

READING BOROUGH COUNCIL

REPORT BY DIRECTOR OF EDUCATION, ADULT & CHILDREN'S SERVICES

TO:	ADULT SOCIAL CARE, CHILDREN'S SERVICES AND EDUCATION COMMITTEE		
DATE:	6 NOVEMBER 2014	AGENDA ITEM:	15
TITLE:	CARE ACT - CONSULTATION REPORT		
LEAD COUNCILLOR:	COUNCILLOR EDEN	PORTFOLIO:	ADULT SOCIAL CARE
SERVICE:	ADULT SOCIAL CARE	WARDS:	ALL
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1.1. The Care Act 2014 ("the Act") is a significant new piece of legislation that replaces many older pieces of legislation governing how Adult Social Care services operate. Over the next two years, the Act brings in some significant changes and this report sets out those changes that will affect Reading Borough Council in 2015/16 and the issues on which the Council will need to consult with residents.

1.2. The key issues that the report will address are:

- Prevention and Information & Advice
- Funding Reform (with specific reference to the following):
 - a) extending the provisions of the Council's current Choice Policy to non-residential (community based) services;
 - b) proposed changes to the Charging for Care Home Accommodation Policy (a national policy for clients placed in residential and nursing homes), including revisions to the Deferred Payments Policy;
 - c) changes proposed for short stay (respite) placements;
 - d) implications for the Council's current Fairer Charging Policy (policy that sets out how an individual may contribute to non-residential (community based) services;

- e) implications of the new power to charge for carers' services, although the Council does not propose to exercise this in 2015-16;
- f) implications of the power to charge self funders for arranging support services; and
- g) implications of discretionary administration payments for Direct Payments/

- Support for Carers

1.3 The proposed consultation issues have been identified from draft regulations ("the regulations") governing the implementation of the Care Act. Consultation proposals may need to be revised once the final Care Act regulations which were published on the 23rd October 2014 are fully reviewed.

2. RECOMMENDED ACTION

- 2.1 That the Adult Social Care, Children's Services and Education Committee is asked to agree the overall strategic direction set out in this report.
- 2.2 That the Adult Social Care, Children's Services and Education Committee is asked to approve that the following proposals be put out to public consultation:
- 2.2.1 That the Council adopts an updated Prevention Framework.
- 2.2.2 That the Council adopts a new Information & Advice Plan.
- 2.2.3 That the Council amends the Choice Policy to extend the provisions of the current policy to community based services.
- 2.2.4 That the Council considers exercising the discretionary power under Section 14 of the Care Act to charge adults for care home accommodation, in accordance with Section 17 of the Care Act and the associated regulations (Section 4.2.8). (This as a continuation of existing practice but consultation is necessary to give the Council a proper mandate to continue charging under a revised legislative framework).
- 2.2.5 That the Council adopts the draft policy subject to minor changes following the publication of the recent regulations, as set out at Appendix 3 on the Universal Deferred Payments Scheme and associated matters see section 4.2.9.
- 2.2.6 That the Council amends its policy on how charges are calculated for respite care as set out in section 4.2.10.
- 2.2.7 That the Council should exercise its discretion under section 14 of the Care Act to charge for community-based services and makes minor amendments to its current Fairer Charging Policy to meet the requirements of the Regulations issued under the Care Act. (This is a continuation of existing practice but consultation is necessary to give

- the Council a proper mandate to continue under a revised legislative framework) as set out in section 4.2.11.
- 2.2.8 That the Council should not exercise its power to charge carers for services provided directly to them, but that respite services are treated for charging purposes as being provided to the cared for person and not the carer (as is current practice), as set out in section 4.2.12.
 - 2.2.9 That the Council should not exercise its power to charge for prevention services. As set out in section 4.2.13.
 - 2.2.10 That the Council should offer support for self-funders by signposting to external services as set out in section 4.2.6.
 - 2.2.11 That the Council does not apply administration fees for Direct Payments as set out in section 4.2.7.
 - 2.2.12 That the Council will provide a range of support to promote carers' wellbeing.
- 2.3 That the Adult Social Care, Children's Services and Education Committee is asked to approve the matters set out herein and the launch of a formal 90-day consultation on the Council's approach to meeting its Care Act duties.
- 2.4 That the Chair of the Adult Social Care, Children's Services and Education Committee be given delegated authority, in consultation with the Lead Councillor for Adult Social Care and the Director for Education, Adult and Children's Services to approve the final consultation document based on the options set out in the report, once the final Regulations, published on 23 October 2014, have been fully reviewed.

3. POLICY CONTEXT

3.1 Prevention and Information & Advice

3.1.1 The Care Act stipulates that local authorities should adopt a prevention focus at every step along the customer pathway. This is intended to ensure that residents are supported to stay well and independent for as long as possible, thus reducing the need for statutory care services, including delaying that need or preventing it altogether. This preventative approach is to be applied to all residents with care and support needs, whether or not eligible for statutory care, so that support to prevent health deterioration is accessible to everyone.

3.1.2 The current portfolio of prevention services delivered by the Council and partners is intended to deliver the outcomes set out in the Council's 2011 Prevention Framework. This Framework needs to be refreshed to highlight revised priorities in the light of the new legislative underpinning and also current service user, carer and local resident feedback. Locally, there is also an increasing emphasis on neighbourhood working, and this too needs to

be included in the Council's updated statement of intent on preventative approaches.

- 3.1.3 The provision of Information & Advice is given a new focus within the Care Act both in terms of the breadth of information to be covered and also the expectation that there is a comprehensive multi-channel offer. There is an expectation that the Council's approach to Information & Advice is co-produced with key stakeholders and this report sets out the activity on this to date in the form of a draft strategy to be put out to wider consultation.

3.2 Funding Reform

- 3.2.1 Care and support provided by Adult Social Care are not free services at the point of delivery in the way that NHS healthcare is. Whilst some types of care and support are provided free (for instance, information and advice), many services are potentially chargeable. The Council will, however, only ask a client to contribute towards their care if they can afford to. Sometimes the person will pay the full cost, or sometimes the cost will be shared between the person and the Council.

- 3.2.2 To determine what a person can afford to pay, the Council will carry out a financial assessment. The Council will consider the person's income, and any assets they own, like investments or in some circumstances a house. The Council will then calculate how much the person can afford to pay towards their care and support costs.

- 3.2.3 The Care Act allows the Council to continue to operate a charging system and this report provides an overview of the requirements of Part 1 of the Act in respect of charging and financial assessment for care and support services provided to adults, for those parts of the Act that come into effect on 1 April 2015.

- 3.2.4 This report highlights the key aspects of the Care and Support (Charging and Assessment of Resources) Regulations 2014 and associated guidance where there is local discretion so that local policy needs to be adopted formally.

3.3 Carer Support

- 3.3.1 The Care Act introduces new rights for carers so that more carers will qualify for a carer's assessment, and carers who are eligible for statutory support become entitled to receive services in their own right (instead of or alongside their needs being recognised in the care package put in place for those being cared for). These rights are intended to give carers parity of esteem with those they care for. Both adult carers of children with additional support needs and also young carers acquire similar new rights under the Children and Families Act 2014 - to come into force at the same time as the Care Act.

- 3.3.2 Initial modelling suggests that the number of carers formally known to the local authority could increase substantially from 2015/16. The true impact of the legislative changes on volumes will not actually be known, however, for some months. A prudent approach would therefore be to set policy on carer support for 2015/16 but subject to review for subsequent years.
- 3.3.3 The local authority has the power under the Care Act to charge for carer services. Charging for any service can discourage take-up, however, and supporting carers to carry on caring (including being able to enjoy a life outside caring) is a key component of a preventative approach to care and support. It also makes financial sense for statutory care services to encourage carers to access support given the value of the contribution which carers make. The proposed approach to carer charging is therefore not to charge for services provided directly to carers, but to continue to treat respite care as a service provided to the cared-for.
- 3.3.4 As for people with support needs, the local authority is expected to take a preventative approach to supporting carers' wellbeing. The Council's carer offer therefore needs to cover a range of services and access points. Seeking carer feedback on priorities, gaps in current provision and approaches to assessments would all help to inform the Council's carer offer from April 2015.

4. THE PROPOSAL

4.1 Prevention and Information & Advice

4.1.1 The current prevention offer in Reading has evolved as a result of service user demand and focused Council and provider initiatives resulting in some excellent service provision. However the Care Act puts greater emphasis on prevention and greater expectations on the Council and its partners to facilitate access to services in the market. As a result the Council proposes to refresh its priorities for prevention in consultation with service users, carers and partners - particularly those from the voluntary and community sector who are key providers in this area. This will shape an updated Prevention Framework, a new Information & Advice Plan and a revised set of grant allocation priorities.

4.1.2 The proposed funding priorities on which feedback is being sought are:

- Ensuring people can access information about care
- Help to navigate care and support services
- Independent advocacy
- Self-advocacy
- Connecting more carers to support
- Empower carers to have choices and to manage their caring role
- Support carers to take breaks from caring

- Reducing the impact of illness
- Supporting independent living
- Community services
- Strengthening community connections

4.2 Funding Reform

4.2.1 The current legal framework for charging for care and support is split between different Acts and Regulations depending on whether services are provided in a registered care home setting or to adults in the community. (Full detail of this issue is set out in Appendix 1).

4.2.2 The current charging framework is as follows:

- Charging for Care Home Accommodation - for adults receiving care and support in a registered care home, the current National Assistance Act (1948) gives local authorities the duty to charge the adult for this subject to the resident's means.
- Charging for temporary stays in care homes (e.g. respite) - in the case of temporary stays in a care home (for example, for respite care), the Charging for Residential Accommodation Guide (CRAG) gives local authorities the discretion to charge an amount that is deemed by the authority as 'reasonable' for up to the first 8 weeks of care, without the need for a full financial assessment under CRAG. Reading Borough Council applies a 'standard minimum charge' for the first 4 weeks of a temporary stay in a care home without the need for a full financial assessment.
- Charging for care and support provided in the community (i.e. non-residential) - for adults receiving care and support in the community (for example, in their own homes, or in supported living or shared lives settings), local authorities have a discretionary power to charge adult recipients of these non-residential services. Reading Borough Council developed and implemented a local 'Fairer Charging Policy' which was agreed by elected members in 2003, with revisions agreed by elected members in 2007 and 2010. Reading Borough Council's Fairer Charging Policy is consistent with the national Fairer Charging and Fairer Contributions guidance.
- Carers - while the national Fairer Charging Guidance gave local authorities discretion to charge carers under Fairer Charging Policies for services provided to carers, many local authorities, including Reading Borough Council, chose not to financially assess carers, or levy charges on carers, when designing the local Fairer Charging Policy.
- Services Provided Free - in line with the Fairer Charging Guidance, Reading Borough Council provides care and support free in the following situations:
 - Re-ablement services (Intermediate Care) - free for up to 6 weeks
 - Community equipment and minor adaptations

- Services to sufferers of CJD
- Services to adults as part of Aftercare support under S117 of the Mental Health Act 1983

4.2.3 The current legal framework for charging and financial assessment will be repealed and replaced by the Care Act 2014. This will require Reading Borough Council to review its current policies and consult upon a revised Charging Framework in accordance with the Care Act 2014 and associated regulations. The following section sets out the issues to be considered and options for the Council.

4.2.4 In drafting the Choice and Charging Framework, the Council is required to consider the following principles:

- To ensure that people are not charged more than it is reasonably practicable for them to pay;
- To reduce variation in the way people are assessed and charged
- To be clear and transparent, so people know what they will be Charged;
- To promote wellbeing and social inclusion, and support personalisation, independence, choice and control;
- Support carers to look after their own health and wellbeing and to care effectively and safely;
- Be person-focused;
- Apply charging rules consistently, so as to minimise anomalies between different care settings;
- Encourage people to stay in or take up employment/training opportunities or plan for future costs of meeting needs to do so;
- Be sustainable; and
- To ensure that where an adult chooses to be provided with accommodation that entails additional costs, that the Council is satisfied that a person is willing and able to pay the additional cost of that preferred accommodation for the period that the Council expects to meet the needs in that accommodation.

4.2.5 Choice Policy

The Council's existing Choice Policy exists to meet legislation¹ around enabling people to choose more expensive care home accommodation where certain conditions are met. For example, a person choosing a particular care home that costs more than the Council would usually expect to pay to meet the needs of that individual, where that person has declined other accommodation within the usual price, and has identified another person (a Third Party) who is willing and able to pay the additional cost (a 'Top Up').

¹ National Assistance Act 1948 (Choice of Accommodation) Directions 1992, and subsequent guidance 2004

This policy needs to be amended to reflect the additional types of accommodation to be covered by the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014; specifically, people choosing more expensive Shared Lives scheme accommodation or Supported Living accommodation.

It is proposed that the current method by which the Council ensures a Third Party is willing and able to pay the identified additional costs of preferred care home accommodation is extended to the additional accommodation types specified in the new Regulations.

4.2.6 Cost of supporting Clients that are self-funding with contracting of services

The Care Act² enables self funders to ask the Council to arrange their care on their behalf however the duty to do this has been deferred until April 2016 in the new statutory regulations.

From April 2015 the Council may choose to respond to requests but has no obligation to do so. However if the Council does decide to arrange contracts for self funders, then the Council would not be able to charge an admin fee for the arrangements (as the Council would be making the arrangements through a power and not a duty).

The Council's proposed approach for 2015/16 would be to signpost self funders to a third party provider of support with contracting for care services with the charge being met by the self funder directly. Financial and volume modelling would be undertaken during 2015/16 to inform decisions about arrangements from 2016/17.

4.2.7 Discretion to pay an administration fee for managing a Direct Payment for a family member.

The Care Act³ gives councils a discretionary power to pay a close family member living in the same household a proportion of the client's Direct Payment to provide management and/or administrative support to the Direct Payment recipient. This is not something the Council would pay to a family member currently.

It is proposed to consult on the Council's offer to carers, which in future will include support offered to carers in their own right, and the right to an assessment and then support plan if they have eligible needs to enable them to continue in their caring role. In light of this support being offered and

² Annex A (41) of the Care Act statutory guidance

³ Section 12 of the Care Act Statutory Guidance 12.36

the additional financial pressures which paying a DP admin fee would incur, the proposal would be not to exercise this discretion.

4.2.8 Charging for Care Home Accommodation

A major change which the Care Act brings is that with the repeal of the National Assistance Act 'duty' to charge for care provided in registered care home accommodation, the Council needs a mandate to exercise the discretionary power to charge. This is set out under Sections 14 and 17 of the Care Act and associated Regulations. Subject to consultation, the Council would be able to put in place a policy to enable it to continue to assess and collect income towards the cost of providing the care and support to adults in registered care homes, as it does currently. It would not be feasible to change this as clients currently contribute around £3.9m per annum towards these costs. The Council does not have the resources to fund this loss of contributions (and will continue to use the guidance set out nationally in assessing individuals).

4.2.9 Universal Deferred Payments Scheme

Under the new regulations, a new national 'Universal Deferred Payments Scheme' is being brought in for those adults whose capital is below the upper capital limits except for ownership (or part ownership) of a property that was occupied as a former home. The Council already delivers this service and the differences between the existing scheme and the new statutory scheme are set out in Appendix 2.

Attached to this report is a draft Deferred and Interim Payments Policy (Appendix 3) that deals with these issues, plus associated matters (listed below), i.e.:

- The 12 week property disregard
- Interim Funding
- Discretionary disregard of property
- Interest to be charged on the deferred payment and administration costs

Within the draft Policy the other two major changes are:

- That the Council will extend the deferred payments scheme to Extra Care Housing, but only in exceptional circumstances.
- That the Council will extend the policy to allow a Third Party Guarantor to be accepted for a short and specific period of time (for example when a self-funder lacks capacity and interim funding is required from the Council).

4.2.10 Charging for temporary stays in Care Homes (for example respite

care)

Where a council exercises its discretion to charge adults for care and support in a registered care home, the Care Act still enables Councils to exercise discretion over whether to carry out a financial assessment during the first 8 weeks of a temporary stay in a care home, or whether to apply a charge as appears 'reasonable' to the council without a financial assessment. This could include applying a Council charging policy for care and support outside of a care home. It is proposed that Reading Borough Council consults on whether to:

- a) Continue to apply a 'standard minimum charge' (as described in 4.2 above) for the first 4 weeks of a temporary stay in a care home, without a full financial assessment. In the new regulations this would be referred to as a 'light touch' financial assessment, applied on the basis that the amount of the charge is nominal and a subsidised amount.
- b) Apply a 'standard minimum charge' for a different length of time of a temporary stay in a care home, without financial assessment, but no longer than 8 weeks.
- c) Apply the individual's financially-assessed charge (if any) from their non-residential (Fairer Charging) financial assessment for up to the first 8 weeks of a temporary stay in a care home.

The current approach (a) to charge a 'standard minimum charge' for respite / temporary stays in care homes for the first 4 weeks allows the Council to collect a standard income during this period, without the cost of carrying out a full financial assessment. However, there are some administrative costs involved in identifying the different charge rates for adults who receive both services in the community (charged under the Fairer Charging policy) and some temporary/respite stays in care homes (with a standard minimum charge).

Option (b) would give the Council the option to vary the length of time before carrying out a full financial assessment under the regulations for residential accommodation (making it shorter or longer, with potential impact on administrative costs of collecting financial information and carrying out an assessment of potential impact on income).

Option (c) would give the Council the option to apply a different financially-assessed charge based on its non-residential policy. On current information, approximately one-third of adults receiving care and support are assessed as entitled to receive free care and support based on their financial assessment for non-residential care. Again on current information, some adults who are assessed as eligible to receive a Personal Budget to meet their care and support needs decline an ongoing weekly Personal Budget due to their daily needs being met by a willing and able carer. However, these people choose to use the 'respite' allocation of their Personal Budget only, in order to

access respite in a care home at a standard minimum rate to allow their carer to have a break.

Recommendation - It is proposed that any consideration of charging for temporary stays in care homes should be considered alongside proposals in respect of charging for support to carers, to ensure a consistent approach to support and charging for carers (see 4.2.8). Therefore the proposal would be:

- That for any client receiving a personal budget, respite is charged as under Fairer Charging (Option c).
- That for any client who is eligible for a personal budget but declines this and only seeks residential respite to ensure a carer can take a break, that that client continues to be charged under existing arrangements (Option a).

Appendix 4 provides scenarios to explain this.

4.2.11 Charging Adults receiving care and support in the community (including supported living and shared lives arrangements)

As with the current Fairer Charging Guidance, the Care Act 2014 and associated regulations and guidance set out minimum requirements that a local charging policy for non-residential care and support must adhere to. It is proposed that the Council considers exercising the discretionary power under Section 14 of the Care Act to charge for care and support services provided to adults with care and support needs, to enable the continuation of financial assessment, benefits advice, and collection of income through charging in order to maintain the financial sustainability of non-residential services. It is unclear currently how couples are to be treated around non-residential charging, however, so the current Fairer Charging Policy will need to be checked against the final Regulations on this point.

4.2.12 Charging adult carers for support provided

As the Care Act 2014 brings in, for the first time, a legal duty to provide services for those Carers with eligible needs to be met, it is recommended by the Department of Health that the Council considers and consults on options for charging for carers' services.

Where care and support services are provided directly to an adult with the care needs as a result of their carer's eligible needs, the care and support provided directly to that individual must not be charged to the carer, but to the individual receiving the care. In those cases, the financial assessment policy for non-residential charging would apply to that individual (see 4.2.10 and 4.2.11 above).

However, there may be services provided directly to the carer that the Council is providing/arranging. The Council may need to consider the interaction between any policy for charging carers, and the policies for charging for services provided directly to the adult with the care needs (for example, levels of charges for temporary/respite stays in a care home versus charges for personal care and support at home), to balance the financial sustainability of providing carer services while promoting the health and wellbeing of carers. The regulations and guidance that accompany the Care Act suggest consideration of a 'light touch' financial assessment for carers, rather than a full financial assessment.

It is recommended that the policy of the Council be that carers are not charged for services provided to them by the Council but that respite services continue to be treated as being provided for the cared for person and not the carer.

There is a risk of confusion over who is actually receiving a service, e.g. domiciliary care to support a household in which the carer has both caring responsibilities and general domestic responsibilities. The proposed policy would commit the Council to funding services like this on occasion even when the carer concerned could afford the charge.

4.2.13 Charging for preventative services

Regulation 2 of the Preventing Needs for Care and Support Regulations under the Care Act enables a local authority to make a charge for preventative services.

The proposal and message for consultation would be to not exercise this discretion in 2015/16, subject to review for 2016/17 as the Council fully understands the benefits of people having access to preventative services and supporting people to be as independent as possible.

4.2.14 Services provided free

The services listed in 4.2.2 which are provided free under current legislation will continue to be provided free under the new Regulations.

5. CONTRIBUTION TO STRATEGIC AIMS

- 5.1 This proposal supports the Council in complying with its obligations as set out in the Care Act 2014.

6. COMMUNITY ENGAGEMENT AND INFORMATION

- 6.1 Section 138 of the Local Government and Public Involvement in Health Act 2007 places a duty on local authorities to involve local representatives when carrying out "any of its functions" by providing information, consulting or "involving in another way".
- 6.2 As set out in Section 4 of this report the proposal is that consultation is undertaken to influence the proposal. A full consultation plan will be drawn up for all the Care Act implications.

7. EQUALITY IMPACT ASSESSMENT

7.1 Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to:-

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

7.2 Conducting a public consultation on the proposed approaches described in this report would support the development of Equality Impact Assessments (EIAs) where relevant to inform Members' final decisions on the proposals. Implementing the Care Act will or could have a differential impact on some 'protected' groups as defined by the Equality Act, particularly people with disabilities, and people due to their age, and those 'associated with' protected groups, i.e. carers.

8. LEGAL IMPLICATIONS

8.1 The Care Act 2014 brings in a new charging framework for care and support. The current legal framework will be repealed and many parts of the Care Act 2014 and associated regulations will come into force from 1 April 2015.

8.2 Section 14 of the Care Act 2014 gives local authorities the power to charge for care and support provided to adults.

8.3 Where local authorities exercise their discretion under Section 14 of the Care Act to charge adults for care and support services provided, Section 17 of the Act specifies the duty to carry out a financial assessment of the adult's ability to pay for those services provided to them. The Care and Support (Charging and Assessment of Resources) Regulations 2014 and guidance on Charging and Financial Assessment should be adhered to when developing charging policies.

- 8.4 The Care Act brings in a carer's legal right to both assessment and support to meet eligible needs.
- 8.5 The current charging legislation will be repealed and the Care Act 2014 comes into effect from 1 April 2015 (with implementation of the care funding changes to come in from 1 April 2016). The Care Act and supporting regulations will replace the current legislation with a single legal framework for charging and financial assessment.
- 8.6 While the intention behind the new regulations is to enable local authorities to continue with broadly similar charging policies and principles as now, local authorities need to review the operation of the local charging framework to check it is consistent with the provisions in the draft regulations and guidance. Where the proposed local approaches are a matter of discretion under the Care Act 2014 and associated regulations, local authorities are required to plan, develop and consult on a new charging framework in accordance with the Care Act 2014 and the regulations, ensuring that in exercising any discretion to charge for services, policies are drafted in accordance with the regulations and guidance⁴.
- 8.7 Sections 14 and 17 of the Care Act allow local authorities to recharge costs of arranging services for those adults who have (or are deemed to have) capital resources above the upper capital limit⁵ and who request the local authority to make the care and support arrangements on their behalf. This aspect is outside the scope of this report.

9. FINANCIAL IMPLICATIONS

9.1 Revenue Implications

- 9.1.1 As identified in the report the Care Act potentially has significant income implications for the Council. Currently, the Council is expecting to collect significant client contributions from Residential and Non-Residential services which it would not be able to cover due to the current significant financial pressures if it was unable to charge clients for these services.

9.2 Capital Implications

- 9.2.1 There are no capital implications contained in this report.

⁴ Final version of the Care and Support (Charging and Assessment of Resources) Regulations 2014 are expected to be published in October 2014.

⁵ The Upper Capital Limit is a limit set in the Regulations above which an adult is deemed as able to meet the full cost of their care and support.

9.3 Risks

9.3.1 The Care Act has significant service delivery implications that are not covered in this report. However, part of the mitigation of these risks is to ensure that the Council has sound and robust charging policies in place to support its Carer Act implementation programme.

Appendix 1

The current legal framework for charging for Care and Support is split between different legislation depending on whether services are provided in a registered Care Home setting or provided to adults in the community.

a) Charging for Care Home Accommodation (current):

For adults receiving care and support in a registered Care Home, the current National Assistance Act (1948) gives Local Authorities the Duty to charge the adult for this subject to a means test. The rules for charging and financial assessment for this type of accommodation are determined by the National Assistance (Assessment of Resources) Regulations 1992 (SI 1992/2977) and the Charging for Residential Accommodation Guide (CRAG) issued by the Department of Health under Section 7(1) of the Local Authority Social Services Act 1970. This includes guidelines on arranging and managing the Council's Deferred Payments Scheme.

b) Charging for temporary stays in care homes (e.g. respite) In the case of temporary stays in a care home (for example, for respite care), CRAG gives Local Authorities the discretion to charge an amount that is deemed by the authority as 'reasonable' for up to the first 8 weeks of care, without the need for a full financial assessment under CRAG. Reading Borough Council applies a 'standard minimum charge' for the first 4 weeks of a temporary stay in a care home without the need for a full financial assessment. The standard minimum charge is calculated in line with minimum state benefit income rates each April in order to ensure adults are not charged more than they could reasonably afford, for up to 4 weeks during a year. This allows for both planned and emergency respite to be financially accessible (for at least 4 weeks) and saves administration costs of carrying out full financial assessments for short temporary stays in care homes.

c) Charging for Care and Support provided in the community (i.e. non-residential):

For adults receiving care and support in the community (for example, in their own homes, or in supported living or shared lives settings), Section 17 of the current Health and Social Services and Social Security Adjudications Act 1983 (HASSASSA Act 1983) gives Local Authorities a discretionary power to charge adult recipients of non-residential services. Where this power is exercised, Local Authorities must follow the principles of the 'Fairer Charging Policies for Home Care and other non-residential Social Services Guidance for Councils with Social Services responsibilities' and 'Fairer Contributions Guidance 2010', both issued under Section 7 of the Local Authority Social Services Act 1970. Reading Borough Council developed and implemented a local 'Fairer Charging Policy' which was agreed by elected members in 2003, with revisions agreed by elected members in 2007 and 2010. Reading Borough Council's Fairer Charging Policy is consistent with the national Fairer Charging and Fairer Contributions guidance, applying the minimum Fairer Charging basic living allowances (as defined in the Fairer Charging Guidance) and allowances for mortgage/rent and Council Tax. Additionally, in order to further protect adults' income, Reading Borough Council also takes into account other housing costs such as home insurance, buildings insurance, life insurance (linked to mortgage), and disregards 10% of disability benefit income such as Attendance Allowance and Disability Living Allowance Care Component. Reading Borough Council considers any extra expenses due to disability in all assessments (not just for those people receiving a disability benefit) and carries out an

assessment of disability-related expenses using the examples given in the Fairer Charging Guidance. Where adults have capital or savings above the upper capital limit set in CRAG each year, those adults are charged full cost for their services⁶.

d) Carers - while the national Fairer Charging Guidance gave Local Authorities discretion to charge carers under Fairer Charging Policies for services provided to carers, many local authorities, including Reading Borough Council, chose not to financially assess Carers or levy charges on carers, when designing the local Fairer Charging Policy.

e) Choice of Accommodation and Top Up Payments:

Following the Local Authority Circular LAC(2004)20 which provided revised guidance on The National Assistance Act 1948 (Choice of Accommodation) Directions 1992, Reading Borough Council developed a Choice Policy, whereby adults wishing to move to a care home placement that was more expensive than the Council would usually expect to pay for that type of accommodation, despite there being a suitable vacancy at the Council's usual rate, may choose the higher cost place subject to certain conditions, including having either identified a Third Party who is willing and able to meet the additional cost, or themselves having a property and either accessing the 12-week property disregard or the Deferred Payments Scheme and having disregarded capital that they can afford to pay the top-up from. On completion of a satisfactory 'light touch' financial assessment of the third party that evidences ability to pay the top up, and a payment commitment in writing from the Third Party, a Third Party Top up is set up.

f) Services Provided Free in line with the Fairer Charging Guidance, Reading Borough Council provides care and support free in the following situations:

- Reablement services (Intermediate Care) - free for up to 6 weeks
- Community equipment and minor adaptations
- Sufferers of CJD
- Adults receiving services as part of an Aftercare Order through S117 of the Mental Health Act 1983

⁶ Some adults who were in receipt of services at the last revision of the Fairer Charging Policy continue to have their full cost charges phased in.

Appendix 2

A comparison between the existing Deferred Payment (DP) Scheme operated by Reading Borough Council and the new universal Deferred Payment Agreement is provided in the table below.

Current RBC policy	New Universal Deferred Payment Agreement (DPA)	Identification of changes and comments
DP can only be offered on registered properties		
DP can only be offered where someone has the legal power to agree (the person, their Power of Attorney or their Court Appointed Deputy		
DP cannot be offered if there are joint owners who will not agree to a legal charge.		
	No DPA can be offered when LA is unable to secure a charge	This in essence matches the first three points on the current RBC policy
	No DPA can be offered when the person wants a larger amount than they can provide security for	In effect this represents no change but makes it explicit
	No DPA can be offered if the property is uninsurable	In effect this is no change as the current agreement stipulates the property must be insured
A person may apply for a DP if their needs have been assessed as appropriately met in a care home.	A person may apply for a DPA if their needs have been assessed as appropriately met in a care home.	No change
DP can be offered to a person with a property who has insufficient income and other assets to meet the full cost of their care	Person has less than £23,250 in other assets	No change but capital limit set to increase in 2016/17
The person can fund their own top up from the property value, subject to an assessment of affordability	The person can use wealth tied up in their home to fund reasonable top-ups	No change

Applications are passed to Head of Service for approval Reasons for non-approval must be given		A process needs to be determined to formally record DPAs being agreed
Preference is given to applicants planning to sell their property, due to impact on Council cash flow	There is no provision for giving priority to those actively trying to sell	This represents a change to the current policy, in that if the person meets the criteria we must give them DPA
	LA is encouraged to offer DPA more widely to anyone they feel would benefit but do not fully meet the criteria	This is an extension to allow the LA to consider people who might not otherwise qualify
Formal valuations are not required unless there is reason to think the approximate value supplied is not correct	The LA must secure a formal valuation to establish the equity in the property	This represents a new responsibility for the LA
	From this valuation the LA must set an upper limit on the amount to be borrowed under DPA (the equity limit)	It is expected the Department of Health will prescribe a formula to calculate the equity limit, and officers need to calculate the maximum loan available from this
	When deciding on the DPA both the LA and the person should consider the sustainability of the arrangement This includes looking at: <ul style="list-style-type: none"> ➤ Likely period of the DPA ➤ The equity available ➤ Sustainability of contribution from savings ➤ Flexibility to meet future needs ➤ The period of time the person would be able to defer weekly costs 	This is a new task to be formally carried out by the LA
	The amount deferred should be reviewed on an	This is a new task to be formally carried out for all

	annual basis and checked against the upper limit as determined by the equity limit calculation	DPAs, previously this was done on ad-hoc basis when it appeared the deferred debt was bringing the person down to the capital limit
	Regular updates should be provided by the LA on fees deferred, interest and administration charges accrued, the total amount due and the equity left in the home	This is a new task to be carried out by the LA
	The LA can periodically reassess the value of the chosen security and adjust the equity limit and maximum loan accordingly	This is a new power which also brings a new task as the revised equity limit and loan amount will need to be communicated and used to amend the statement
The property must be adequately maintained and insured	We must tell the person if we intend to place conditions on how the property is maintained while the DPA is in place	
Interest is not charged during the person's lifetime and only starts to be charged from 56 days after the person's death	<p>Interest can be charged from the start at a rate no more than prescribed by the Department of Health</p> <p>The person must be informed before the agreement is made if interest will be charged</p> <p>Interest can continue to be charged after the upper limit (the maximum loan amount) has been reached and after death, up to the date the debt is cleared</p>	<p>This is a new power which needs the Council to decide whether to charge interest and if so at what rate</p> <p>Any decision to charge interest will affect the amount the Council can recover but will also have resource implications as interest charges may be reviewed regularly by the Department of Health and will need to be calculated regularly</p> <p>The decision will also need to determine the frequency of calculating interest⁷</p>

⁷ Current information suggests the final regulations will state that where interest is applied, it is to be compound interest. It is expected that a maximum interest rate will be set by the Dept of Health and that the maximum rate will be reviewed every 6 months.

<p>There is no admin charge but there is a charge which covers the cost of the legal charge at Land Registry</p>	<p>The LA can charge admin costs</p> <p>These must be set at a reasonable level, reflecting actual costs</p> <p>They can include:</p> <ul style="list-style-type: none"> ➤ Land Registry charges ➤ Postage, printing and phone calls ➤ Employment costs of those providing the service ➤ Costs of valuation and revaluation ➤ Costs of removal of charges ➤ Overheads 	<p>This is a new power which needs the Council to decide whether to charge admin costs</p> <p>This could allow the Council to fund the extra costs associated</p> <p>Any such costs must be publicly available</p>
<p>Failure to pay the contribution assessed from income and savings for 3 months may lead to termination of the Deferred Payment</p>		<p>There appears to be no equivalent sanction available under DPA</p>
<p>A contribution from income is calculated to be paid during the period of the DP</p> <p>This is the same as for any other CRAG client, allowing the standard weekly personal allowance plus costs associated with insurance and protection of the property</p>	<p>The LA may require a contribution from income but must not leave them with less than the disposable income allowance</p> <p>For a DPA this is £144 per week. The person may choose to contribute more</p>	<p>This represents a much higher weekly allowance than those without property</p> <p>It also means that the Council will collect less income during the period of the DPA and that the maximum value referred to above will be reached much more quickly than under the current policy</p>
<p>When it is clear the deferred payment amount owing has brought the net equity down to capital limits, the Council reassesses the financial assessment and contacts the person</p>	<p>The LA can give 30 days notice of ending the DPA, but needs to identify how their care costs can be met in future</p> <p>The examples given of when we can do this relate only to the DPA no</p>	<p>There is no provision in the draft guidance for termination in the event the person breaks the agreement by not paying their income contribution or not maintaining the property.</p>

	longer being appropriate because the person has reached their upper limit or a statutory disregard is now in place	
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Appendix 3 - DRAFT Property Issues Policy

READING BOROUGH COUNCIL
HOUSING & COMMUNITY CARE

PROPERTY MATTERS

POLICIES & PROCEDURES

DRAFT – AWAITING FULL REVIEW OF REGULATIONS

CONTENTS

Chapter 1. 12 Week Property Disregard

Chapter 2. Deferred Payment Agreements

Chapter 3. Interim Funding

Chapter 4. Discretionary Disregard of Property

Chapter 5. Abbreviations and Definitions

CHAPTER 1 - 12 WEEK PROPERTY DISREGARD

Contents:

1. Introduction
2. Application of the Property Disregard
3. Financial Contribution During the Period of the Disregard
4. The Effect on Disability Benefits

1. Introduction

- 1.1 The 12 week property disregard is a policy applying to people going into a care home for the first time, who, as a result of the ownership of their own home, are responsible for the full cost of their placement. It also applies to someone whose property was subject to either a statutory property disregard or a discretionary disregard but, due to a change of circumstances, now finds themselves responsible for the full cost. The purpose of the policy is to provide a breathing space to allow a long-term decision about the property to be made.

2. Application of the Property Disregard

- 2.1 When a person is admitted to a care home on a permanent basis, or when the person has been in the care home on a respite basis and their placement is made permanent, their financial interest in their property will be disregarded in the assessment of their financial contribution for the first 12 weeks. This mandatory disregard only applies to the service user's sole or main residence. It does not apply to any other property or land.
- 2.2 The disregard will also apply if the property, or the service user's beneficial interest in property, has been subject to a statutory disregard or a discretionary disregard and that disregard comes to an end. This could be due to the person for whom the disregard was given going into a care home, moving house or dying. In this event the property will be disregarded for the 12 weeks from the date that the previous statutory disregard applied.
- 2.3 If the person has more than the upper capital limit at the start of their placement in a care home it is deemed that they have the opportunity to make decisions about what to do with their property during the period they are able to fund themselves, unless this is less than 12 weeks. In this event they will be entitled to the remaining period of the 12 weeks from the start of their placement.

3. Financial Contribution During the Period of the Disregard

- 3.1** A financial contribution will be calculated in accordance with the provisions of the Council's Residential Charging Policy for the whole of the period of the property disregard.
- 3.2** This contribution will be based on all of the service user's financial circumstances excluding the value of the property disregarded. This will take account of their income and any savings or assets above the lower capital limit and leave the resident with a disposable income allowance.
- 3.3** This contribution is due for settlement at the time the invoices are raised.

4. The Effect on Disability Benefits

- 4.1** Disability benefits, in this case, covers Attendance Allowance, Disability Living Allowance (Care Component) and Personal Independence Payment (Daily Living Component).
- 4.2** These benefits continue to be payable to the service user for the first four weeks after being in a care environment. This includes hospital and care home. They cease to be payable after that period.
- 4.3** At the end of the property disregard period, provided the service user becomes responsible for the full cost, they are entitled to have their disability benefit restarted.

CHAPTER 2 - DEFERRED PAYMENT AGREEMENT

Contents:

1. Introduction
2. Background
3. Eligibility Criteria
4. Information for Service Users
5. The Application Process
6. Specific Property Issues
7. The Deferred Payment Agreement in Practice
8. Renting Out Property
9. Persons Lacking Capacity
10. Conditions Placed on Deferred Payment Agreements
11. Interest and Administration Charges
12. Annual Statements
13. Settlement of the Deferred Debt
14. Default Provisions
15. Appeals

1. Introduction

- 1.1 This document details the way in which the Council will apply the Deferred Payment Agreement scheme as established by the Care Act 2014 sections 34 - 36.
- 1.2 Deferred Payments is a scheme which is available to someone entering a care home on a permanent basis (i.e. their care has been assessed as best met in a care home) and who, because they own their own home or have a beneficial

interest in that home, is responsible for meeting the total cost of the placement.

- 1.3 Deferred Payments is not available to someone entering a care home on a permanent basis and who owns their own home but who has savings or other assets above the upper capital limit. In this case the person is considered able to fund their own placement without the need to involve the Council.
- 1.4 There is however a possible exception if the person's savings are only marginally above the upper capital limit. In this event the Council can, at its discretion, agree to a DPA.

2. Background

- 2.1 The Council's residential charging policy applies to all clients wishing to enter a deferred payment agreement.
- 2.2 The Care Act 2014 requires local authorities to operate a Deferred Payment Agreement (DPA) to allow people to defer the sale of their home where it is needed to fund care home fees.
- 2.3 A Legal Charge is registered against a property when someone other than the registered owner wants to have it legally acknowledged that they have a financial interest in the property. The Legal Charge in favour of the Council would need to be repaid on completion of the sale of the property so the Council can then arrange removal of the Legal Charge.
- 2.4 In each case where the Council agrees to a DPA, a suitable form of security will be required for the period of the service user's placement or until the sale of the property. The preferred option is for this to be a Legal Charge against the property. However alternative forms of security can be considered, including a solicitor's undertaking, a third party guarantor or assigning the proceeds of a suitable financial product, for example one or more life insurance policies.
- 2.5 If the DPA is to be secured by way of a Legal Charge and the property is jointly owned then all registered owners must confirm in writing their agreement to registration of the Legal Charge against the property, prior to the Council considering the application.
- 2.6 The Council has discretion over whether the DPA applies to any additional care fees (top-ups) arising through the resident's choice of accommodation.

3. Eligibility Criteria

- 3.1 The Deferred Payment Agreement can only be secured by way of a Legal Charge against the property if the property is correctly registered with Land Registry. Unless an alternative, acceptable form of security is being provided, then DPA cannot be offered if:
 - The property is unregistered;

- The property is registered but one or more registered party is unwilling or unable to give a legal agreement, e.g. because they have died intestate or because they no longer have mental capacity;
- The property is a mobile home where it is the land that is registered and not the mobile home; and
- The property is leasehold and restrictions in the lease prevent the Council from registering a legal charge.

3.2 The service user may apply to the Council for a DPA provided that:

- The individual has been assessed under the Care Act 2014 as having eligible needs that are appropriately met by placement within a registered care home;
- The service user is responsible for full fees (i.e. has capital of over capital limits) under the Council's residential charging policy;
- The service user has insufficient income and other assets, other than the value of their house or flat, to meet the full costs of their care;
- The service user does not wish to sell the property immediately or wishes to sell it but is unable to do so quickly enough to meet the full cost of their care;
- The service user owns a property, either all or part; and
- The value of the property is sufficient, together with other income and assets, to meet the criteria for self-funding and there is either no outstanding mortgage, OR there is a mortgage but the outstanding amount leaves sufficient value to meet the criteria for self-funding and the service user has sufficient resources to meet the mortgage payments as they fall due.

4. Information for Service Users

- 4.1 Local authorities are required to ensure that people who are considering entering residential/nursing home care are made aware of the DPA scheme.
- 4.2 This information will include details of interest charges and administration costs.
- 4.3 The information provided will also advise in general terms what alternative types of security will be accepted and any conditions likely to be attached.
- 4.4 Details can be found in the booklets "Meeting Your Care Home Costs" and "Property Issues" which Care Managers should issue to service users and/or their representatives.
- 4.5 People wishing to take advantage of the scheme should be advised to seek independent financial and legal advice, as stated in the leaflet on Property Issues.
- 4.6 The Council will also provide details of alternative types of security, other than a legal charge, which would be acceptable and the conditions attached to each alternative type of security.

- 4.7 The information will also provide an overview of the advantages and disadvantages of the DPA.

5. The Application Process

- 5.1 The Care Manager will check with the client and/or their representative whether there is a property involved and notify the FAB Team. The FAB Team will also carry out appropriate checks to identify potential applicants, including previous financial assessments and Land Registry searches.
- 5.2 The Care Manager will ensure that the FAB Team is notified of all clients who appear to be eligible for 12-week property disregard and DPA as soon as placement in a care home is identified as appropriate. This is likely in most cases to be before the care home placement starts. Notification should be made using Frameworki.
- 5.3 The FAB Team will write to all potential Applicants or their legal representatives inviting applications, giving a date by which the completed application should be returned and stating what evidence of the property value will be accepted. This date should be no later than six weeks from the date of placement in the care home. This letter will make clear that if the proposed security is a legal charge, a DPA cannot be agreed if Reading Borough Council are, for whatever reason, unable to get agreement from the owner(s) to a Legal Charge being placed.
- 5.4 On receipt of the completed application the FAB Team will carry out an assessment of the arrangements. This will include the reliability of the property valuation, the equity available (guidance awaited in final regulations), the likely period of the DPA and the sustainability of the Deferred Payment application.
- 5.5 The FAB Team will prepare a report for submission based on the assessment in 5.4 to the Head of Service and submit for approval through Frameworki.
- 5.6 The Head of Service will review the report from the FAB Team together with the completed application and decide whether the application meets criteria set out in the DPA policy. The decision must be made within two weeks from the date of referral from the FAB Team. If the application is refused the reason/s must be clearly recorded by the Head of Service and communicated to the person and/or their representative by the FAB Team.
- 5.7 Once the decision has been made by the Head of Service, the FAB Team will write to the client or their representative to advise of the decision. Any conditions attached to the DPA must also be confirmed in writing, for example around any requirement for insurance of the property.
- 5.8 This letter will also confirm any administration charges and interest to be added to the deferred debt.

- 5.9 Information will also be provided about annual statements and when they will be produced. (See Section 12 below).
- 5.10 This letter constitutes an offer to the person and will state the date from which the DPA is proposed to start. It will be produced in duplicate, one copy to be signed by the person, or their representative, to be returned as their acceptance of the DPA offer. The other copy is to be retained by the person or their representative.

6. Specific Property Issues

- 6.1 **Unregistered Property** - If the property is unregistered the Council is unable to accept it as security. The applicant, if wishing to continue to apply for Deferred Payments must arrange for the property to be registered at the Land Registry and to meet the costs of registration.
- 6.2 **Leasehold Property** - Leasehold property is eligible for the DPA. Issues sometimes arise with the head landlord/ultimate freehold owner. Restrictions are sometimes placed on the title and the agreement of the head landlord/ultimate freehold owner is needed to arrange the placing of the Legal Charge. In these cases it is the applicant's responsibility to arrange for any consent needed and to meet any costs involved. In the event that the consent is not forthcoming then the Council cannot accept the property as security.
- 6.3 **Shared Ownership** - As with leasehold property the applicant is responsible for arranging for the consent of the other co-owners. Proof of the percentage owned by the applicant and its potential value will also be required.
- 6.4 **Equity Release** - Where part of the value of the property has been realised by way of equity release, proof of the applicant's residual equity in the property will be required.
- 6.5 **Tenants in Common** - As with any jointly owned property, a DPA can only be approved if all co-owners agree to the legal charge. The Council in such cases will have, as a maximum legal charge amount, the applicant's share in the total value.
- 6.6 **Types of Security** - The Council will normally expect the DPA to be secured by a legal charge against the property. However in certain circumstances other forms of security will be considered. These are:
- A solicitor's undertaking. This is a binding agreement where the solicitor undertakes to settle the charges from the person's money, usually from the proceeds of sale of the property.
 - A third party guarantor. This is where a third party, usually a family member, agrees to pay the charges due. This will require a binding agreement to be signed by the third party.
 - A valuable possession. For this to be acceptable to the Council, proof of its value will be required and a binding form of agreement that in the event of failure to settle the charges due this item or items become the property of Reading Borough Council.

7. The Deferred Payment Agreement in Practice

- 7.1 An application form must be completed (**Annex 1**), signed by the Applicant or their representative and then sent to FAB Team within six weeks of admission to the care home on a permanent basis. Any period in respite care does not count towards this six-week period. This time limit is not affected if the client is placed privately in a care home and then subsequently approved for funding, for example because there is general agreement with the family that a care home placement is needed and the family decide to place because there is a vacancy in the preferred home.

If the person has been in the care home on a self-funding basis (because their income or capital are above the specified limits) then an application should be submitted as soon as possible and no later than six weeks after the need to apply for DPA has been identified either by the Council or by the person or their representative.

If an alternative form of security to a legal charge is being offered this should be stated when submitting the application.

- 7.2 The FAB Team will request the Legal Team carry out a land registry search as soon as they become aware of the case.
- 7.3 The Legal Section will carry out a land registry search and report back to the FAB Team within one week.
- 7.4 The FAB Team will be responsible for checking the application form and following up on any queries that may arise, including ensuring a proper valuation has been made. The FAB Team will then get together all the information related to the Deferred Payment application, including intentions around the property, the equity available and the assessment of whether the DPA is sustainable. This assessment will address, inter alia, the likely period of the DPA, the equity available and the period of time the person would be able to defer the weekly costs.
- 7.5 The FAB Team will then complete the Deferred Payment Agreement for approval via Frameworki for submission to the Head of Service. This should be done as soon as possible after receipt of the application.
- 7.6 The Head of Service will then consider the application to verify that the proposed DPA is in line with the policy. If a form of security other than a legal charge is being offered, the Head of Service will also consider whether this is an acceptable form of security. Advice from the Legal Team may be sought before taking this decision.
- 7.7 If the Head of Service approves the application the FAB Team will write to the Applicant to advise them of the approval. This notification will also formally advise the invoicing arrangements and the amount which is to be paid on an on-going basis (the assessed contribution). In addition the notification will warn that failure to maintain these on-going payments could result in the

Deferred Payment Agreement being terminated. (See 14.4 below). The notification letter will also state that, where there are joint owners they must all consent to the placing of a legal charge against the property and, that if any of the joint owners do anything to prevent the legal charge being placed this will result in the offer of the DPA being withdrawn and the Council will immediately notify the care provider that it is ceasing to be involved in the placement.

The FAB Team will also notify the Legal Department, Personal Budget Support Team and Care Manager that the application has been approved.

- 7.8 If the Head of Service refuses the application, the FAB Team will write to the Applicant no later than the end of the eighth week after admission to the Care Home to advise that the application has been turned down and that from the end of the 12-week disregard period they will be required to make their own arrangements. The letter from FAB Team will explain the reasons for the decision and advise about the appeals and complaints procedures. The FAB Team will notify Contracts so they can notify the care home of the termination of the Council's involvement.
- 7.9 Subject to the satisfactory outcome of the ownership search and approval by Head of Service, the FAB Team will instruct the Legal Department to prepare the DPA and Legal Charge and supply any outstanding information, including desired date of commencement of the DPA.
- 7.10 The Legal Department will, on receipt of instructions and subject to having all the necessary information and documents to proceed with the case, be responsible for the following duties:
 - a) Where the property is owned by the resident and is not being sold, the Legal Department will contact the person dealing with the application. This could be the service user or their Power of Attorney/Court Appointed Deputy. The Legal Department will send out the Deferred Payment Agreement and Legal Charge for signature.
 - b) Where the property is owned jointly by the resident and other party(ies) who have agreed to enter into a legal charge, the Legal Department will contact the service user or their Power of Attorney/Deputy and send out the Deferred Payment Agreement and Legal Charge for signature. If the parties do not sign and return the agreement within 28 days then the FAB Team will liaise with the Contracts Team in order to cease funding of the placement.
 - c) Where the property is solely owned by the resident but is on the market for sale, the Legal Department will contact the service user or their Power of Attorney/Deputy or their solicitors regarding the property, to establish what the current situation is with regards to the property. Once the Legal Department have received this information they will then advise on the best course of action, and in the event that a Deferred Payment Agreement and Legal Charge cannot be entered into, the Legal Department will inform the FAB Team who will need to decide whether funding is to cease or continue. As soon as this decision is made the FAB Team will provide amended instructions to the Legal Department.

- d) In the case of registered properties the Legal Department will send the Deferred Payment Agreement and Legal Charge to the Land Registry for registration and will be responsible for its removal once settlement is received and for all arrangements related to securing the Council's interest. The Legal Department are also responsible for dealing with the Applicant's legal advisers.
- e) The Applicant will be responsible for paying the Council's Land Registry fees for registration of the Legal Charge). These fees form part of the administration costs as dealt with in Section 11 below.

7.11 At the start of the DPA the FAB Team will open up an account to record the following:

- The valuation of the property and the date of this valuation
- The assessed weekly contribution from income and savings
- Administration costs and interest charges to be applied

7.12 RBC will require the property to be revalued every year. Any cost of revaluation will be met by the person.

8. Renting Out Property

8.1 The client should be advised to seek independent advice if they are considering renting out their property while there is a DPA in place. It should be stressed that this is a decision for the service user and their family.

8.2 If the property is already let, the individual or their representative should be urged to seek legal advice before proceeding with the DPA to confirm length of tenancy and termination clauses.

8.3 Service users applying to access the DPA should be advised that any proposed letting arrangement should be agreed by the Council. The FAB team will be responsible for collecting the details and submitting to the Head of Service.

8.4 The Council will take the net rental income into account as part of the person's assessed weekly contribution. The net rental income will be after agent's fees, any liability to taxation and reasonable maintenance expenses.

8.5 The property must be adequately maintained and insured to the Council's satisfaction.

9. Persons lacking capacity

9.1 If the service user lacks the mental capacity to give informed consent to a legally binding agreement, it means they are not themselves capable of entering into a Deferred Payment Agreement. In these circumstances if someone else has the legal authority to act for them, that person can apply on their behalf.

- 9.2 If someone has been appointed to legally act on behalf of the service user, they do not themselves become the Applicant for the purposes of the DPA. The Applicant will still be the service user. To be able to legally act on behalf of the service user, the appointed person must be one of the following:
- a Court Appointed Deputy
 - the holder of a registered Enduring Power of Attorney
 - the holder of a registered Lasting Power of Attorney

The power of attorney must include authority to manage the person's property and financial affairs.

- 9.3 If no-one has been appointed, attempts should be made to identify someone who is willing and able to apply for Deputyship or to act as the person's attorney under LPA (subject to the individual having capacity to confer an LPA). As this process will take time, if the service-user has been or is going to be placed by the Council, consideration must be given to finding an alternative form of security to protect the Council's interest. However it is recognised that this may not always be possible and any application where it is not must be referred to the Head of Service for a decision. If it is agreed to arrange the placement, as soon as someone is made a Deputy the Council will expect a formal DPA to be completed as soon as practicable.

10. Conditions Placed on Deferred Payment Agreements

- 10.1 No DPA can be agreed by the Council if no suitable security is available or the person wishes to defer a larger amount than (in the Council's assessment as set out above) they can provide security for.
- 10.2 Neither can a DPA be agreed by the Council if the property cannot be insured.
- 10.3 The Council will require prompt settlement of the assessed contribution during the lifetime of the DPA. (See 14.3 below which deals with the Council's position in the event these contributions are not settled promptly).
- 10.4 The Council will require the property to be properly maintained and insured. If this means that some of the person's savings are reasonably required to be used to bring the property up to a suitable standard of maintenance, the Council will not withhold its agreement to this use of capital unless there is evidence the level of cost is deemed unreasonable.
- 10.5 When applying for DPA the person, or their representative, must supply a proper valuation of the property or their share of it.
- 10.6 The Council will require periodic review of this valuation (see 7.12 above) to ensure the level of deferred debt stays within the equity available.
- 10.7 Any changes which affect, or may affect, the DPA or the person's level of capital must be notified to the Council's FAB Team without delay. The following are examples but are not comprehensive:

- If the person inherits a sum of money
- If structural problems are discovered, e.g. subsidence
- Should a close family member move into or out of the property

11. Interest & Administration Charges

11.1 Interest will be added to the amount deferred at the rate of X% from the start of the DPA. (The rate of interest is awaited in the final regulations).

11.2 The following charges will be added to the amount deferred:

- Land Registry charges - one off charge of £350
- Office expenses (postage, printing, telephone etc) - one off charge of £x
- Employment costs of RBC staff involved in arranging DPAs - one off charge of £x
- Employment costs of RBC staff completing annual statements - annual charge of £x
- Cost of removing legal charge - actual cost incurred at the date charge is removed

These charges will be subject to annual review to take account of inflation.

12. Annual Statements

12.1 The DPA starts to run from the date notified (see 5.10 above).

12.2 Annual statements will be produced by RBC's FAB Team as at each and every annual anniversary of this date. These statements will be completed within 6 weeks of this anniversary. Two copies of the statement will be sent to the service user or their representative (Power of Attorney or Deputy).

12.3 The annual statement will show the following figures:

- The original property valuation
- The equity available or maximum amount which can be borrowed under DPA
- Any revised property valuation as per 7.12 above
- The revised equity available resulting from this change in the property value
- The total cost of care for the year to the statement date, split between assessed contribution and deferred debt
- Payments received in settlement of the assessed contribution
- The amount of any interest charges and administration costs added to the debt
- The total deferred debt outstanding including these interest and administration costs
- Balance of equity still available (after deducting the amount of total deferred debt)
- Approximate period this equity is expected to last

12.4 The service user or their representative will be expected to check this statement and sign and return one copy to acknowledge that the statement is, to the best of their knowledge, correct and retain one copy. If a signed copy is not returned within four weeks the FAB Team will write to state that, as no correction has been notified, the statement will be recorded as correct.

13. Settlement of the Deferred Debt

13.1 If the service user has placed the property for sale on admission to long-term care, or chooses to sell at a subsequent date the accrued debt will be due for repayment upon the sale, whereupon the Legal Team will apply to remove the charge on payment of the outstanding monies.

13.2 In this event the DPA will be terminated and the service user may become self-funding, depending on the balance of funds available after clearing the charge.

13.3 The FAB Team will be responsible for calculating the accrued debt and notifying the Legal Team.

13.4 If the property has not been sold at the date of the service user's death the FAB Team will be responsible for contacting the executor, if known, no less than 2 weeks after the person's death and no more than 4 weeks after. If the executor is not known and if the service user has identified a third party to help RBC reclaim the amount deferred, the FAB Team will contact that third party within the same timescale. If neither is known then the person who was acting as their representative should be contacted.

13.5 When making contact as in 13.4, the FAB Team will notify the amount outstanding and how this is made up and whether any further charges may accrue, for example further interest.

13.6 Should the executor or administrator of the estate decide to settle the debt without, or before, selling the property, RBC will accept such settlement and then remove the legal charge or release any alternative security provided.

14. Default Provisions

14.1 The Deferred Payment Agreement is a contract between RBC and the Applicant. RBC will agree to pay the full cost of the placement in the care home and the Applicant will either agree to allow a Legal Charge to be placed, or provide sufficient acceptable security. This is to ensure that RBC can recover its outlay on behalf of the service user, while their savings and assets, net of the level of deferred contribution, are greater than the upper capital limit.

14.2 In addition the Applicant also agrees to settle the assessed contribution in a timely way. RBC will submit regular invoices for this purpose.

14.3 Failure to pay the assessed contribution for three months may lead to the DPA being terminated. RBC will look at each case on its own facts and will not

apply this clause if there are genuine reasons for non-payment, e.g. difficulty in accessing bank accounts, and will agree an alternative timescale. RBC will give 30 days' notice of intention to apply this clause explaining how the person's care needs should be paid for from that date.

- 14.4 RBC will also give 30 days' notice in the event that the equity available is no longer sufficient to fund the person's care. In this case RBC will offer to contract with a suitable care home on the service user's behalf and will attempt to secure the Council's usual rate and will reassess the financial contribution due.
- 14.5 Should the property for which the DPA was arranged become occupied by a relative for whom a statutory disregard may apply RBC will establish the reasons behind this change and decide whether it is appropriate to allow the property to be disregarded. If a disregard is agreed RBC will write to give formal notice of termination of the DPA, confirming the Deferred Debt outstanding.
- 14.6 RBC will also decide, in the event that it judges that the property is not being properly maintained and/or insured, whether to terminate the DPA. In this event RBC will give 30 days' notice and explaining how the person's care needs should be paid for from that date. During this 30 day period the person may, if they believe the Council has acted unfairly, may appeal to the Head of Service. Such appeal should either demonstrate why the insurance or state of maintenance are in fact satisfactory or what steps are being taken to remedy the failing(s).

15. Appeals

- 15.1 Where the service user or their personal representative disagrees with the decision they have the right to request a review of the decision. The review will be carried out by a different Head of Service.
- 15.2 If the person wishes to appeal they should submit any additional evidence with their appeal.

Chapter 3 - Interim Funding

Contents:

1. Introduction
2. Background
3. Eligibility Criteria
4. Information for Service Users
5. The Application Process
6. Interim Funding in Practice
7. Conditions Placed on Interim Funding
8. Interest and Administration Charges
9. Annual Statements
10. Conversion to Deferred Payment Agreement
11. Default Provisions

1. Introduction

- 1.1 The Deferred Payment Agreement is described in Chapter 2. Paragraph 9.1 explains that the Council can only agree to a DPA if the person has capacity or, if they lack capacity, that someone has the legal authority to act on their behalf. It is however recognised that there will be cases where the person entering a care home lacks mental capacity but has no-one with legal authority to act for them and no other acceptable form of security is available.

- 1.2 The Council accepts that it has a duty of care to such people, but also has a duty to protect the public purse.
- 1.3 The Interim Funding (IF) Policy is in place to provide a framework whereby this balance can be achieved. As such, and because it is a short-term substitute for DPA, it will look very similar to Chapter 2 - Deferred Payment Agreement. IF is not intended to take the place of a longer-term funding arrangement.

2. Background

- 2.1 The Council's residential charging policy includes provision that if the person owns their own home and no disregard applies, either statutory or discretionary, then the value of their interest in that property will be included in any financial assessment. This will often mean the person is responsible for the full cost and, if it is not possible to agree a DPA, then the Council can refuse to take responsibility and leave the person to make their own arrangements.
- 2.2 There will however be times when duty of care to the person will override this.
- 2.3 In these cases the Council will be prepared to consider an Interim Funding Agreement which will be similar to a DPA. This may also cover cases where the person has savings above the upper capital limit but no-one can legally access them to pay for their care and a private arrangement with the care home is not possible.
- 2.4 The circumstances where the Council will consider Interim Funding cannot be set out in a comprehensive list as there is the possibility of a situation arising for the first time, but examples of the type of situation where IF can be considered are:
 - Sudden loss of mental capacity and an application to become Court Appointed Deputy is being made.
 - The person appointed as Lasting Power of Attorney or Enduring Power of Attorney is not able to act. This could be because that person has died or themselves lost mental capacity and that someone else is applying to become a Deputy.
 - The property is jointly owned but the other owner is unable to agree to a legal charge. This could be because they have lost mental capacity. Someone is applying to become a Deputy for this person.
 - The property is unregistered but steps are being taken to arrange registration.

3. Eligibility Criteria

- 3.1 IF can only be considered if DPA is definitely not available or suitable. If suitable alternative security is available, e.g. third party guarantor, then this must be followed up first.

- 3.2 IF will normally only be considered if the property would otherwise have led to a DPA, with the exception, as in 2.4 above, of unregistered property.
- 3.3 The service user, or someone acting on their behalf, may apply to the Council for IF provided that:
- The individual has been assessed under the Care Act 2014 as having eligible needs that are appropriately met by placement within a registered care home.
 - The service user is responsible for full fees (i.e. has capital of over capital limits) under the Council's residential charging policy.
 - The service user has insufficient income and other assets, other than the value of their house or flat, to meet the full costs of their care.
 - The service user owns a property, either all or part.
 - The value of the property is sufficient, together with other income and assets, to meet the criteria for self-funding and there is either no outstanding mortgage, OR there is a mortgage but the outstanding amount leaves sufficient value to meet the criteria for self-funding and the service user has sufficient resources to meet the mortgage payments as they fall due.

4. Information for Service Users

- 4.1 Information will be provided detailing interest charges and administration costs.
- 4.2 The information provided will also advise in general terms what alternative types of security will be accepted and any conditions likely to be attached.
- 4.3. Details can be found in the booklets "Meeting Your Care Home Costs" and "Property Issues" which Care Managers should issue to service users and/or their representatives.
- 4.4 People wishing to take advantage of the IF scheme should be advised to seek independent financial and legal advice, as stated in the leaflet on Property Issues.
- 4.5 The information will also provide an overview of the advantages and disadvantages of the IF.

5. The Application Process

- 5.1 Having identified that the person going into a care home has a property, or a beneficial interest in a property, and that the person not only lacks capacity but has no-one with the legal authority to represent them, the FAB Team will take the lead in gathering all the relevant information for submission to Head of Service.
- 5.2 The Care Manager should take steps to identify someone who can take responsibility for becoming the legal representative (either Lasting Power of Attorney or Court Appointed Deputy) and pass this information to the FAB Team.

- 5.3 If the Care Manager is unable to find a suitable person known to the service user then a referral will need to be made to the Council's Deputy Team or to a suitable outside organisation, e.g. Age UK.
- 5.4 The FAB Team will write to the person or organisation identified to confirm what steps are being taken to acquire the legal power to act and what plans and arrangements they have for the property.
- 5.5 The FAB Team will prepare a report for submission based on the information collected to the Head of Service and submit for approval through Frameworki.
- 5.6 The Head of Service will review the report from the FAB Team together with any supporting correspondence and decide whether the proposed arrangements are acceptable and provide sufficient guarantee to protect the Council's position. The decision must be made within two weeks from the date of referral from the FAB Team. If the application is refused the reason/s must be clearly recorded by the Head of Service and communicated to the person and/or their representative by the FAB Team.
- 5.7 Once the decision has been made by the Head of Service, the FAB Team will write to the client or their representative to advise of the decision. Any conditions attached to the IF must also be confirmed in writing, for example around any requirement for insurance of the property.
- 5.8 This letter will also confirm any administration charges and interest to be added to the deferred debt.
- 5.9 Information will also be provided about annual statements and when they will be produced. (See Section 9 below).

6. Interim Funding in Practice

- 6.1 An application form must be completed (**Annex 1**), signed by the person acting for the service user and then sent to FAB Team as soon as possible. This application must be accompanied with an explanation of how it is planned to acquire the legal power to act on behalf of the service user. The person must also complete an undertaking to keep the Council informed of progress and to either settle outstanding charges or agree to a legal charge, or a combination of these if appropriate, once the legal power to act is in place.
- 6.2 The FAB Team will request the Legal Team to carry out a land registry search as soon as they become aware of the case.
- 6.3 The Legal Section will carry out a land registry search and report back to the FAB Team within one week.
- 6.4 The FAB Team will be responsible for checking the application form and following up on any queries that may arise, including ensuring a reliable valuation has been carried out and that the proposed arrangements to acquire the legal authority to act appear reasonable. The FAB Team will then get together all the information related to the Interim Funding application,

including intentions around the property, the equity available and the assessment of whether the IF is sustainable. This assessment will address, inter alia, the likely period of the IF, the equity available and the period of time the person would be able to defer the weekly costs and the anticipated timescale before conversion to DPA.

- 6.5 The FAB Team will then complete a proposed Interim Funding case for approval via Frameworki for submission to the Head of Service. This should be done as soon as possible after receipt of the application.
- 6.6 The Head of Service will then consider the application to verify that the proposed IF and the plans to be able to legally act do not place the Council at undue risk, while taking account of the Council's responsibility to safeguard the individual in need of care.
- 6.7 If the Head of Service approves the application the FAB Team will write to the person acting on behalf of the service user to advise them of the approval. This notification will also formally advise the invoicing arrangements. The person will be advised that if they have not already done so they should apply to the DWP to become appointee and that the part of the charge relating to state benefits should be paid on an on-going basis. In addition the notification will warn that failure to maintain these on-going payments could result in the Interim Funding being terminated (see below). The notification letter will also state that, where there are joint owners they must all consent to the placing of a legal charge against the property and, that if any of the joint owners do anything to prevent the legal charge being placed this will result in the offer of IF being withdrawn and the Council will immediately notify the care provider that it is ceasing to be involved in the placement.

The FAB Team will also notify the Legal Department, Personal Budget Support Team and Care Manager that the application has been approved.

- 6.8 If the Head of Service refuses the application, the FAB Team will write to the person acting on behalf of service user within 5 working days to advise that the application has been turned down and advising the date from which the Council will cease to be involved or confirming that the Council will have no involvement if appropriate. The letter from the FAB Team will explain the reasons for the decision and advise about the complaints procedure. The FAB Team will notify Contracts so they can notify the care home of the termination of the Council's involvement.
- 6.9 The FAB Team will carry out periodic checks on each IF case and if no update has been received for 3 months the FAB Team will write to request an update.
- 6.10 Once the person who is looking to obtain the legal power to act provides evidence to the Council that they now have the appropriate power, the FAB Team will write to notify that the Council now requires the IF to be changed to become a DPA, with the legal protection that affords to the Council.

7. Conditions Placed on Interim Funding

Interim funding is provided subject to the following conditions:

- 7.1 The person acting for the individual entering the care home will take all reasonable steps to acquire the legal authority to act. This includes applying to the DWP to become appointee.
- 7.2 The portion of the charge relating to state benefits will be paid promptly, once appointeeship is in place.
- 7.3 Once legal power to act is arranged, the IF will be converted to a DPA.

8. Interest and Administration Charges

- 8.1 These will be exactly the same as for DPA. See paragraph 11 of the Deferred Payment Agreement Policy.

9. Annual Statements

- 9.1 The DPA starts to run from the start date notified (see 5 above).
- 9.2 Annual statements will be produced by RBC's FAB Team within 6 weeks of each anniversary of the start date. Two copies of the statement will be sent to the service user's representative.
- 9.3 The annual statement will show the following figures:
 - The original property valuation.
 - The equity available or maximum amount which can be borrowed under IF.
 - Any revised property valuation.
 - The revised equity available resulting from any change in the property value.
 - The total cost of care for the year to the statement date, split between assessed contribution and deferred debt.
 - Payments received in settlement of the assessed contribution.
 - The amount of any interest charges and administration costs added to the debt.
 - The total deferred debt outstanding including these interest and administration costs.
 - Balance of equity still available (LTV less amount of total deferred debt).
 - Approximate period this equity is expected to last.
- 9.4 The service user's representative will be expected to check this statement and sign and return one copy to acknowledge that the statement is, to the best of their knowledge, correct. If such acknowledgement (or any correction to the statement) is not received within 21 days of the date of the statement, the representative will be deemed to have accepted it as correct.

10. Conversion to Deferred Payment Agreement

- 10.1 Once the person acting has obtained the power to act on behalf of the service user, usually by being appointed a Deputy, they will immediately notify the Council's FAB Team and provide evidence accordingly.
- 10.2 The FAB Team will then start the process of converting the IF to a DPA.
- 10.3 If the person acting is now able to access sufficient funds on the service user's behalf to settle the outstanding debt then they should arrange to do so without delay.

11. Default Provisions

- 11.1 If the Council discovers that the Court of Protection has approved the appointment of a Deputy and the Deputy has not contacted the Council to let them know, the Council may decide to terminate the Interim Funding immediately and seek recovery of the care costs incurred, plus any interest and administrative costs, through the Courts.
- 11.2 If the person acting does not settle the amounts it is agreed they can access, for example state benefits in the role of appointee, without good reason, the Council may consider ending the Interim Funding.
- 11.3 In the event the equity available is no longer sufficient to fund the person's care, the Council will give 30 days' notice of ending the IF. In this case RBC will offer to contract with a suitable care home on the person's behalf and will attempt to secure the Council's usual rate. The Council will also reassess the financial contribution due.

Chapter 4 - Discretionary Disregard of Property

CONTENTS

1. Introduction
2. Background
3. Factors to be considered
4. Decision Process
5. Appeals

1. Introduction

- 1.1 This outlines the Council's policy and procedures regarding the application of Discretionary Property Disregards for Residential Charging.

2. Background

- 2.1 The Council's residential charging policy applies to all clients wishing to enter a registered care home.
- 2.2 The Care Act 2014 sets out a number of situations where any property the person owns or has a beneficial interest in, must be disregarded. There may be other circumstances where the Council considers it appropriate to disregard this interest in property, even though not specified in Regulations. This is Discretionary Disregard.
- 2.3 The Council has to balance the use of this discretion with the need to ensure that residents with assets are not maintained at public expense.
- 2.4 Where the Council is being asked to consider a discretionary disregard because the property is being occupied consideration will be given to the intention behind the occupation of the premises by the third party. The timing of the move into the property by the third party will also be relevant.

3. Factors to be considered

- 3.1 In considering whether to disregard the service user's property, the following factors will be taken into account along with consideration of the Council's financial resources. The weight placed against each will depend on the individual circumstances and actions taken:
 - What is the nature and closeness of the relationship between the person remaining in the property and the service user?
 - Has the person cared for the service user and for how long? If so, what is the level and nature of the care provided by the person?
 - Has any care been provided by others? If so what is their relationship

- to the service user and what is the level and nature of that care?
- How long has the person lived in the property?
- Where did the person reside (live as their main or usual place of residence) before moving in to the property and what has happened to their former accommodation and any proceeds of sale?
- What was the main reason for the person to move into the service user's home? Were there any other factors affecting the decision to move into the service user's home?
- What is the age, employment status and financial circumstances of the person?
- When did the service user first have identified care needs?
- When was residential care first considered as an option for the service user?
- Has the person made any financial contributions towards the property? If so what are they? For instance has he/she contributed to the mortgage, home improvements, household maintenance? Was there a tenancy? What is the level of any contribution, over what period and is there any documentary evidence?

4. Decision Process

- 4.1 The FAB Team will be responsible for gathering relevant information for all potential discretionary disregard cases. This will include liaising with the Social Care Worker and their ATM over the details required. In cases where the level of information is limited and/or details are unclear it will be referred to the Team Manager. The Team Manager will review the details and consider appropriate steps to take, including discussion with the Locality Manager.
- 4.2 Once all the information has been gathered it will be referred to the Head of Service for a decision.
- 4.3 The Head of Service will consider all the facts of the case and decide, on the merits of the case, whether to agree to a disregard of the property. In cases of difficulty referral to the council's legal advisers will be made for advice. This consideration and decision will be carried out within 5 working days of the case being submitted unless there is a delay due to awaiting legal advice.
- 4.4 If the application for discretionary disregard is turned down reasons must be given. The FAB Team will be responsible for notifying the service user or their financial representative of the outcome.

5. Appeals Process

- 5.1 Where the service user or their personal representative disagrees with the decision they have the right to request a review of the decision. The review will be carried out by a different Head of Service.
- 5.2 If the person wishes to appeal they should submit any additional evidence with their appeal.

Chapter 5 - Abbreviations and Definitions

- DPA - Deferred Payment Agreement is the agreement that the Applicant is required to enter into in accordance with Sections 34 - 36 of the Care Act 2014.
- Residential Charging Policy is the policy agreed by Reading Borough Council for charging people in care homes, both residential and nursing.
- CA - The Care Act 2014.
- Deferred Contribution - the difference between the cost of placement and the weekly assessed contribution.
- Weekly assessed contribution - the amount that is assessed to be paid on an on-going basis, as calculated in accordance with the Residential Charging Policy and taking into account all the financial details with the exception of the property (the person's only or main home).
- Service User - the person who is applying, or on whose behalf application is being made, to the Council for support with meeting their care needs.
- Applicant - the service user or someone with legal authority to act on their behalf in connection with the DPA.
- Property - for the purpose of these policies the term "Property" means that property (flat, house, mobile home etc) which was the service user's sole or main residence prior to admission to a care home and in which they have a beneficial interest.
- LTV - Loan to Value is the proportion of the property value which it is considered should be available to borrow against.
- FAB Team - Financial Assessment & Benefits Team.
- The Council - Reading Borough Council.
- Legal charge - the charge attached to the DPA and registered against the service user's property to protect the Council's interest.
- Solicitor's Undertaking - a binding undertaking from the applicant's solicitor to pay the Council's outstanding debt, in respect of the cost of meeting the person's social care needs, from the proceeds of the sale of the property.
- Third Party Guarantor - a person other than the service user who guarantees to meet the service user's outstanding costs for care. This person will enter into a binding agreement with the Council.
- Statutory Property Disregard - a property, as defined above in "Abbreviations and Definitions", will be disregarded if it continues to be occupied by the service user's spouse or partner, any relative over 60, a disabled relative regardless of age or a child of the service user aged under 18. This disregard will end if the property ceases to be occupied by the person who qualified for the statutory disregard.
- Respite care - a period of time when the service user is provided with care, in a care home or otherwise, due to the absence of their carer(s) or to provide a break for their carer(s).
- Capital limits - amounts as determined from time to time by the Government. The lower capital limit is an amount which the Council cannot take into the financial assessment. The upper capital limit is the figure above which the service user is responsible for the full cost of their care.
- IF - Interim Funding is an arrangement similar to DPA but where no-one has the legal power to agree to a legal charge or no-one is able to provide a suitable alternative form of security.

DRAFT Appendix 4

Background:

The Care Act combines for the first time, the framework for financial assessment for care in registered care homes and in settings outside of a care home (for example care and support receiving in a person's own home, in extra care housing, in supported living arrangements or shared lives arrangements). This allows Councils the opportunity to reconsider approaches to charging for temporary stays in residential care homes (for example, to receive respite care).

The following scenarios are to support the information in section 4.2.3 of the report, to outline the impact for individuals between the current charging policy⁸ for temporary and respite stays, and the options considered.

Example 1. 65 year old woman, receives a Personal Budget of £100.00 per week to meet her ongoing weekly care needs and £1400 per year towards respite care (from a carer's assessment carried out with her daughter). She uses her Personal Budget allocation to pay for a carer each weekday morning, and uses her respite allocation to meet her care needs while her daughter is away on holiday. Her daughter meets her other care and support needs. She has had a Fairer Charging financial assessment carried out showing she is NIL CHARGE for her ongoing weekly care and support.

Venue of respite	Charge under existing policy	Charge under recommended Policy	Impact on service user
In a Care Home	£77.61 per week	Nil (apply Fairer Charging outcome)	Pay less (£77.61 per week LESS)
At home with paid carers	Nil (Fairer Charging)	Nil (Fairer Charging)	No difference

Example 2. An 80 year old man, receives a Personal Budget of £130.00 per week to meet his ongoing weekly care needs and £1400 per year towards respite care (from a carer's assessment carried out with his wife). He uses his Personal Budget allocation to pay for a carer each morning, and uses his respite allocation to meet his care needs while his wife has a break from caring. He has had a Fairer Charging financial assessment carried out showing he is assessed to pay £52.47 per week for his ongoing weekly care and support.

Venue of respite	Charge under existing policy	Charge under recommended Policy	Impact on service user
In a Care Home	£77.61 per week	£52.47 per week (apply Fairer Charging outcome)	Pay less (£25.14 per week LESS)
At home with paid carers	£52.47 per week (Fairer Charging)	£52.47 per week (Fairer Charging)	No difference

⁸ The current charges for temporary and respite stays in registered care homes are dependent on age and linked to minimum benefit entitlements: aged 18-24 yrs: £32.25 per week; age 25-63yrs: £40.19 per week; aged over 63: £77.61 per week.

Example 3. An 84 year old woman, receives a Personal Budget of £110.00 per week to meet her ongoing weekly care needs and £1400 per year towards respite care (from a carer’s assessment carried out with her husband). She uses her Personal Budget allocation to pay for a carer each morning, and uses her respite allocation to meet her care needs while her husband has a break from caring. She has had a Fairer Charging financial assessment carried out showing she is assessed to pay the full cost of ongoing care and support due to savings and investments being over the upper capital limit.

Venue of respite	Charge under existing policy	Charge under recommended Policy	Impact on service user
In a Care Home	£77.61 per week	FULL COST (apply Fairer Charging outcome)	<i>Pay more based on cost of service</i>
At home with paid carers	FULL COST (Fairer Charging)	FULL COST (Fairer Charging)	<i>No difference</i>

Example 4. A 29 year old man living with his mother receives a Personal Budget of £70 per week to meet his ongoing weekly support needs and £1400 per year towards respite care (from a carer’s assessment carried out with his mother). He uses his weekly Personal Budget allocation to pay for a support worker to take him out into the community and uses the respite allocation to access Whitley Wood respite service. He has had a Fairer Charging financial assessment carried out showing he is assessed to pay £41.39 per week towards his ongoing care and support.

Venue of respite	Charge under existing policy	Charge under recommended Policy	Impact on service user
In a Care Home (such as Whitley Wood overnight respite service)	£40.19 per week	£41.39 (apply Fairer Charging outcome)	<i>In this case slightly more, but if the man had disability-related expenses, it may have been less under Fairer Charging</i>
At home with paid carers	£41.39 (Fairer Charging)	£41.39 (Fairer Charging)	<i>No difference</i>

Example 5. A 72 year old man receives a Personal Budget of £2100 per year towards his respite care (from a carer’s assessment carried out with his wife). He has declined a further weekly amount in his Personal Budget for his ongoing care and support needs as both he and his wife would prefer that his wife continues to meet his day to day care and support needs, provided that his wife is able to have breaks from caring. He has already had a Fairer Charging financial assessment carried out which showed he is assessed to pay the full cost of ongoing care and support due to the level of savings and investments above the upper capital limit.

Venue of respite	Charge under existing policy	Charge under recommended Policy	Impact on service user
In a Care Home	£77.61 per week	The ‘light touch’ financial assessment charge £77.61	<i>No difference</i>
At home with carers	FULL COST (Fairer Charging)	FULL COST (Fairer Charging)	<i>No difference</i>

Example 6. A 65 year old woman, receives a Personal Budget of £1400 per year towards respite care (from a carer’s assessment carried out with her daughter). She has declined a further weekly amount in her Personal Budget for her ongoing care and support needs as she and her family have decided that they can manage her ongoing care and support needs provided that the family have breaks from caring. She uses her respite allocation to meet her care needs while other members of her family are away. She has already had a Fairer Charging financial assessment carried out showing she is NIL CHARGE for any ongoing weekly care and support.

Venue of respite	Charge under existing policy	Charge under recommended Policy	Impact on service user
In a Care Home	£77.61 per week	NIL (apply Fairer Charging outcome)	<i>Pay less (£77.61 per week LESS)</i>
At home with carers	NIL (Fairer Charging)	NIL (Fairer Charging)	<i>No difference</i>

Example 7. A 38 year old man requires urgent respite care as his wife who is his main carer has gone into hospital. He hasn’t had a Fairer Charging financial assessment before as this is the first time he has had contact with the Council’s Adult Services.

Venue of respite	Charge under existing policy	Charge under recommended Policy	Impact on service user
In a Care Home	£40.19 per week	£40.19 per week (‘Light Touch’ financial assessment), though he may request a financial assessment if he feels unable to afford this.	<i>No difference</i>
At home with carers	Subject to Fairer Charging financial assessment	Subject to Fairer Charging financial assessment	<i>No difference</i>