and format accessible to sensory impaired and people with learning disabilities about how the scheme works
- 4.3 Where relevant the Council will endeavour to provide access to information and advice on DPAs at the earliest appropriate opportunity during the period of the 12-week property disregard. As per the Charging Policy, the Council will disregard the value of a person's *main or only* home when the value of their non-housing assets is below the upper capital limit for 12 weeks in the following circumstances:
- (a) when they first enter a care home as a permanent resident; or
 - (b) when a property disregard other than the 12-week property disregard unexpectedly ends because the qualifying relative has died or moved into a care home.

In addition, the Council has discretion to choose to apply the disregard when there is a sudden and unexpected change in the person's financial circumstances. In deciding whether to do so the Council will consider the individual circumstances of the case.

- 4.4 The Council will aim to ensure that people are able to make a smooth transition from the 12-week disregard to the DPA if they opt to enter into an agreement. This means ensuring, as far as possible, that a DPA is available by the first day of week 13.
- 4.5 Where a person may lack capacity to request a Deferred Payment, the Council will complete a formal capacity assessment and a Deputy or Attorney (a person with a relevant Enduring Power of Attorney or Lasting Power of Attorney) may request a Deferred Payment on their behalf if it is deemed to be in the person's best interest.
- 4.6 If a family member requests a Deferred Payment and they do not have the legal power to act on behalf of the person, then the family member would be advised by the Council to seek legal advice about applying for a Lasting Power of Attorney or Deputyship Order.
- 4.7 The Council will not enter into a DPA on behalf of a person lacking mental capacity unless the appropriate arrangements are in place.
- 4.8 The Council will provide the person with information and advice on options for Deputyship, Lasting Power of Attorney and advocacy.
- 4.9 The Council will also be able to provide some advice about renting your property out and getting insurance arranged, etc.

5. ARRANGING A DEFERRED PAYMENT AGREEMENT

- 5.1 The Council will inform the person (where appropriate) that they will need to consider how they plan to use, maintain and insure their property if they take out a DPA, for example if they wish to rent, to prepare for sale, or to leave their property vacant for a period.
- 5.2 The Council will place conditions for maintaining and insuring the property while the DPA is in place which are detailed in the terms and conditions of the Council's DPA.

6. HOW MUCH CAN BE DEFERRED?

- 6.1 If the Council is satisfied with the security for the DPA a person will be able to defer the entirety of their care costs or part of their care costs and this will be discussed with the person to be incorporated into the Agreement.
- 6.2 If a person is considering a top up, the Council will consider whether the amount or size of the deferral requested is sustainable given the equity available from the chosen form of security.
- 6.3 When the Council is considering how much a person can defer, three elements will dictate how much a person will be allowed to defer:

- (a) The amount of equity a person has available in the form of security (usually their property). When considering the equity available the Council must be guided by an equity limit for the total amount that can be deferred and ensure that the amount deferred does not rise above this limit. The equity limit will leave some equity remaining in the security used for the DPA – this will both act as a buffer to cover any subsequent interest which continues to accrue, and will provide a small ‘cushion’ in case of small variations in the value of the security. In the majority of cases a property will be used as security so the equity limit will provide a cushion against changes in house prices.

When calculating progress towards the equity limit, the Council must also include any interest and fees to be deferred. If a person intends to secure their DPA with a property, the Council will obtain a valuation of the property. A person may request an independent assessment of the property’s value (in addition to the Council’s valuation). If an independent assessment finds a substantially differing value to the Council’s valuation, the Council and the person will aim to discuss and agree on an appropriate valuation prior to proceeding with the DPA.

Where a property is used as security to offer a DPA, the equity limit must be set at the value of the property minus 10%, minus £14,250 (for 2015/2016 this is in line with the lower capital limit) and minus the value of any other encumbrance secured on it. This limit provides some protection to the Council against changes in the value of the security (such as possible house price fluctuations) and the risk that the Council may not be able to recoup the full amount owed.

When a person is approaching or reaching the point at which they have deferred an amount equal to 70% of the property equity, the Council will aim to review the cost of their care with the person, discuss when the person might be eligible for any means tested support, discuss the implications for any top-up they might currently have, and consider jointly whether a DPA continues to be the best way for someone to meet these costs.

Once a person has deferred payments up to the equity limit the Council must refuse to defer any further charges. However, interest can still accrue beyond this point and administration charges can still be deferred.

- (b) The amount the person is contributing to their care costs from other sources, including income and (where the person chooses to) any contribution from savings, a financial product or a third-party.

A person may meet the costs of their care and support from a combination of any four primary sources:

- Income, including pension income;
- Savings or other assets they might have access to; this might include any contributions from a third party;
- A financial product designed to pay for long-term care; or
- A DPA which enables them to pay for their care at a later date out of assets (usually their home).

The share of care costs that a person defers will depend on the amount they will be paying from the other sources listed above. The Council will not require a contribution towards care costs from a person's income but where such a contribution is to be made, due regard will be given to the 'disposable income allowance'. The disposable income allowance is a fixed amount, currently £144 per week, of a person's income which the Council must allow the person to retain, if the person wants to retain it.

A person may choose to keep less of their income than the disposable income allowance. This might be advantageous to the person as they would be contributing more to the costs of their care from their income and consequently reducing the amount they are deferring. This must be entirely at the individual's discretion and the Council must not compel someone to retain less than the disposable income allowance if the person wants to retain the full amount.

If a person decides to rent out their property during the course of their DPA, the Council will allow the person to retain 25% of any rental income they possess in addition to the disposable income allowance. The decision as to whether or not to rent a property must be the person's and theirs alone.

A person may also contribute to their care costs from payments by a third party, for example any contributions available from a financial product or from their savings. Contributing to care costs from another source would reduce the amount being deferred. The Council must not compel a person to contribute to their fees from these sources.

- (c) The total care costs a person will face, including any top-ups the person might be seeking. When the Council is required to offer a deferred payment agreement it will allow someone to defer their 'core' care costs. To ensure sustainability of the deferral, the Council has discretion over the amount people are permitted to top-up. The Council will consider any request for top-ups, but will retain discretion over whether or not to agree to a given top-up. The Council will accept any top-up deemed to be reasonable given considerations of affordability, sustainability and available equity. The Council will be mindful of the duties set out in relation to top-ups and additional costs in the Care and Support and Aftercare (Choice of Accommodation) regulations 2014.

6.4 The Council will take into consideration the following to ensure that the top-up is sufficiently sustainable:

- The period the person would want a DPA for (if they intend to use it as a short term solution);
- The equity available;
- The sustainability of a person's contributions from their savings (if applicable);
- The flexibility to meet future care needs. and;
- The period of time a person would be able to defer their care costs.

7. INTEREST RATE AND ADMINISTRATION CHARGE

- 7.1 The Council will recoup the administrative costs associated with DPAs, including legal and ongoing running costs by means of an administration charge.
- 7.2 The Council will charge interest on any amount deferred, including any administration charge deferred. This is to cover the cost of lending and the risks to local authorities associated with lending, for example the risk of default.
- 7.3 The Council will charge interest at the national maximum interest rate in accordance with the Regulations. The national maximum interest rate tracks the market gilts rate specified in the most recently published report by the Office of Budget Responsibility. This is currently published in the Economic and Fiscal Outlook, which is usually published twice-yearly alongside the Budget and Autumn Statement.
- 7.4 The national maximum interest rate will change every six months on 1 January and 1 June to track the market gilts rate specified in the most recently published report by the Office of Budget Responsibility. The Council will review this to ensure the interest rate set by the Council does not exceed the national maximum interest rate.
- 7.5 The Council will review the interest rate twice a year and will provide details of payments made for each period.
- 7.6 The same interest rate will be charged on all Deferred Payments within the Council.
- 7.7 The Council will inform people before they make the agreement that interest will be charged, what interest rates are currently set at, and when interest rates are likely to change.
- 7.8 The interest charged and added to the deferred amount will be compounded monthly using an annual rate. The Council will ensure when making the agreement that individuals understand that interest will accrue on a compound basis.
- 7.9 Interest will continue to accrue on the amount deferred even once someone has reached the 'equity limit', it will also accrue after someone has died up until the point at which the deferred amount is repaid to the local authority. If the Council cannot recover the debt and seeks to pursue this through the County Court system, the Council will charge the higher County Court rate of interest.
- 7.10 The Council's administration charge will be set each year with other Council charges and will be an amount equal to the actual costs incurred in provision of the Deferred Payment scheme, as set out in Regulations. The Council will maintain a publicly-available list of administration charges that a person will be liable to pay.
- 7.11 Administration charges and interest can be added on to the total amount deferred as they are accrued, although a person may request to pay these separately if they choose.
- 7.12 When agreement has been reached between a person and the Council as to how much will be deferred, the Council will ensure this is clearly set out in the DPA. See Appendix A for draft Deferred Payment Agreement.
- 7.13 The DPA will make clear that all fees deferred, alongside any interest and administrative charges incurred, must be repaid by the person in full. The Council will also notify the individual in writing whenever they are liable for an administration charge.

8. CIRCUMSTANCES IN WHICH THE COUNCIL MAY STOP DEFERRING CARE COSTS

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

- (a) When a person's total assets fall below the level of the means-test, and the person becomes eligible for the Council to support in paying for their care;
- (b) Where a person no longer has need for care in a care home (or where appropriate Supported Living Accommodation);
- (c) If a person breaches certain terms of their contract; or
- (d) If, under the Charging Regulations, the property becomes disregarded for any reason and the person consequently qualifies for the Council's support in paying for their care, including but not limited to:
 - where a spouse or dependent relative (as defined in Charging Regulations) has moved into the property after the agreement has been made, where this means the person is eligible for the Council's support in paying for care and no longer requires a DPA; and
 - where a relative who was living in the property at the time of the agreement subsequently becomes a dependent relative (as defined in Charging Regulations). The Council may choose to cease further deferrals at this point.

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

8.3 The Council must cease deferring further amounts when a person has reached the 'equity limit' that they are allowed to defer or when a person is no longer receiving care and support in either a care home setting or in supported living accommodation. This also applies when the value of the security has dropped and so the equity limit has been reached earlier than expected.

8.4 In any of these cases, interest will continue to accrue on the amount deferred until the agreement is terminated (either by sale of the property, the person's death or by the Council being repaid separately).

8.5 If a decision is made to stop deferring care costs, the Council cannot demand repayment in these circumstances, and repayment is still subject to the usual terms of termination.

8.6 The Council will provide a minimum of 30 days advance notice that further deferrals will cease and will give the person an indication of how their care costs will need to be met in future. Depending on their circumstances, the person may either receive support from the Council in meeting the costs of their care, or may be required to meet their costs from their income and assets.

9. OBTAINING SECURITY

9.1 The Council must have adequate security in place when entering into a DPA. The Council has discretion to consider whether another type of security could be provided if a person cannot secure their deferred payment agreement with a charge on a property.

9.2 In cases where an agreement is to be secured with a jointly-owned property, the Council requires both owners' consent (and agreement) to a charge being placed on the property. Both owners must be signatories to the charge agreement, and the co-owner must agree not to object to the sale of the property for the purpose of repaying the debt due to the Council. The Council must obtain similar consent to a charge being created against the property from any other person who has a beneficial interest in the property.

- 9.3 Under the discretionary scheme, the Council has discretion to decide what else may constitute 'adequate security' for a DPA, in cases where a first charge cannot be secured.
- 9.4 The Council will consider the merits of each case individually. Other forms of security the Council may choose to consider include (but are not limited to):
- a third-party guarantor – subject to the guarantor having / offering an appropriate form of security;
 - a solicitor's undertaking letter;
 - a valuable object such as a painting or other piece of art; or
 - an agreement to repay the amount deferred from the proceeds of a life assurance policy.
- 9.5 The Council has full discretion in individual cases to refuse a DPA if it is not satisfied that adequate security is in place.

10. DRAWING UP A DEFERRED PAYMENT AGREEMENT

- 10.1 Where someone chooses to enter into a DPA, the Council will aim to have the agreement finalised and in place by the end of the 12-week disregard period, or within 12 weeks of the person approaching the Council regarding DPAs in other circumstances.
- 10.2 Decisions on a person's care and support package, the amount they intend to defer, the security they intend to use and the terms of the agreement should only be taken following discussion between the Council and the individual. Once agreement in principle has been reached between the Council and the person, it is the Council's responsibility to transpose the details agreed into a DPA, taking the legal form of a contract between the Council and the person.
- 10.3 The Council will provide a hard copy of the DPA to the person, and the person will be provided with reasonable time to read and consider the DPA, including time for the person to query any clauses and discuss the DPA further with the Council.
- 10.4 The DPA will clearly set out all terms, conditions and information necessary to enable the person to ascertain his or her rights and obligations under the DPA.
- 10.5 The Council will aim to ensure at a minimum that people sign or clearly and verifiably affirm they have received adequate information on options for paying for their care, that they understand how the DPA works and understand the agreement they are entering into; and that they have had the opportunity to ask questions about the contract.
- 10.6 All DPA's will be subject to the Unfair Terms in Consumer Contracts Regulations 1999, so the terms will be written in plain, intelligible English and will not be binding if they are unfair to the borrowers. The Council will also have to ensure that they do not contravene the Consumer Protection from Unfair Trading Regulations 2008.
- 10.7 The Council will not adopt a blanket policy and will consider each case on its own merits.

11. THE COUNCIL'S RESPONSIBILITIES ONCE THE DEFERRED PAYMENT AGREEMENT IS IN PLACE

- 11.1 The Council will provide people with six-monthly written updates of the amount of fees deferred, of interest and administrative charges accrued to date, and of the total amount due and an estimate of the equity remaining in the home taking into account those figures.

- 11.2 The update will also set out the amount deferred during the previous period, alongside the total amount deferred to date, and will also include a projection of how quickly someone would deplete all equity remaining in the agreed form of security up to their equity limit. This will be for illustrative purposes only
- 11.3 The Council will also provide the person with a statement on request within 28 days.
- 11.4 The Council will reassess the value of the agreed form of security once the amount deferred exceeds 50% of the security (and periodically thereafter), and adjust the equity limit and review the amount deferred if the value has changed.
- 11.5 The Council must accept reasonable alternative maintenance and insurance services.

12. MONITORING THE DEFERRED PAYMENT

- 12.1 The Council will review the amount being deferred every 6 months to ensure the deferred amount does not exceed the equity limit. The Council will have particular regard to the amount deferred as it approaches the equity limit.
- 12.2 The security will also be revalued when the amount deferred equals or exceeds 50% of the value of the security to assess any potential change in the value (and consequently the person's 'equity limit' will be reassessed in turn). After this re-valuation, the Council will revalue the security periodically to monitor any potential further changes in value. If in either case there has been any substantial change the Council will review the amount being deferred.

13. TERMINATING THE DEFERRED PAYMENT AGREEMENT

- 13.1 The DPA can be ended at any time: it can be ended by the individual themselves or by someone acting on their behalf, for example family or solicitor. There are 3 ways in which this can be done:
 - (a) By repaying the full amount owed - this can happen during the person's lifetime or where the person with the DPA has passed away;
 - (b) When the property is sold and the Council has been repaid; or
 - (c) When the person has passed away and the full amount owed is repaid to the Council from their estate.
- 13.2 When the DPA is ended the full amount due will include: care costs, any interest accrued and any administrative or legal fees that are charged. The full amount must be paid to the Council at the point of sale of the property or within 90 days.
- 13.3 If a person decides to sell their home, they must notify the Council during the sale process. They will be required to pay the amount due to the Council from the proceeds of the sale, and the Council will be required to relinquish the charge on their property.
- 13.4 The individual may decide to repay the amount due to the Council from another source or by a third party, who will repay the amount calculated and owed to the Council on behalf the individual. The Council will require 90 days' notice in writing of the intention to terminate the agreement. Once the full amount owed has been received by the Council, then the Council must relinquish the charge that has been placed on the property and the agreement comes to an end.
- 13.5 If the DPA ends due to the person's death, the calculated amount owed to the Council must be paid out of the estate or paid by a third party. A person's family or a third party may wish

to settle the debt to the Council by other means of payment. The Council must accept alternative means of payment in these circumstances, provided that the payment covers the full amount owed to the Council.

- 13.6 If there is an Executor of the Will or Administrator of the Estate, they can decide how the amount due to the Council will be paid. This may be from the person's estate (usually the sale of the house) or potentially from a life insurance policy, or from a third party source. The Council will wait at least two weeks following the person's death before approaching the Executor with a full breakdown of the total amount deferred (a family member or the Executor can approach the Council to resolve the outstanding amount due prior to this point).
- 13.7 Responsibility for arranging for repayment of the amount due (in the case of payment from the estate) falls to the Executor of the Will. Interest will continue to accrue on the amount owed to the Council after the individual's death and until the amount due to the Council is repaid in full. In the case that a DPA is agreed on the basis of a form of security other than property, the Council will need to make provision in the DPA for conclusion of the DPA in the event that the given security is disposed of/comes to fruition.
- 13.8 If the DPA ends due to the person's death, the amount owed to the Council falls due for full payment 90 days after the person has died. After this 90 day period, if the Council feels active steps have not been taken to resolve the situation and pay the debt or if the Council feels that the Executor is wilfully obstructing the sale of the property, the Council may enter into legal proceedings to reclaim the amount due to them. In such cases the Council will have regard to its debt recovery policy.
- 13.9 In whichever circumstances the DPA is ended, the full amount due to the Council must be repaid and will cover all the costs that have accrued under the DPA. The Council must provide a full break down of how the amount due has been calculated and this should be sent to the person (and/or third party where appropriate). When the full amount owed has been received by the Council, the Council will provide the individual with confirmation that the DPA has been concluded and confirm (where appropriate) that the charge against the property has been removed.

Dated

2015

DEFERRED PAYMENTS AGREEMENT

Between

**TAMESIDE METROPOLITAN
BOROUGH COUNCIL**

And

XXXX

relating to

XXXX

TAMESIDE METROPOLITAN BOROUGH COUNCIL

(DRAFT)DEFERRED PAYMENTS AGREEMENT

This Agreement is made between Tameside Metropolitan Council (“the local authority”), of *[insert address of local authority]* and *[insert name of adult recipient of care]* (“you”, “the borrower”), of *[insert address of adult recipient of care]*.

1.1 INTERPRETATION

1.1 In this agreement, the following words have the following meanings:

Accommodation: the care home or supported living accommodation identified in Schedule 1, as it may be amended in accordance with term 2.7 below;

Agreement: the terms set out in this document and numbered 1 to 15, Schedule 1 and, where you are agreeing to make periodical interest payments, Schedule 2;

Care Charges: those charges for care and/or support which are specified by description and monthly amount in Schedule 1, as they may be amended in accordance with any of terms 2.7, 2.8 or 2.10 below;

Costs: the local authority’s reasonable administrative costs reasonably incurred in respect of this Agreement, which are payable under term 4 below, estimates for some of which are given in Schedule 1 on page [:];

Debt: the balance from time to time of the loan which has not yet been repaid, together with any interest and Costs already charged and not yet paid;

Loan: the total amount, at any time, which has been lent under this Agreement to pay Care Charges or, where the local authority is the care provider, the total amount of Care Charges which have been deferred, and the words “lend”, “lending” and “lent” are used in this Agreement to describe the act of deferring a Care Charge or Care Charges payable to the local authority or the act of lending any amount to pay a Care Charge or Care Charges to another care provider;

Lending Limit: the limit on lending as set out in Schedule 1 (see also term 2.2);

Property: the property and any other assets identified on page 1 of this Agreement;

Rate of Interest: the annual rate of interest stated in Schedule 1, as it may be varied under term 3.4.

1.2 Where a reference is made in this Agreement to any legislation or legislative provision, it includes reference to that statute or statutory provision as it may from time to time be amended, extended or re-enacted.

1.3 Where the context allows or requires, words in the singular include the plural and words in the plural include the singular.

1.4 Where a reference is made in this Agreement to your income, it means your income as calculated in accordance with regulations made under section 17 of the Care Act 2014.

2 HOW THE LOAN WILL BE MADE

- 2.1 The local authority agrees, subject to the Lending Limit [*and to the limits related to income, as set out in 2.8 to 2.10 below*], to lend amounts to you, the borrower. Each amount will be subject to a maximum of the monthly Care Charge specified in Schedule 1 or, if less, the monthly care charge which is actually payable for the Accommodation and which meets the Description of Care Charges in Schedule 1. The Loan will be made by lending you the amounts payable in Care Charges by paying them to your care provider at the times when they become payable. The details of the Accommodation and the Care Charges are set out in Schedule 1 at the end of this Agreement, together with the Lending Limit.
- 2.2 If the Loan would exceed the Lending Limit as a result of the local authority lending an amount that it would otherwise be due to lend for Care Charges, the local authority will not lend that amount. This means, for example, that if 90% of the value of the property, less the amount of any indebtedness secured over the Property by a charge with priority over the local authority's security and less £14,250, is £70,000, and you have already been lent a total of £70,000, you will not be lent any more unless or until the value of the property increases. However, where, due to a fall in the value of the property, the Loan comes to exceed the Lending Limit on a date which falls after the date on which the local authority last lent an amount in respect of Care Charges and on or before the date on which it is next due to lend an amount in respect of Care Charges, the local authority will lend on that next occasion even though lending on that occasion will result in the Loan further exceeding the Lending Limit. After that, the local authority will not lend any further amount unless or until the value of the property increases.
- 2.3 Where the Care Charges are payable to a care provider other than the local authority, the local authority will pay the amount of the Care Charges to the care provider, provided always that in the event that the local authority discovers that any amount lent under this Agreement has not been used to pay for Care Charges, the local authority may become entitled to demand immediate repayment of that amount from you under term 5.2, together with interest on that amount, calculated in accordance with term 3 below.
- 2.4 If there is any change in the frequency of the Care Charges or any change in the amount of the charges which the care provider is charging you for care, you must inform the local authority as soon as reasonably practicable (unless the charges are charges payable to the local authority itself), giving advance notice of any such change to the local authority whenever you have advance notice of the change.
- 2.5 You may, at any time, pay the Care Charges, or part of the Care Charges, yourself, when they become payable, in which case you must give advance notice to the local authority of the amount you are going to pay separately ("your contribution"), specifying whether your contribution is to be made on only one occasion or on a specified number of occasions or on each occasion when a Care Charge becomes payable until further notice.
- 2.6 The local authority will not be required to change the frequency with which, or the amounts in which, it lends under this Agreement any sooner than the fourteenth day after the local authority receives notice of any change in the frequency with which or the amounts which, as applicable, you are charged, or which you require the local authority to lend under this Agreement.
- 2.7 If you move from the Accommodation into another care home or other supported living accommodation, that new accommodation and the care charges payable in respect of it or, if less, that part of those care charges which is equal to the existing Care Charges will be substituted as the Accommodation, provided that the care charges for the new Accommodation meet the description which is given of the Care Charges in the Schedule or, if not, provided that the local authority is either required under the Care Act 2014 to agree to lend in respect of those care charges or permitted to do so under the Care Act 2014 and willing to do so, and the times for payment of the Care Charges will be

substituted for the times shown in the Schedule once at least fourteen days' notice of those times has been given to the local authority.

- 2.8 The amount of the monthly Care Charge for which the local authority is to lend, as set Out in Schedule 1, takes into account the fact that your income exceeds £144 per week and the fact that the local authority requires you to contribute to the payment of each monthly care charge, as it falls due, the amount by which your income exceeds £144 weekly. The weekly Care Charge for which the local authority will lend will be increased by an amount which is equivalent to any reduction in your income up to the maximum of the monthly care charge which is actually payable and which meets the Description of Care Charges in Schedule 1, and subject to the Lending Limit.
- 2.9 The local authority may, upon giving you at least 30 days' written notice within 30 days after:
- (a) it comes to the attention of the local authority that your income has exceeded £144 in any week while this Agreement is subsisting, or
 - (b) where, at or since the date of this Agreement, your income has already exceeded £144 per week, it comes to the attention of the local authority that your income has further exceeded £144 in any week while this Agreement is subsisting, require you to repay the amount, if any, by which that part of the Loan already provided under this Agreement for Care Charges in respect of that week exceeded the difference between the care charges actually payable and the amount by which your income exceeded £144 in that week.
- 2.10 The local authority may, upon giving you at least 30 days' written notice within 30 days after it comes to the attention of the local authority that your income is to exceed, or further exceed, £144 in any week while this Agreement is subsisting, reduce the amount that it will lend in respect of the care charges for each subsequent week that your income is so to exceed £144 by the amount by which your income is so to exceed £144 in that week and the amount of the Care Charge specified in Schedule 1 will be amended accordingly.
- 2.11 The local authority will not lend any further amount under this Agreement, even where the total amount of the Loan already provided is less than the Lending Limit, at any time when:
- 2.11.1 you are no longer receiving care and support in a care home or in supported living accommodation;
 - 2.11.2 in the reasonable view of the local authority your needs should no longer be met by the provision of care and support in a care home or in supported living accommodation;
 - 2.11.3 the Property can no longer be insured against all usual risks, unless there are reasonable grounds for concluding that the site value of the Property, disregarding any building on the property, is adequate security for the Debt, together with such further lending as is to be provided.
 - 2.11.4 if your financial resources in terms of capital and as calculated for the purposes of the financial assessment carried out under section 17 of the Care Act 2014 are not more than the sum specified in regulation 12 of the Care and Support (Charging and Assessment of Resources) Regulations 2014 (currently £14,250) and since the date of this Agreement the [Property3] has become occupied by your partner or by your child who is under 18, or by another member of your family who is aged over 60 or who is incapacitated or by a relative of yours who is aged over 60 or who is incapacitated and for the purposes of assessing your financial resources in terms of capital the local authority has decided to disregard the value of [Property]

- 2.12 The local authority will give you at least 30 days' written notice of the date on which the Lending Limit will be reached.
- 2.13 Where the local authority is to make the Loan by making payments to you to enable you to pay Care Charges to another care provider, you must pay the whole of the care charges that are payable by you to that care provider, including those Care Charges for which the Loan is to be made, and the local authority's agreement to make the Loan is conditional upon you paying those care charges when they fall due.

3. INTEREST

- 3.1 Interest will be *[insert: charged daily at the daily equivalent of the Rate of Interest or: insert whatever method of calculation and charging is to apply]*.
- 3.2 Interest will be paid in accordance with Schedule 2, unless or until you give the local authority at least [14] days' written notice that you wish to have the interest added to the Debt instead of paying it. If you do so, you may return to paying interest at any time by giving the local authority at least [14] days' written notice that you wish to do so.]
- 3.3 Interest will be added to the Debt each month, on the date when an amount is lent to you for Care Charges, unless the interest is paid before that date.
- 3.4 The local authority may vary the Rate of Interest so as to reflect, in a proportionate and reasonable way, the cost of funding the Loan upon giving you at least 14 days' written notice if the Rate of Interest is to be increased or without notice if the Rate of Interest is to be reduced, provided that:
- 3.4.1 the Rate of Interest may never exceed the maximum rate which the local authority is permitted to charge by regulations made under the Care Act 2014; and
- 3.4.2 if the local authority exercises its power to increase the Rate of Interest, it will also subsequently exercise its power so as to reduce the Rate of Interest so as to reflect, in a proportionate and reasonable way, the cost of funding the Loan which is to be provided under this Agreement, whenever that cost is reduced.

4. COSTS AND INTEREST ON COSTS

- 4.1 You must pay the Costs, estimates for some of which are set out in Schedule 1 on page [].
- 4.2 *[insert either: The Costs you have to pay will be the actual reasonable costs incurred in respect of this Agreement or: The Costs you have to pay in relation to ascertaining the value of the Property, registration of the legal charge, perfection of the security, discharging the security and for the purpose of ensuring compliance with the Agreement will be the actual reasonable costs incurred, and any other Costs you have to pay will be the average cost, or average costs, to the local authority incurred in relation to deferred payment agreements generally.]*
- 4.3 A copy of the local authority's current tariff of charges will be provided to you with this Agreement. The local authority will give you notice of any changes to the tariff of charges by sending you a copy of the tariff whenever it is changed, and you may obtain a copy of the current tariff of charges on request at any time.
- 4.4 The local authority will give you notice of any Costs incurred by the local authority and if you do not reimburse the amount of those costs to the local authority within 28 days after such notice is given, the amount of those costs will be added to the Debt and interest will

be charged on the amount of those costs in accordance with term 3 above in respect of the period starting on the 29th day after notice of the costs was given to you until payment to the local authority.

5. REPAYMENT

5.1 The Debt is to be repaid to the local authority on the earliest of the following dates:

5.1.1 the date of any sale or other disposal of the Property;

5.1.2 90 days after your date of death.

5.2 If the local authority discovers that any part of the Loan has not been used to pay the Care Charges for which it was lent, then, unless the reason why you have not used that part of the Loan to pay the Care Charges is an unintended error which you are able and willing to have promptly corrected, the local authority may give not less than 28 days' notice to you:

5.2.1 demanding that you repay that part of the Loan, together with the interest payable on that part of the Loan in accordance with term 3 above; and/or

5.2.2 to cancel the local authority's commitment to lend any further amount under this Agreement.

5.3 If the local authority gives notice to you in accordance with term 5.2.1, the part of the Loan referred to in the notice, together with the interest payable on that part of the Loan in accordance with term 3 above, will become immediately payable by you upon the expiry of the period of not less than 28 days which is stated in the notice.

5.4 If the local authority gives notice to you in accordance with term 5.2.2, the local authority's commitment to provide any further lending under this Agreement will be cancelled upon the expiry of the period of not less than 28 days which is stated in the notice.

5.5 If the local authority provides any part of the Loan under this Agreement upon the mistaken assumption that it was required to provide that part of the Loan when in fact it was not because, for example, you were no longer living in the Accommodation, that part of the Loan will be immediately repayable to the local authority, together with interest calculated in accordance with term 3 above.

6. SECURITY

The local authority's rights to repayment and to be paid interest and Costs under this Agreement are to be secured by a legal charge over the Property.

7. POSSESSION AND USE OF THE PROPERTY

The Property must not be let or occupied by any person without the local authority's prior written consent, which will not be unreasonably withheld provided that the property is to be occupied upon an assured short hold tenancy which enables an order for possession to be obtained, after the expiry of an initial term of no more than 6 months, upon one month's written notice.

8. INSURANCE AND MAINTENANCE OF THE PROPERTY

- 8.1 If satisfactory evidence is not provided to the local authority that the Property is adequately insured against all usual risks, the local authority may itself insure the Property under an appropriate policy of insurance and against all usual risks unless there are reasonable grounds for concluding that the site value of the Property, disregarding any building on the property, is adequate security for the Debt, together with a reasonable amount by which it is anticipated that the Debt will increase in the foreseeable future.
- 8.2 The local authority will give you notice of any Costs reasonably incurred by the local authority in so insuring the Property and if the borrower does not reimburse the amount of those Costs to the local authority within 28 days after such notice is given, the amount of those Costs will be added to the Debt and interest will be charged on the amount of those Costs in accordance with term 3 above in respect of the period starting on the 29th day after notice of the Costs is given to you, or, if later than the 29th day after advance notice is given that such an item, or items, of Costs will be incurred, the date on which such item, or each such item of Costs is incurred.
- 8.3 The local authority, or any appropriately qualified person acting on behalf of the local authority, may, no more than once a year, and upon giving at least 14 days' notice to the borrower or other owner of the Property, inspect the Property for the purposes of ascertaining whether the Property is being maintained in reasonable condition and/or whether there are works of maintenance and/or repair which should be undertaken to the Property in order to preserve or restore its value.
- 8.4 The local authority, or any appropriately qualified person acting on behalf of the local authority, may, upon giving not less than 14 days' notice to you or another owner of the Property, carry out such works of maintenance and/or repair as the local authority reasonably considers should be undertaken to the Property in order to preserve or restore its value at or to a value which is adequate security for the Debt, together with a reasonable amount by which it is anticipated that the Debt will increase in the foreseeable future, provided that no more than 56 days before giving you that notice you or another owner of the Property were given 28 days' notice to carry out or have those works carried out and those works have not been carried out to the reasonable satisfaction of the local authority.
- 8.5 In the event that the local authority has reasonable grounds to believe that works of maintenance and/or repair are or may be required as a matter of urgency, the requirement for 28 and 14 days' notice under 8.3 and 8.4 above is to be replaced with a requirement to take reasonable steps to notify you or any other owner of the Property as soon as reasonably practicable.
- 8.6 The local authority will give you notice of any reasonable Costs reasonably incurred by the local authority in relation to the maintenance and/or repair of the Property and if you do not reimburse the amount of those Costs to the local authority within 28 days after such notice is given, the amount of those Costs will be added to the Debt and interest will be charged on the amount of those Costs in accordance with term 3 above in respect of the period starting on the 29th day after notice of the Costs was given to you until payment to the local authority.

9. VALUATIONS

- 9.1 If at any time the local authority has reasonable grounds for concluding that the Debt exceeds [50%] of the value of the Property, the local authority may take reasonable steps to ascertain the value of the property and in particular instruct a suitably qualified valuer to inspect the Property and to provide a report to the local authority on the market value of the Property.

- 9.2 The local authority will give you notice of any reasonable Costs reasonably incurred by the local authority in obtaining a valuation report or otherwise ascertaining the value of the Property and if you do not reimburse the amount of those Costs to the local authority within 28 days after such notice is given, the amount of those Costs will be added to the Debt and interest will be charged on the amount of those Costs in accordance with term 3 above in respect of the period starting on the 29th day after notice of the Costs was given to you until payment to the local authority.

10 KEEPING THE LOCAL AUTHORITY INFORMED

- 10.1 You must inform the local authority as soon as reasonably practicable if any of the following happens:
- 10.1.1 the Property becomes occupied by your partner or by your child who is under 18 or by another member of your family who is aged over 60 or who is incapacitated, or by or relative of yours who is aged over 60 or who is incapacitated as this may mean that the value of the Property is no longer to be taken into account by the local authority for the purpose of calculating your financial resources in terms of capital in the financial assessment carried out under section 17 of the Care Act 2014;
 - 10.1.2 your income exceeds, or is expected to exceed, £144 in any week or, where your income has already exceeded £144 per week, it further exceeds, or is expected to further exceed, £144 in any week;
 - 10.1.3 there is any change to the amount or frequency of your Care Charges;
 - 10.1.4 you have not paid any Care Charge in full when it has become due (other than any which is payable to the local authority or which the local authority is to pay on your behalf under this Agreement);
 - 10.1.5 you cease to live in a care home or supported living accommodation;
 - 10.1.6 there is a change to your needs for care and support the effect of which is that you may no longer require your needs to be met by the provision of the Accommodation;
 - 10.1.7 a decision is taken to sell or otherwise dispose of the Property [or any of it].
- 10.2 You must, whenever asked to do so by the local authority, provide evidence to the local authority, as soon as reasonably practicable, that the Property is adequately insured against all usual risks. The local authority will not request the provision of such evidence during a period in respect of which evidence has already been provided to the local authority that the Property is adequately covered by an insurance policy, provided that evidence has also been provided to the local authority that the premium and insurance premium tax payable for that policy have been paid.
- 10.3 If the local authority makes the Loan by making payments to you, you must, whenever asked to do so by the local authority, obtain and provide to the local authority, as soon as reasonably practicable, evidence that you have made equivalent payments to a care provider in respect of care and support in the Care Home. The local authority will not request the provision of such evidence more frequently than every three months.

11. ENDING THIS AGREEMENT

- 11.1 This Agreement has no fixed duration.

- 11.2 You may bring the Agreement to an end at any time by giving reasonable written notice to the local authority and paying the whole of the Debt.
- 11.3 If you do not bring the Agreement to an end early under 11.2 above, the Agreement will come to an end when the Debt is paid in accordance with term 5 above.

12 STATEMENTS

12. The local authority will provide you with a written statement, informing the you of the amount which you would have to pay to the local authority if you were to bring the Agreement to an end on the date on which the statement is sent or such later date as has been requested by you, and the amount of interest and Costs which have accrued since the Agreement was made:
- 12.1.1 at the end of the period of six months beginning with the date of this Agreement;
- 12.1.2 every six months after the date of the first statement; and
- 12.1.3 within 28 days of a request to the local authority for such a statement made by you or on your behalf.

13 HOW NOTICES OR STATEMENTS ARE TO BE GIVEN

- 13.1 Any notice or statement which the local authority is to give, or may give, to you under this Agreement is to be given by sending the notice by first class prepaid post to you at the Accommodation or to such other person and at such address as has been agreed between the Local Authority and you from time to time.
- 13.2 Any notice which you give to the local authority under this Agreement is to be given by contacting *[insert details for oral contact]* or by sending the notice by first class prepaid post to *[insert contact details]*.
- 13.3 Any notice or statement which is sent by first class prepaid post is to be treated as having been served on the second day after it is posted, excluding Sundays and public holidays.

14 APPLICABLE LAW

The interpretation, validity and performance of this Agreement shall be governed by the law of England and Wales.

15 VARIATION

Any variation to this Agreement must be in writing and signed both by the borrower and on behalf of the local authority.

Borrower's Signature

Please read this Agreement carefully, including all the terms set out above, the information set out below and the terms and information set out in the Schedules at the end of the Agreement. Only sign below if you understand and accept those terms and information.

Signed by the borrower:

Date of signature by the borrower:

Signed on behalf of the local authority:

Name of person signing:

Position of person signing:

Date of signature on behalf of the local authority and date of Agreement:

MISSING PAYMENTS

If you do not make payment when it falls due, legal proceedings may be issued against you for a judgment for the amount you owe [and/or for possession of the Property]. It could also make it more difficult or expensive for you to obtain credit in the future.

Complaints

If you or any guarantor is dissatisfied with any action or omission on the part of the local authority under or in connection with this Agreement, in the first instance please write to *[insert appropriate local authority contact details]* or telephone *[insert appropriate local authority contact details]*. If your complaint is not resolved by the local authority to your satisfaction, you may have a right of appeal to *[insert details of rights to appeal]*.

SCHEDULE 1

Accommodation: *[Insert name and address of care home or supported living accommodation]*

Description of Care Charges:

[charges which the local authority considers to be necessary to meet the borrower's needs while the borrower is living in the Accommodation/charges include, in addition to the charges which the local authority considers to be necessary to meet the borrower's needs, the following charges which are being incurred to meet the borrower's preferences: *[insert details of the additional costs and the preferences to which they relate]* charges which are being incurred to meet the borrower's preferences: *[insert details of the preferences to which the charges relate []**].]*

[Weekly/Monthly]* Care Charge: £[]

The Care Charges specified above are those Care Charges for which the Loan is to be provided by the local authority under this Agreement. The total payable for your care and support while the borrower is living in the Accommodation may be more than the Care Charges shown above.

Date when first Care Charge to which this agreement relates will be incurred: []

Lending Limit: [the lower of:

- (1) 90% of the market or surrender value of the Property less:
(a) the total amount of any indebtedness secured on that asset, or those assets, by security which has priority over the local authority's security, and (b) £14,250; and
- (2) *insert maximum amount which the parties have agreed may be lent].*

Rate of Interest: []% per year subject to variation under term 3 on page [].

Estimated Costs: £[] for making the agreement; £[] for [registering the legal charge/perfecting the security]; £[] for [cancelling registration of the legal charge/discharging the security upon repayment of all sums payable under this Agreement.]] * *Delete or amend as applicable to reflect frequency of charges.*

*** Delete and/or complete as applicable according to whether the agreement is limited to those charges for which the local authority is required to enter into a deferred payment agreement and/or additional costs.*

SCHEDULE 2

[Insert agreed terms as to the payment of interest, such as the day of the month on which interest is to be paid, a monthly amount that is to be paid or the manner in which that amount is to be determined bearing in mind that the interest accruing each month will gradually increase as more Care Charges are deferred or more money is lent to pay Care Charges. If the interest payments are to be fixed, they may result in interest being paid in advance (where the fixed payment exceeds the amount accruing in each period) or in interest being debited to the account notwithstanding the periodic payment of interest (where the fixed payment is less than the amount accruing in each period). In either situation, it should be made clear to the borrower what is happening, so that the borrower knows if he is paying interest before it has been incurred and so that he knows if he is not covering all the interest, so that some interest is being added to the Debt on which interest will then be charged.]

Land Registry

Legal charge of a registered estate

CH1

This form should be accompanied by either Form AP1 or Form FR1

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Conveyancer is a term used in this form. It is defined in rule 217A, Land Registration Rules 2003 and includes persons authorised under the Legal Services Act 2007 to provide reserved legal services relating to land registration and includes solicitors and licensed conveyancers.

Leave blank if not yet registered.

Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue'.

Give full name(s).

Complete as appropriate where the borrower is a company.

Give full name(s).

Complete as appropriate where the lender is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

1	Title number(s) of the property:
2	Property:
3	Date:
4	<p>Borrower:</p> <p>For UK incorporated companies/LLPs Registered number of company or limited liability partnership including any prefix:</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>
5	<p>Lender for entry in the register:</p> <p>TAMESIDE METROPOLITAN BOROUGH COUNCIL</p> <p>For UK incorporated companies/LLPs Registered number of company or limited liability partnership including any prefix:</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>

Each proprietor may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

Place 'X' in any box that applies.

Add any modifications.

Place 'X' in the appropriate box(es).

You must set out the wording of the restriction in full.

Standard forms of restriction are set out in Schedule 4 to the Land Registration Rules 2003.

Insert details of the sums to be paid (amount and dates) and so on.

The borrower must execute this charge as a deed using the space opposite. If there is more than one borrower, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If a note of an obligation to make further advances has been applied for in panel 8 this document must be signed by the lender or its conveyancer.

6	<p>Lender's intended address(es) for service for entry in the register:</p> <p>Council Offices, Wellington Road, Ashton-Under-Lyne OL6 6DL</p>
7	<p>The borrower with</p> <p><input checked="" type="checkbox"/> full title guarantee</p> <p><input type="checkbox"/> limited title guarantee</p> <p>charges the property by way of legal mortgage as security for the payment of the sums detailed in panel 9</p>
8	<p><input checked="" type="checkbox"/> The lender is under an obligation to make further advances and applies for the obligation to be entered in the register</p> <p><input checked="" type="checkbox"/> The borrower applies to enter the following standard form of restriction in the proprietorship register of the registered estate:</p> <p style="padding-left: 40px;">"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed on behalf of Tameside Metropolitan Borough Council of Council Offices, Wellington Road, Ashton under Lyne OL6 6DL by its Borough Solicitor or conveyancer"</p>
9	<p>Additional provisions</p> <p>The Charge referred to in Panel 6 is made pursuant to the Deferred Payments Agreement dated ("the Agreement") and to which the Borrower and the Lender are parties and the Borrower acknowledges that the Property is charged by way of legal mortgage as security for the repayment to the Lender of the total amount of the Deferred Payments (as defined under Clause 1.4 of the Agreement) and which may be owing from time to time by the Borrower to the Lender the repayment thereof (together with any interest due) to be deferred on the terms set out in Clause 1.5 of the Agreement</p>
10	<p>Execution</p> <p><u>SIGNED AS A DEED</u></p> <p>by the said</p> <p>in the presence of:-</p> <p>Name:-</p> <p>Adresss:-</p>

Occupation:-

SIGNED AS A DEED

by the said

in the presence of:-

Name:-

Adresss:-

Occupation:-

WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

EQUALITY IMPACT ASSESSMENT

Subject	The Care Act 2014 Charging Policy & Deferred Payments Policy	
Service / Business Unit	Service Area	Directorate
Adult Assessment	Adult Services	People
EIA Start Date (Actual)	EIA Completion Date (Expected)	Completion Date (Actual)
August 2015	August 2015	August 2015

Lead Contact / Officer Responsible	Paul Dulson Head of Adult Assessment & Care Management
Service Unit Manager Responsible	Sandra Whitehead Interim Executive Director Adult Service

EIA Group (lead contact first)	Job title	Service
Paul Dulson	Head of Adult Assessment	Adult Services
Michelle Bowler	Service Unit Manager	Exchequer
Sarah Quayle	Operations Manager	Exchequer
Jobada Rahman	Assistant Team Manager	Adult Services
Steve Jamieson	Principal Resource Manager	Adult Services Finance

SUMMARY BOX

Section 149, of the Equality Act 2010, the public sector equality duty (PSED) requires that a public authority must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation
- Advance equality of opportunity
- Foster good relations

Having due regard to these involves:

- Removing or minimising disadvantage suffered by persons
- Taking steps to meet the needs of persons with different characteristics
- Encouraging people to participate in public life
- Tackling prejudice and promote understanding.
- Taking steps to take account of disabled persons' disabilities

This EIA focusses on the Council's proposals on the new financial charging policy for Adult Social Care as a result of the Care Act 2014 and also the specific details of the Deferred Payment Policy which is an element of the wider Charging Policy.

A consultation exercise in respect of the proposals on the new financial charging policy took place

between 17 November 2014 and 09 January 2015 and a further consultation took place between 29th May 2015 to 6th July 2015.

The consultation approach included an online questionnaire by means of the Council's Big Conversation as it was appropriate to engage directly with service users and residents. In addition eight focus groups were held across the borough amongst a range of social groups to ensure as many people as possible were engaged. A further 2500 current service users were written to to ascertain their views.

Despite potential barriers to engagement due to the online questionnaire and the fact that many service users do not use the internet, as well as the depth and complexity of the information presented, significant efforts were made to ensure that barriers were removed or alleviated where possible. Considerable exposure through the publicising of the consultation in the local press and on a local radio station, a mailshot to all current service users with the option to request a printed copy of the questionnaire or to call the department for more information (whereby a telephone consultation would also be offered).

Where equality groups were potentially most disadvantaged, such as through disability or age (access to the internet, ability to get to publicly accessible internet provision), or ethnicity (language), these concerns were addressed by specific solutions where need arose. For example it was established that support workers and carers were the best placed people to relay the complex information and proposals within the consultation to any disabled people requiring this extra support that they work with and this was therefore encouraged. Bilingual colleagues within the Adults Finance Service and Welfare Rights were also called upon to support in telephone consultations with people who did not speak English.

Section 1 - Background

BACKGROUND

The Council currently charge for care in residential accommodation and care provided in other settings such as at home. A financial assessment takes place in order to determine how much a service user must contribute towards the costs of their care. The Council consider the service users' income, savings and any assets they own; this might include any investments or property, and then calculate how much the service user can afford to pay towards the cost of their care.

The Council currently charge service users for care and support in residential accommodation and conduct financial assessments for contributions towards that care in accordance with the 'Charging and Residential Guide' and for care in non-residential settings in accordance with the 'Fairer Charging Policies for Home Care and other non-residential Social Services'.

The Care Act 2014 was passed before Parliament on 23 October 2014 which changed the rules governing how local authorities will provide care services in future.

The Act clearly describes a series of new duties and responsibilities on local authorities about care and support for adults and also gives local authorities the powers to decide on a new financial charging policy.

As home to a diverse population – some 220,600 people – Tameside Council seeks to ensure that it provides its services in a fair, accessible, and equitable manner whilst satisfying the requirements of the Equality Act 2010 and the public sector equality duty (section 149) contained therein.

Consultation

The consultation exercise completed pertained specifically to the changes in the new financial charging policy for Adult Social Care services which were implemented from 01 April 2015 in accordance with the statutory Care Act 2014 guidance as released by the Government. Although

the guidance is statutory, it did enact a series of discretionary elements which formed the content of the consultation, these being;

- **Charging for temporary or short term care up to the first 8 weeks as if the person was living in permanent residential care.**
- **Income that is disregarded from a financial assessment**
- **Upper and Lower Capital Limits**
- **Charging for care and support outside of a care home setting**
- **Disability related expenses - standard disregard**
- **Maximum percentage of disposable income**
- **Personal Independence Payments**
- **Severe Disability Premium**
- **Deferring Third Party Top-ups**
- **Extending Deferred Payments to Supported Living Schemes**
- **Renting out a property that is subject to a Deferred Payments Agreement**

This EIA concentrates on the process of developing an appropriate framework for the execution of the Care Act 2014 and the impact of these proposals. Consultation was undertaken in order to ensure that all protected characteristic groups were considered in terms of both the accessibility of the consultation process and the overall impact the changes to the new financial charging policy for Adult Social Care services will have upon those groups.

Hosting the consultation online allowed it to be much more accessible as people do not have to physically attend a consultation, and consultees could access the exercise in their own time and at their own leisure.

The option was given, for those who do not have access to the internet, to request a printed copy of the questionnaire or to call the department for more information (whereby a telephone consultation would also be offered). Considerations were also given to ethnicity and a potential language barrier as a result of the online and printed questionnaires being in English language, therefore the option was given to request printed copies of the question in other languages if required.

Links to an online easy read version of the Care Act 2014 as produced by the Government and a short video outlining the principles of the Care Act 2014 produced by The Social Care Institute for Excellence (SCIE) were included in the Big Conversation.

The consultation was publicised amongst all current and prospective service users

Response Method	Starts	Completions
Big Conversation online questionnaire Nov 14 – Jan 15	142	81
Big Conversation online questionnaire May 15 – July 15	49	49
Telephone consultation	20	20
Paper questionnaire	35 issued	3

Section 2 – Issues to consider

ISSUES TO CONSIDER

The below table details the demographic profile of the overall population of the borough in comparison to the current client base of those in receipt of chargeable adult social care services

and that of respondents to the Big Conversation;

Demographic Group	Tameside Population (%)	Client Base (%)	Respondents to Big Conversation (%)
Gender			
Male	49.2	38.1	46.3
Female	50.8	61.9	53.7
Age			
Under 30	37.1	6.0	4.2
30 – 44	19.6	7.8	8.5
45 – 59	20.8	12.1	31.6
60 – 79	18.4	28.4	43.1
80+	4.1	45.7	12.6
Ethnicity			
White	90.9	96.2	95.6
BME	9.1	3.8	4.4
Disability			
Yes	20.9	33.7	53.8
No	79.1	66.3	46.2

Eleven discretionary elements were consulted upon, and following the consultation exercise the Key Decision recommends the implementation of the following outcomes:

- **Continue charging for temporary or short term care up to the first 8 weeks as if the person was living in permanent residential care.**
- **Continue to disregard the value of Income Support/Guaranteed Credit element of Pension Credit plus the buffer of 25%.**
- **Maintain the lower capital limit and introduce an upper capital limit.**
- **Introduce a new maximum charge for care and support outside of a care home setting in line with residential care.**
- **Continue to maintain the disability related expenses - standard disregard**
- **Continue to set the maximum percentage of disposable income taken into consideration for assessment at 100%.**
- **To treat Personal Independence Payments as Disabled Living Allowance currently is when carrying out a financial assessment.**
- **To take the full amount of Severe Disability Premium into account when carrying out a financial assessment.**
- **Decisions to defer payments including top ups for residential care will be taken on a case by case basis**
- **The Deferred Payments Scheme will be extended to people living in supported accommodation**
- **25% of any rental income from a property subject to a deferred payments agreement will be allowed to be retained by the service user.**

In light of the above, in addition to considering the effects on the protected characteristic groups it is important to also consider the following groups who the changes pertain to predominantly;

Property Owners

As of 1 April 2015, the Council must offer a Deferred Payment Agreement to all service users in receipt of chargeable residential services, who own a property and whom meet the qualifying criteria.

The Ageing Population

Tameside's population is currently estimated at 220,600 residents. There has been a growth particularly in the number of people over 65 years by 13% since 2013 and this is projected to continue to increase to 33% by 2025. Older people often have an increasing need for health and social care as they grow older.

It is estimated that in 2008 there were 2,384 people over the age of 65 with dementia in Tameside. By the year 2025 this total is expected to rise by 40.6% to reach 3,351 people.

Prospective Service Users

It is important that those who, although may not currently be in receipt of adult social care services, may be in receipt in the near future and will, therefore, be affected by the changes as outlined in this consultation. In rolling out a comprehensive programme of engagement to ensure maximum rates of participation, the council is therefore mindful of the requirement to satisfy its obligations under the PSED of the Equality Act 2010, and ensure that all groups are able to participate should they wish.

The conclusions drawn from the evidence and analysis of the effects on equality on the protected characteristic groups are detailed in the below table:

Protected Characteristic	Demographic Analysis
Age	<p>Pensioners: Tameside has a caseload of 2998 adults in receipt of social care services who have been financially assessed. There are 2033 service users (68% of the total) who are of pensionable age. There is a greater proportion of older people in receipt of care services than compared to the Tameside population overall in which those of pensionable age form 21% of the population. Census data reveals an increase in an ageing population.</p> <p>Within the last five years 84 people owned property at the time they were placed by the Council into chargeable residential care. All 84 of these service users were of pensionable age.</p> <p>Working age / non-pensioners: 965 service users (32% of the total) are non-pensioners (i.e. have not reached pension credit age) and are therefore of working age.</p>
Disability	<p>The disability profile of the client base of those in receipt of chargeable care services shows that 982 service users (33 % of the total) are disabled. There is a greater proportion of disabled people who are service users compared to the Tameside population overall (21%).</p> <p>Of the 84 people who have been placed into chargeable residential care, who owned property, seven of these (8%) were classified as disabled. The remaining 77 were of the older people category and are likely to have been placed into chargeable residential care due to an age-related deterioration in their ability to manage key day to day tasks or due to dementia.</p>
Gender	<p>39% of the client base are male and 61% female. The gender profile of the client base shows a greater proportion of females compared to the Tameside population overall. The total pensioner client base is 69% female and 31% male. The disabled client base is 48% female</p>

	<p>and 52% male.</p> <p>Of the 84 people who have been placed into chargeable residential care and owned a property 59 (70%) of these were female and 25 (30%) were male.</p>
Race	<p>90% of the client base of those in receipt of chargeable social care services for adults are white and 10% BME. This is largely in line with the ethnicity profile of Tameside overall (91% white and 9% BME).</p> <p>Of the 84 people who have been placed into chargeable residential care whilst owning a property 66 of these were white (79%) and 7 (8%) people were BME. Race details are not held for the remaining 11 (13%) people.</p>
Religion and Belief / Sexual Orientation / Gender Re-Assignment / Pregnancy and Maternity / Marriage and Civil Partnership	<p>Specific data is not available on these protected characteristics for those in receipt of chargeable social care services for adults. However no evidence of any disproportionate impact was discovered.</p>

LIST OF EVIDENCE SOURCES
<p>Big Conversation analytics</p> <p>Mid-year Population Estimates 2013 (ONS) – age and gender data</p> <p>Census 2011 (ONS) – ethnicity and disability data</p> <p>Abacus system reports</p>

Section 3 – Impact

IMPACT			
<p>The table below details the proposals addressed within the Care Act 2014 financial charging policy key decision and their impact. For the purposes of this analysis Deferred Payment Agreement administrative fees and interest rates will be considered collectively as both charges will be applied in all instances where the eligibility criteria is met.</p>			
<table> <tr> <th><u>PROPOSAL</u></th></tr> <tr> <td>Continue charging for temporary or short term care up to the first 8 weeks as if the person was living in permanent residential care.</td></tr> <tr> <th><u>IMPACT</u></th></tr> </table>	<u>PROPOSAL</u>	Continue charging for temporary or short term care up to the first 8 weeks as if the person was living in permanent residential care.	<u>IMPACT</u>
<u>PROPOSAL</u>			
Continue charging for temporary or short term care up to the first 8 weeks as if the person was living in permanent residential care.			
<u>IMPACT</u>			

The current Council policy is to charge someone as if they were in residential care if they move into a residential care home for a temporary period. If the Council was to change this policy to charge as if the person was remaining at home and only paying a home care charge then the financial impact on the Council would not be significant however given the current financial climate and the need to ensure that people are paying what they can afford recognising the actual cost of the care they are receiving it is proposed to continue with the current policy.

This will only impact on those people who move into residential care for a temporary period up to 8 weeks. Those currently affected will not be further impacted upon.

PROPOSAL

Continue to disregard the value of Income Support/Guaranteed Credit element of Pension Credit plus the buffer of 25%.

IMPACT

This proposal is a continuation of the current policy in that it recognises that the Government has set a baseline that it deems sufficient to live on. The additional 25% buffer that the Council operates ensures that people have that extra income available before any charges are levied on the remaining income beyond the minimum rate plus 25%.

Those people receiving social care services on basic benefits will not be impacted upon however if they have other income (either earned or welfare benefits) then they will be expected to pay towards their care and support costs.

There are currently around 2,500 people in receipt of care who are required to pay something towards their care costs and this will continue as now.

PROPOSAL

Maintain the lower capital limit and introduce an upper capital limit.

IMPACT

This proposal maintains the current lower capital limit but introduces an upper capital limit of £23,250 above which people will be expected to pay the full cost of their care. This will impact on approximately 51 people to varying degrees with only 4 people being expected to pay the new maximum amount for non-residential care of £419.00 per week. This is in line with the minimum amount someone would be expected to pay in residential care and attempts to rebalance an anomaly that has existed for many years in that people living at home irrespective of what savings they had were only required to pay a maximum of £214.50.

PROPOSAL

Introduce a new maximum charge for care and support outside of a care home setting in line with residential care.

IMPACT

This proposal is being made to rebalance an inequality in the Council's current charging policy. People receiving a non-residential package of care currently only pay a maximum of £214.50 per week towards their care. There are people with larger incomes or large amounts of savings who can afford to pay more as they would be expected to do if they were receiving their care in a residential care home. This anomaly currently means that someone may be receiving a care package at home in excess of £2000 per week but still be required to pay only £214.50 despite having the ability to pay more. The proposal is to increase the maximum charge to £419.00 which is in line with the lowest cost of residential care in an off framework home so that people with the ability to pay are not disadvantaged whether living in one environment or the other.

There are currently 13 people who would see their current charges increase by over 50% but all have significant savings or income and are therefore in a position to afford the increases.

PROPOSAL

Continue to maintain the disability related expenses - standard disregard

IMPACT

<p>The proposal is to continue the current policy practice of disregarding £13.24 per week (2015/16 amount) of any income in recognition that people with disabilities and life limiting conditions often have additional expenditure that is directly related to those conditions.</p> <p>To withdraw this disregard would result in people having to pay a higher charge for the services they receive and would reduce the amount of disposable income they have.</p>
<u>PROPOSAL</u>
Continue to set the maximum percentage of disposable income taken into consideration for assessment at 100%.
<u>IMPACT</u>
<p>This is a continuation of current Council policy and therefore no new people will be adversely affected. Once the minimum income guarantee plus 25% and any disregards are taken into consideration the remaining income that someone has is regarded as disposable and therefore open to be taken into account when calculating a persons charges.</p> <p>The charge takes into account the persons ability to pay and the actual cost of the care being provided. People who are in receipt of social care services are required to pay something towards the cost of their care. The more disposable income someone has the more they should be expected to pay towards the actual cost. The people who this proposal most affects are those with a large amount of disposable income.</p>
<u>PROPOSAL</u>
To treat Personal Independence Payments as Disabled Living Allowance currently is when carrying out a financial assessment
<u>IMPACT</u>
<p>The Personal Independence Payment (PIP) is a new benefit replacing Disabled Living Allowance (DLA) and will be gradually phased in over the next few years. Currently DLA is split into daytime and night time care and a higher and lower amount is payable depending upon what care needs a person has. The current policy is to only take the night time rate of DLA into account if the person has night time needs that are being met by services. if they don't have such needs then the night time rate is disregarded when calculating a person's charges. This proposal extends the current policy to people in receipt of PIP so that a proportion equivalent to the night time needs rate of DLA is disregarded.</p> <p>This affects all new recipients of PIP and all existing DLA recipients as their benefits transfer to PIP over the next few years.</p>
<u>PROPOSAL</u>
To take the full amount of Severe Disability Premium into account when carrying out a financial assessment.
<u>IMPACT</u>
<p>Severe Disability Premium (SDP) is another benefit paid to people with a disability (cognitive or physical) and currently the Council disregards the first £10.00 per week when calculating the charges that someone is able to pay. SDP is specifically provided so that the person can continue to lead as independent life as possible but recognises that they may need additional help and support to do this. It is acknowledged that the payment should be used to pay towards the actual cost of social care that the person is receiving.</p> <p>The proposal is to cease disregarding £10.00 of SDP and instead to take the full amount into consideration when calculating a person's ability to pay for their care. This will mean that all recipients of SDP (currently around 500 people) will have all of their SDP taken into account when carrying out their annual financial assessment.</p>
<u>PROPOSAL</u>
Decisions to defer payments including top ups for residential care will be taken on a case by case basis
<u>IMPACT</u>
If a person chooses a residential or nursing home that operates a top up then this increases the weekly amount that the person is expected to pay for their care. If the

<p>payment is deferred then this increase impacts on the Council as it is required to pay the cost of care until such time as the deferred payment is realised.</p> <p>Deferred Payments are required to be offered by the Care Act 2014 but take up is relatively small in the borough. Early indications since the implementation of the Act suggest that this number will not increase significantly. Most homes in Tameside do not charge top-ups and therefore the impact is further reduced.</p>
<u>PROPOSAL</u>
The Deferred Payments Scheme will be extended to people living in supported accommodation
<u>IMPACT</u>
<p>The current arrangement is only available to people living in residential or nursing care homes. This proposal extends the opportunity of a deferred payment arrangement to people who move out of their home and move into supported accommodation such as extra care housing.</p> <p>There are very few people who this proposal will affect as most people who move into extra care housing are either not home owners or still have a spouse or relevant family members still living at home. Also the low take up of deferred payments already within the residential care sector will also mitigate against a significant uptake of this option.</p>
<u>PROPOSAL</u>
25% of any rental income from a property subject to a deferred payments agreement will be allowed to be retained by the service user.
<u>IMPACT</u>
<p>Few people currently request deferred payments and fewer still would be likely to rent out their property once they have moved into residential care. That said if they do wish to rent out their property and continue to defer payments then it is felt that retaining 25% of the rental income would be a fair amount. This will ensure that there is an incentive for renting the property whilst at the same time ensuring the majority of the income is taken into account as an income.</p>

Section 4 – Proposals & Mitigation

PROPOSALS & MITIGATION								
<table> <tr> <td><u>PROPOSAL</u></td></tr> <tr> <td>Continue charging for temporary or short term care up to the first 8 weeks as if the person was living in permanent residential care.</td></tr> <tr> <td><u>MITIGATION</u></td></tr> <tr> <td> <p>The current policy will remain the same and people currently in temporary residential care will not be affected any further than they currently are.</p> <p>A full financial assessment will be carried out on an at least yearly basis and this will calculate a person's ability to pay for the care that they are receiving.</p> </td></tr> <tr> <td><u>PROPOSAL</u></td></tr> <tr> <td>Continue to disregard the value of Income Support/Guaranteed Credit element of Pension Credit plus the buffer of 25%.</td></tr> <tr> <td><u>MITIGATION</u></td></tr> <tr> <td> <p>This proposal is a continuation of the current policy in that it recognises that the Government has set a baseline that it deems sufficient to live on. The additional 25% buffer that the Council operates ensures that people have that extra income available before any charges are levied on the remaining income beyond the minimum rate plus 25%.</p> <p>A full financial assessment is carried out prior to calculating a person's ability to pay towards their care costs. The baseline income plus 25% would be taken off before any further calculation is made on the rest of a person's income and savings.</p> </td></tr> </table>	<u>PROPOSAL</u>	Continue charging for temporary or short term care up to the first 8 weeks as if the person was living in permanent residential care.	<u>MITIGATION</u>	<p>The current policy will remain the same and people currently in temporary residential care will not be affected any further than they currently are.</p> <p>A full financial assessment will be carried out on an at least yearly basis and this will calculate a person's ability to pay for the care that they are receiving.</p>	<u>PROPOSAL</u>	Continue to disregard the value of Income Support/Guaranteed Credit element of Pension Credit plus the buffer of 25%.	<u>MITIGATION</u>	<p>This proposal is a continuation of the current policy in that it recognises that the Government has set a baseline that it deems sufficient to live on. The additional 25% buffer that the Council operates ensures that people have that extra income available before any charges are levied on the remaining income beyond the minimum rate plus 25%.</p> <p>A full financial assessment is carried out prior to calculating a person's ability to pay towards their care costs. The baseline income plus 25% would be taken off before any further calculation is made on the rest of a person's income and savings.</p>
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People who are living on only the basic state minimum guaranteed income will not be required to pay anything however most people in receipt of adult social care services will also have other forms of income such as disability benefits and these will be taken into account in the financial assessment and charge calculation.

PROPOSAL

Maintain the lower capital limit and introduce an upper capital limit.

MITIGATION

In introducing an upper capital limit, people whether they live at home or in residential care will be treated equally and the charges will be based on the principle of an ability to pay for the actual cost of the care that they are receiving.

Those people who are most adversely affected will be financially assessed and arrangements will be made for either a gradual increase over a few months or an agreed set date for the new charge to start so as to reduce the immediate financial burden being taken at once.

The Council will carry out financial assessments phased over the next few months until the end of March 2016. As new financial assessments are completed the new arrangements will be implemented. Advance notice of the changes being made to the financial assessment will be given following the Key Decision and subsequently prior to the assessment to ensure that people are made aware of the changes. The key principle of people being able to pay towards the actual cost of their care will be maintained and therefore people will not be left with a weekly amount equivalent to the Governments minimum income guarantee plus a 25% buffer.

PROPOSAL

Introduce a new maximum charge for care and support outside of a care home setting in line with residential care.

MITIGATION

In introducing a new maximum charge, people whether they live at home or in residential care will be treated equally and the charges will be based on the principle of an ability to pay for the actual cost of the care that they are receiving.

Those people who are most adversely affected will be financially assessed and arrangements will be made for either a gradual increase over a few months or an agreed set date for the new charge to start so as to reduce the immediate financial burden being taken at once.

The Council will carry out financial assessments phased over the next few months until the end of March 2016. As new financial assessments are completed the new arrangements will be implemented. Advance notice of the changes being made to the financial assessment will be given following the Key Decision and subsequently prior to the assessment to ensure that people are made aware of the changes. The key principle of people being able to pay towards the actual cost of their care will be maintained and therefore people will not be left with a weekly amount equivalent to the Governments minimum income guarantee plus a 25% buffer.

PROPOSAL

Continue to maintain the disability related expenses - standard disregard

MITIGATION

The proposal is to continue the current policy practice of disregarding £13.24 per week (2015/16 amount) of any income in recognition that people with disabilities and life limiting conditions often have additional expenditure that is directly related to those conditions.

Everyone receiving social care services has a financial assessment and the standard disregard will be taken off their total income prior to calculating any charges. The standard disregard benefits everyone in receipt of services.

PROPOSAL

Continue to set the maximum percentage of disposable income taken into consideration for assessment at 100%.

<u>MITIGATION</u>
<p>This is a continuation of current Council policy and therefore no new people will be adversely affected. Once the minimum income guarantee plus 25% and any disregards are taken into consideration the remaining income that someone has is regarded as disposable and therefore open to be taken into account when calculating a person's charges.</p> <p>This proposal is based on a person's ability to pay for their care and support and those people with a high disposable income will be expected to pay more towards the cost of their care than those with lower amounts of disposable income. Everyone will receive at least an annual financial assessment which will take into account any disregards or minimum income guarantees and only take actual disposable income into account when calculating charges.</p>
<u>PROPOSAL</u>
To treat Personal Independence Payments as Disabled Living Allowance currently is when carrying out a financial assessment
<u>MITIGATION</u>
<p>The proposal is to bring in line the disregard for both PIP and DLA recipients so that they are equally treated. Although PIP does not have a specific amount identified as night time rate the total payment is the same as DLA and therefore the rate for night time care needs identified for DLA will be used for PIP.</p> <p>The financial assessment will be able to determine the rate of PIP that someone is in receipt of and if no night time needs are identified then an appropriate amount of the PIP will be disregarded. This will ensure that people are equally treated if they have the same level of need.</p>
<u>PROPOSAL</u>
To take the full amount of Severe Disability Premium into account when carrying out a financial assessment.
<u>MITIGATION</u>
<p>There are currently 500 people in receipt of Severe Disability Premium receiving social care services in Tameside. They currently have £10.00 per week of their SDP disregarded and this proposal means that this will stop.</p> <p>The Council will carry out financial assessments phased over the next few months until the end of March 2016. As new financial assessments are completed the new arrangements will be implemented. Advance notice of the changes being made to the financial assessment will be given following the Key Decision and subsequently prior to the assessment to ensure that people are made aware of the changes. The key principle of people being able to pay towards the actual cost of their care will be maintained and therefore people will not be left with a weekly amount equivalent to the Governments minimum income guarantee plus a 25% buffer.</p>
<u>PROPOSAL</u>
Decisions to defer payments including top ups for residential care will be taken on a case by case basis
<u>MITIGATION</u>
<p>Numbers are relatively low and when carrying out a financial assessment and application for a deferred payment the value of the property is taken into account ahead of making decisions whether to allow a deferred payment agreement or a timeframe for such an agreement to take place within. If a top up also exists then this will be taken into consideration at the time of the considerations and if it is felt that there is insufficient value in the property or any other mitigating factor then the Council may refuse the application.</p> <p>Close scrutiny of the application together with a full financial assessment will be maintained to ensure that any arrangement remains viable and with limited risk to the Council.</p>
<u>PROPOSAL</u>
The Deferred Payments Scheme will be extended to people living in supported accommodation
<u>MITIGATION</u>

<p>There are very few people who this proposal will affect as most people who move into extra care housing are either not home owners or still have a spouse or relevant family members still living at home. Also the low take up of deferred payments already within the residential care sector will also mitigate against a significant uptake of this option.</p> <p>This policy will be regularly reviewed to ensure continued financial viability for the Council.</p>
PROPOSAL
25% of any rental income from a property subject to a deferred payments agreement will be allowed to be retained by the service user.
MITIGATION
<p>This policy is new and will be open to regular review to ensure that both the service user and the Council are not disadvantaged as a result of the proportion currently being proposed. It is unlikely that take up of the deferred payment scheme and possible rental of properties will be on a significant scale.</p>

Section 5 – Monitoring

MONITORING PROGRESS
n/a

Issue / Action	Lead officer	Timescale
n/a	n/a	n/a

Sign off

Signature of Service Unit Manager	Date
Paul Dulson	06/082015
Signature of Assistant Executive Director / Assistant Chief Executive	Date
Sandra Whitehead	06/08/2015
Stephanie Butterworth	06/08/2015