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Dear Councillor

CABINET - TUESDAY, 3RD MARCH, 2015

I am now able to enclose, for consideration at next Tuesday, 3rd March, 2015 meeting of the Cabinet, the following reports that were unavailable when the agenda was printed.

Agenda Item 12 The Care Act 2014 in Cheshire East (Pages 1 - 74)

To consider the implications of the new statutory framework for Adult Social Care Services, and for the broader Council, for 2015/16 and beyond.

Yours sincerely

Cherry Foreman
Democratic Services Officer

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CHESHIRE EAST COUNCIL**REPORT TO: CABINET**

Date of Meeting: 3 March 2015

Report of: Brenda Smith, Director of Adult Social Care and Independent Living

Subject/Title: The Care Act 2014 in Cheshire East

Portfolio Holder: Councillor Janet Clowes
Care and Health in the Community

1. Purpose of Report

- 1.1 From April 2015 social care and support is changing for the better with the introduction of the Care Act 2014. The Care Act 2014 brings together in one single piece of statute the majority of legislation governing Adult Social Care.
- 1.2 The new Care Act aims to ensure that the care and support system is more consistent across the country. Cheshire East Council strongly supports the principles of fairness embedded within the legislation.
- 1.3 Cheshire East residents will benefit from the new legislation including the enhanced focus on the 'wellbeing' of its citizens, the new national eligibility criteria for services, the recognition of the role of carers by ensuring they have equal rights to access support and many other changes.
- 1.4 The Care Act introduces a number of new duties and powers for Local Authorities which require the Council to review its policies to ensure they are compliant with the new legislation.
- 1.5 This report provides an overview of the Care Act 2014, the Regulations and the Statutory Guidance in advance of the implementation of the Act from April 2015.
- 1.6 The report details the new policies which Cheshire East Council needs to introduce in order to be fully compliant with the legislation from 1st April 2015. Policies can be found at Appendices A-D.

2. Recommendations

It is recommended that Cabinet:

- 2.1 Note the implications of the new statutory framework for Adult Social Care services and the broader Council, including financial and other risks to the Council for 2015/16 and beyond.
- 2.2 Approve the proposal **not** to apply charges to care services for carers.
- 2.3 Approve the revised policies attached at Appendices A-D which are required for Cheshire East Council to be Care Act compliant. These are:

Pricing and Charging Policy
Deferred Payment Scheme Policy
Direct Payment Policy
Care Top Up Policy

3. Reasons for Recommendations

- 3.1 The Care Act 2014 is a major piece of legislation with a significant impact across the Council. Cabinet needs to be aware of and acknowledge the required duties and powers within the Care Act and the financial impact on the Council.
- 3.2 The Council has discretionary powers within the Care Act in respect of charging for care services. One area of discretion is to apply charges to carers for services they have been assessed to need. In recognition of the valuable contribution made by carers, it is recommended that charges are **not** applied for carers.
- 3.3 Cheshire East Council must have revised policies in place in accordance with the new legislation. In those areas where policy is set by Cabinet, the revised policies will require formal approval in advance of the April implementation date.

4. Background

- 4.1 The Care Act is the biggest change to social policy for a generation. This legislation brings together and simplifies previous legislation, regulations and guidance relating to Adult Social Care.
- 4.2 The Care Act is divided into three main parts. Part One deals with the reform of Adult Social Care and supporting legislation. Part Two seeks to improve care standards by putting people and their carers in charge of their care and support. Part Three establishes Health Education England and the Health Research Authority.

- 4.3 The Care Act will be implemented in two phases. Phase One will be implemented from April 2015. The underlying principle of the Care Act is for Local Authorities to promote the wellbeing of the population and in doing so to ensure that people have access to advice and information to assist them to access the right help and to focus on prevention and early intervention services. Phase One implementation of the Act involves the key elements of the legislation. These are detailed at Appendix E.
- 4.4 Phase Two will be implemented from April 2016 and includes the elements of the new legislation which governs the financial contribution to care including the revised capital limits, the Care Cap and care accounts. These are listed in Appendix E.
- 4.5 The Care Act requires the revision of a number of policies in order that the Council is fully compliant with the new legislation. The Care Act also introduces discretionary powers in respect of charging for care and associated services. The Council will need to consider how it uses its discretionary powers. Many of the areas of discretion can be considered and introduced at a later date.
- 4.6 A new duty within the Care Act is for the Local Authority to introduce the national eligibility criteria for carers and a requirement to ensure care and support is made available to those carers with assessed eligible needs. The Council has discretion within the new legislation to charge for care services for carers. This is an area of discretion which requires a decision in advance of the April implementation date. **It is proposed that the Council does not apply charges for care services for carers, which the Council makes available to meet eligible needs.**
- 4.7 The Care Act is being implemented against a backdrop of policy changes across both health and social care. Nationally there is a drive to integrate health and social care. The implementation of the Care Act has taken account of the local and national plans for the future integration with health. Working closely with health services will be critical to implementing the requirements of the Care Act, for example in offering services that can prevent future care needs.
- 4.8 Cheshire East Council welcomes the opportunities for improvement in the provision of Adult Social Care and support that the Care Act presents. An improvement programme has been established under the leadership of the Director of Adult Social Care and Independent Living. A number of individual projects have been working to deliver on the wide ranging requirements of the new legislation.
- 4.9 There is a national publicity campaign about the Care Act led by Public Health England. The first phase of the campaign began in January and runs to March 2015. A toolkit has been provided to Councils comprising website copy, case studies, leaflets and posters. Some addresses

have been selected nationally for a letter drop. In Cheshire East this will be mainly the Crewe area.

- 4.10 The second phase of the national campaign will begin in Autumn 2015 and will be focused on how much people might pay for their care and support, information about the Care Cap and Care Accounts and a behavioural change campaign encouraging people to plan for care they might need in later life.
- 4.11 To supplement the national campaign Cheshire East Council has developed a short animation about the Care Act that is available on the Council website. The Council has arrangements in place for telephone and email enquiries. Further initiatives include the development of a Care Act 'app' to enable people to check if they have eligible needs.

5. Wards Affected

- 5.1 All Wards.

6 Policy Implications

- 6.1 Much of the Act is already embedded in policy and practice but there are nevertheless a number of changes required by the Act.

The Policy implications and key dates identified are as follows:

Key Requirements	Timescale
New charging framework	April 2015
Universal deferred payments	April 2015
Care Accounts	April 2016
Cap on care costs	April 2016
Extended means test	April 2016

7 Implications for Rural Communities

- 7.1 The Care Act requires the Local Authority to facilitate a vibrant, diverse and sustainable market of care services. This will apply to all areas of Cheshire East and will need to reflect the specific needs of all communities and ensure accessible services, which is of particular importance within the more rural areas.

8 Financial Implications

- 8.1 The implementation of the Care Act involves a number of additional areas of responsibility being delivered by the Council with the main financial costs being associated with the increase in demand for assessments (for individuals and carers) during 2015/16 and 2016/17 together with changes in financial assessment thresholds and the introduction of the Care Cap from April 2016 onwards.

- 8.2 During 2014/15 the Council received a one-off allocation from central government of £125,000 to support the following:
- Preparations for implementation
 - Establishment of a change management programme
 - Capacity to lead and manage change
 - Participation in National Stocktake exercise
 - Identify an accountable Senior Responsible Officer as a single point of contact

A Care Act Programme Board and project team has been established and any balance of the above funds will be carried forwards into 2015/16 to assist with the ongoing implementation of the Care Act.

- 8.3 The Care Act duties outlined in section 4.3 and 4.4 are expected to be funded from a combination of funding flows from the Department of Health, DCLG and the Better Care Fund. The table below provides a summary of the funding:

Revenue Funding Source	Amount 2015/16 £m
Social Care Act Grant	£2.27m
Better Care Fund	£0.86m
Prison Grant	£0.07m
	£3.20m

- 8.4 In 2015/16 the Social Care Act grant is to fund additional assessments arising from the implementation of the Care Act and a Deferred Debt Payment scheme.
- 8.5 The Council has been using a modelling tool developed by Lincolnshire County Council to assist with understanding the potential cost implications of additional assessments.
- 8.6 It is difficult to estimate the impact and timing of potential numbers that will present for assessment, however based upon the assumptions that have currently been made the funding allocated to the Council is aligned with the expected demand in 2015/16. However, there are risks that more people than anticipated present for assessment and the timing of national information campaigns is likely to influence the level of demand.
- 8.7 The funding flows for 2016/17 relating to the impact of the changes in financial eligibility threshold and the introduction of the Care Cap have very recently been announced by central government and a national funding consultation is under way until the end of March 2015. The current funding assumptions for the Council's budget setting process

are cost neutral pending more detailed funding allocation information from Central Government.

- 8.8 From April 2016, there will be changes to the means tested eligibility threshold and the Care Cap will be introduced. The Care Cap is a restriction on the amount that a person will pay in eligible care costs over the course of their lifetime (this level will be set at £72,000 for people over 65 years old when the Care Cap is introduced in April 2016).
- 8.9 The Care Cap will be recorded in a Care Account. The Care Account will only capture the **eligible care costs** (at local authority rates) from April 2016 for those people who have been assessed by the Council and meet the eligible needs criteria. Costs incurred before a person is assessed, or before 1 April 2016, will not count towards the cap.
- 8.10 The cap does not include what are referred to as “living costs”, “accommodation costs” or “hotel costs”. This means that people in residential care would be expected to pay for costs such as utility bills and food. This is in place to maintain consistency between those receiving care in their own home and those in residential care. The government proposes that the contribution towards these “hotel costs” would be approximately £12,000 per year from April 2016 or £230 per week. Further guidance is expected in the 2016/17 funding reform consultation about this element.
- 8.11 The Care Account will only capture eligible care costs at local authority rates. This means that if a person is paying for a more expensive care home through choice, only the costs equivalent to the local authority rates will be included within the care account.
- 8.12 The Care Cap thresholds for working age adults and people receiving eligible care before turning 18 years old are yet to be confirmed, Further information is anticipated in the 2016/17 funding reform consultation.
- 8.13 Social Care is subject to means testing and people with eligible care needs are required to complete a financial assessment to evidence the need for financial support from the Council. From April 2016, there will be changes in the means tested eligibility thresholds (subject to 2016/17 funding reform consultation). The means tested threshold for people going into a care home is set to increase from £23,250 to £118,000 (if the need for residential care is included in the assessment). This means that the authority will not contribute towards their care until they are below the threshold of £118,000 or they have reached the Care Cap.
- 8.14 There are a number of finance models (e.g. Lincolnshire, Birmingham and Surrey) in existence to assist with quantifying the impact of the costs to the Council of individuals reaching the Care Cap and the impact of the changes in finance eligibility levels at an authority level.

- 8.15 The Lincolnshire finance model has been used to assist with understanding and quantifying the potential impact of the key Care Act changes within Cheshire East. A number of assumptions have been made as part of the modelling work and these will be reviewed alongside the information contained in the 2016/17 funding reform consultation which is due to be issued early during 2015.

9 Legal Implications

- 9.1 Current social care legislation has evolved over a number of decades and the Care Act will consolidate or replace many pieces of legislation and guidance in one Act. Cheshire East Council has to develop new policies as outlined in Section 6 above. In addition, many existing policies have been reviewed and updated to ensure that they are Care Act compliant.

10 Risk Management

- 10.1 The Care Act Project Board has identified issues and risk and agreed actions to mitigate the risks.

11 Access to Information

- 11.1 The background papers relating to this report can be inspected by contacting the report writer:

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PROCEDURE TITLE	PRICING & CHARGING POLICY (Appendix A)
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PURPOSE	Charging Policy for Residential and Community based services
SCOPE	Adult Social Care services in the community and long and short term residential care, Direct Payments, Supporting People, Deferred Payments, Telecare, Carers and services for those deemed as full cost payers.
POLICY SUPPORTED	Top up Policy, Deferred Payment Policy, Personal Budget/ Direct Payment Policy
RESPONSIBILITIES	Director of Adult Social Care and Independent Living
ENQUIRY POINT	Alison McCudden, Service Manager, Social Care Business Support and Finance
KEYWORDS	Charging, The Care Act 2014, Fees

PROCEDURE APPROVAL			
APPROVED BY		POSITION	
SIGNATURE	V3/23.2.15/Amc	DATE APPROVED	

COMMUNICATING WITH CUSTOMERS OR CARERS

When following this policy, if you need to communicate with customers or carers, it is essential that the communication is made in a way that is understandable to them. For example, where people may be from a different ethnic origin, it is essential to find out whether or not their first language is English. If it is not, it will be appropriate and essential to enquire whether written or spoken communications need to be, or would best be, in their first language.

If the customer has a learning disability, you will need to make sure that any written communication is in an appropriate form and consider whether it would be advisable to have an Advocate available for any discussions.

Our Communication and Information Strategy requires that we should make information accessible to all. We have, therefore, contracted with a number of organisations to provide translation and interpretation services, and to transfer information into alternative formats such as large print or Braille. If you are unsure about the conventions which are acceptable to people from other cultures or religions, guidance is available from Communications: communications@cheshireeast.gov.uk.

DEFINITIONS

Charge	The amount of personal contribution required from a customer for a particular Council-provided service, dependent on their assessed ability to pay
Price	In the context of Council-provided services, this is the amount required from a customer's Personal Budget to purchase a service, regardless of their ability to pay through a financial assessment
Personal Budget	The agreed amount of funding available to meet a customer's assessed eligible social care needs, net of their own personal contribution

APPENDICES

Appendix 1	Community Charging explained
Appendix 2	Scheme of Fees and Charges (to be agreed)

POLICY

1. INTRODUCTION

- 1.1 The Care Act received Royal Assent in May 2014. Regulations and statutory guidance were published on 23 October 2014. The Care Act fundamentally reforms Adult Social Care: it repeals all current legislation dating back to 1948, and sets out a series of new duties and powers for local authorities. These fall into two categories: 'reform of duties in respect of adult social care and support', which comes into force from April 2015; and 'reform of adult social care funding', which is about changes to the eligibility for social care funding and reforming the way in which people pay for care, which come into force from April 2016.
- 1.2 The Care Act is to be implemented in the context of the Council aiming to keep people healthy and independent for as long as possible and reduce the need for adult social care; giving service users greater choice over the services they use and greater control over their lives; and making sure that services are safe and effective.
- 1.3 The Care Act introduces a new national eligibility criteria and a minimum threshold to ensure that there is transparency and clarity about who is eligible for local authority funded care and support and that there is consistency in decision-making. These are set out in the Care and Support (Eligibility Criteria) Regulations 2014, and are based on how a person's needs affect their ability to achieve relevant outcomes and how this impacts on their well-being.
- 1.4 The Regulations also set out new national criteria for carers to determine eligibility for local authority funded support, which are based on the impact that a carer's needs have on their well-being.
- 1.5 Councils are required to take care to ensure that any charging policy is reasonable, to ensure their charging policies are demonstrably fair between different customers and within the overall objectives of social care i.e. to promote the independence and social inclusion of customers which are not undermined by poorly-designed charging policies.
- 1.6 Cheshire East Council operates a charging policy designed within the parameters of The Care Act 2014 guidance effective from 1st April 2015 and previously within the parameters of the Department of Health Fairer Charging and Charging for Residential Accommodation Guidance.
- 1.7 Cheshire East Council intends to implement a Resource Allocation System (RAS) from April 2016.

New Charging Framework

- 1.8 The Care Act gives local authorities the power to charge for services for care and support and replaces existing provisions.

- 1.9 The overarching principle is that people should only be required to pay what they can afford. People will be entitled to funding from their local authority based on a means-test and some will be entitled to free care. The accompanying Department of Health guidance includes the principles to be adopted by local authorities when deciding when to charge, the requirements for appropriate information and advice and the financial assessment process.

National Deferred Payment Agreement

- 1.10 The Care Act introduces a national Deferred Payment Agreement scheme across England (replacing local schemes) and local authorities are required to offer a deferred payment to people who meet specified criteria.
- 1.11 Deferred Payment Agreements offer flexibility for when and how someone pays for their care and support such that the costs can be deferred until death. It is designed to avoid people being forced to sell their home during their lifetime, however many people choose to enter into an Agreement to give them the time and flexibility to sell their home when they choose.
- 1.12 Where an Agreement is taken out, a legal charge is placed on the individual's property to secure the debt. When the local authority is reimbursed for the accrued fees, the legal charge is lifted. The accompanying Department of Health guidance sets out the details including the circumstances in which a Deferred Payment Agreement can be considered or refused and how adequate security must be put in place.
- 1.13 Under legislation prior to the Care Act, local authorities had the power to offer Deferred Payment Agreements. Cheshire East Council has offered a Deferred Payment Agreement scheme for a number of years, and existing policies and procedures have been amended to reflect the Care Act. People who have deferred charges prior to 1.4.2015 will be supported over a 3 year period to new legislation.

Capital threshold for care and support

- 1.14 The overarching principle is that people should only be required to pay what they can afford. People will be entitled to financial support based on a means-test and some will be entitled to free care. The accompanying Department of Health statutory guidance includes the principles to be adopted by local authorities when deciding when to charge, the requirements for appropriate information and advice and the financial assessment process.
- 1.15 For people with assessed eligible needs, the amount of funding they are entitled to from their local authority is means tested. Most people pay something towards the cost of their care and support and many people pay the full costs. Under current legislation, those with assets over £14,250 can be required to make a contribution towards the costs of their care and support, some people with sufficient income living in the community but with less than £14,250 can be required to make a contribution, and those with assets over £23,250 can be required to meet the full costs. Under the Care Act, from April 2016, these figures will rise, with the upper capital threshold limit expected to be set at the £118,000 for people in residential

and nursing care who have a property which can be taken into account, all other people in the community or in a period of property disregard will have an upper capital threshold limit of £27,000 and the lower threshold will be set at £17,000. This means that more people will be entitled to a greater proportion of their funding from their local authority.

The new cap on care costs

- 1.16 From 1 April 2016 there will be a limit on the cumulative total that people pay for their care and support. This limit is called the care cap. Once the cap is reached, the local authority will then pay for an individual's care and support
- 1.17 The care cap amount has not yet been finalised by the Government. However, there are likely to be different caps: for young adults that need care and support from their 18th birthday; for working age adults; and for adults aged 65 years and over. The Government has suggested the cap for this group should be set at £72,000.

Independent Personal Budgets and Care Accounts

- 1.18 For those people making a contribution to the costs of their own care and support but yet to reach the cap, the Care Act introduces Independent Personal Budgets and maintenance of Care Accounts.
- 1.19 The Independent Personal Budget is an amount of money that has been identified, relating to an individual following a social care assessment of need. This budget will determine the reasonable costs that can be counted towards the care cap and then count the cumulative costs of care and support to monitor progress and determine when the cap has been reached. The Council will keep track on how people progress towards the care cap through individual care accounts.
- 1.20 Reasonable costs will be determined following a social care assessment, and are the minimum that the local authority would have to pay if it were meeting the full costs of someone's care and support i.e. if an individual has chosen to spend extra then this will not count towards the cap. For those in nursing or residential care it includes only the costs of care and support and does not include "general living costs" (i.e. the amount that someone would have to pay for accommodation, utilities and food if they were living in their own home.)
- 1.21 It is anticipated that these changes will result in the numbers of people coming forward for an assessment of eligible need increasing in 2015/16 as people will wish to ensure that their Care Account is set up.
- 1.22 The legislation preceding the Care Act, under which support for carers of adults was provided, is repealed from 1 April 2015 and local authorities will work to the national eligibility criteria for carers of adults in need of care and support as set out in the Care and Support (Eligibility) Regulations 2014. Where an adult is found to have care and support needs following a needs assessment (or in the case of care, following a carer's assessment), the local authority must determine whether those needs are at a level sufficient to meet the 'eligibility criteria' under those

Regulations. The intention of the Government is that threshold for eligibility for local authority funded care and support continues to meet needs similar to 'Substantial' and 'Critical' levels.

- 1.23 Under the Care Act, local authorities will not have a duty to charge for residential and nursing care, but will have the power to charge for residential, nursing and non-residential services.
- 1.24 The accompanying Department of Health guidance includes the principles to be adopted by local authorities when deciding when to charge.
- 1.25 After charging, a person living in the community must be left with the minimum income guarantee, equivalent to income support/the individual applicable amount plus a buffer of 25%. Local authorities should consider whether it is appropriate to set a maximum percentage of disposable income (over and above the guaranteed minimum income) that may be taken into account in charges, and whether a maximum charge is appropriate. Cheshire East Council will charge 97% of disposable income and does not have a maximum level of charges.
- 1.26 The Care Act also gives local authorities the power to charge for services to carers. The accompanying guidance states that when deciding whether to charge, and in determining what an appropriate charge is, "a local authority should consider how it wishes to express the way it values carers within its local community as partners in care, and recognise the significant contribution carers make". Cheshire East Council does not propose charging for Carer's Services.

2. Background

Regulatory Framework and Statute – Non-Residential Services

- 2.1 Local authorities had discretionary powers to charge adult recipients for non residential services under Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 (HASSASSA Act 1983). From 1st April 2015 the discretionary power to charge adult recipients for meeting their needs is under section 14(1) of The Care Act 2014 and all prior regulation is repealed.
- 2.2 Cheshire East Council Adult Services supports fully the personalisation agenda, offering more people the opportunity to take control of their care through a Direct Payment of cash instead of commissioned services. Direct Payments are made net of an individual's assessed contribution with the customer being required to pay their weekly contribution into the Direct Payment account to ensure the care needs are fully covered.
- 2.3 The Council has a scheme of delegated fees and charges which are normally subject to annual inflationary increases. 2015/16 Schedule of fees and charges are attached at appendix 2.

Regulatory Framework and Statute – Residential Services

- 2.4 From 1st April 2015 the discretionary power to charge adult recipients for meeting their needs is under section 14(1) Care Act 2014. The Care and Support (Charging and Assessment of Resources) Regulations 2014 and the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014 set out additional conditions that Local Authorities are to adhere when charging adult recipients for non residential and residential services.

3. **Responsible Officer and Review Mechanisms.**

- 3.1 The following Officers have the authority to approve the annual fees and charge reviews:

Director of Adult Services and Independent Living

Executive Portfolio Holder with responsibility for Adult Social Care Services

- 3.2 Each year (normally by the end of December, to coincide with the normal budget-setting process) the Responsible Officers will submit to the Executive Portfolio Holder a Scheme of Fees and Charges for approval. Once approved, these will be published.

4 **Scope of Services**

- 4.1 Adult Social Care services in the community and long and short term residential care, Direct Payments, Supporting People, deferred charges, Care4CE services, telecare, carers and services for those deemed as full cost payers.

5 **Factors Influencing Charging**

- 5.1 Most people will be expected to pay at least something towards the costs of their care in the community, or in a care home, from their income and capital. Individuals with more than the upper capital limit as defined by the Department of Health are expected to meet the full cost of their care but may choose the Council to commission care services on their behalf. This is following an assessment of need which determines their eligibility and via a means test if the Council is involved with arranging the placement.
- The exceptions to this requirement are set out below:
 - **Intermediate Care including Reablement:** For up to six weeks' intensive support to enable an individual to recover from an acute episode and be independent
 - **Community Equipment (aids and minor adaptations).** Aids must be provided free of charge whether provided to meet or prevent/delay needs. A minor adaptation is one costing £1,000 or less.
 - **Care and support provided to people with Creutzfeldt-Jacob Disease.**
 - **After-care services/support provided under section 117 of the Mental Health Act 1983.**

- **Any service or part of service which the NHS is under a duty to provide.** This includes Continuing Health Care and the NHS contribution to Registered Nursing Care.
- **More broadly**, any services which a local authority is under a duty to provide through other legislation may not be charged for under the Care Act 2014.
- **Supported Employment** Free of charge.
- **Continence Services:** The NHS is responsible for providing and meeting the cost of any continence supplies and services that individuals are assessed as requiring, including any equipment needed
- **Specialist Medical Equipment in Care Homes:** A care home providing nursing must produce a Statement of Purpose, which explains what equipment and facilities it will provide. It should also make general alterations and adaptations to allow appropriate access to facilities for its residents

5.2 The Council will take account of all income in the assessment of means, with the following exceptions:

Disregarded Income:

- Applicable amount plus 25% as set by DH for individuals living in the community to ensure they have sufficient income to cover ordinary living needs
- Earned income
- The Defined Personal Expenditure Allowance as set by the DH for those individuals supported by the Council in long or short term residential/nursing care
- War Widows' Special Payments/ Armed Forces Independence Payments and Mobility supplement.
- Mobility payments including the mobility component of Disability Living Allowance or Personal Independent Payment, or any mobility payment paid as part of a War Pension.
- Gallantry Awards.
- Income from savings; where interest is paid on savings, this is added to the balance of savings and counts as capital, not as income
- Awards of certain damages.
- Charitable and voluntary payments (which could be made by a relative) intended to pay for a specific item and not towards care services.
- Christmas bonus and Winter Fuel allowances.
- Supporting People payments and other housing related costs
- Any payments of Child Tax Credit, Child Support Maintenance Payments, Guardian's Allowance or Child Benefit.
- Dependency increases paid with certain benefits.

- Any payment made because of a personal injury to a claimant except where the payment is specifically intended to cover the costs of care for up to 52 weeks from the day of receipt of the first payment. If the money is placed in a disregard location such as a personal injury trust or administered by a court the relevant disregards will apply.
- Income that is used to support an individual with their disability-related costs in the community.
- Guaranteed Income Payments made to Veterans under the Armed Forces Compensation Scheme.
- Certain mortgage repayment costs as defined in Annex C of the Care Act 2014 Statutory Guidance.

5.4 Income that is Partly Disregarded

- £10 per week of a War Widow's, War Widower's or War Disablement Pension
- 50% of a private or occupational pension is ignored where the pension is received by a married person or a civil partner, provided this amount is paid to the spouse or civil partner and the spouse or civil partner does not live in the same residential or nursing home
- Qualifying income for Pension Credit Savings Credit equivalent to the amount of Savings Credit received is disregarded up to a maximum set by Department of Health.
- For individuals with higher incomes who are unable to claim Pension Credit or have been awarded less than the applicable amount per week, a flat-rate disregard is applied
- Disability Benefit paid for night time care where the Council is providing day time care only. This does not include Personal Independence Payments.

6 Charging Levels

- 6.1 Residential and nursing fees and charges are set by the Council within market acceptability, taking account of neighbouring authority fees as well as the levels of service needed. The Council has historically set fees and charges for long and short term residential care and for the range of community-based services and Direct Payments.
- 6.2 The Council must offer at least one option that is affordable within a person's personal budget. However, a person must also be able to choose alternative options, including a more expensive setting, where a third party or in certain circumstances the resident is willing and able to sustain the additional costs. Additional payments must always be optional. (refer to the Council's Care Top up Policy). If a resident has entered a more expensive home out of necessity, the Council must meet the extra cost.
- 6.3 People who are deemed to be able to pay the full cost of care will not be offered Direct Payments.

- 6.4 Customers entering long term permanent care with a property interest which does not fall to be disregarded will be offered the option to defer some of their charges. (refer to the Council's Deferred Payment Policy).
- 6.5 People who choose to use Care4CE services (the Council's internal care provider) may be charged more than the price for care in the open market, due to the Council's overheads in providing internal services and subject to the individual's financial assessment.
- 6.6 The Council must protect income for those in the community at the applicable rate plus 25%, to cover essential living costs such as heat, light, clothing, food, transport. In addition any housing and disability related costs are disregarded.
- 6.7 Service Users will be offered welfare benefit advice and assistance to maximise their income or to protect them from unintentional benefit fraud.

7 Respite Charging

- 7.1 Cheshire East Council applies non-residential charging rules to commissioned respite care charging. An amount to cover building insurance, water rates, lifeline costs, Council Tax or any rent/mortgage payments are disregarded.
- 7.2 If someone wishes to access respite care services using a Direct Payment – they can be allocated up to 4 weeks direct payment funding. The community charge will automatically apply to the direct payment, unless the direct payment is only for respite care and where this is the case the residential charge will be netted off the allocated amount for respite.

8. Concessionary Access to Services.

- 8.1 Carers' services will remain free of charge.
- 8.2 People with income below the applicable amount plus 25% are not required to pay a contribution.
- 8.3 No earned income is taken into account in the means test as an incentive to work.

9. Flat Rate Fees

- 9.1 There are a number of services which attract a flat rate fee: Money Management Services provided by the Council; Deferred Payment admin fee (refer to the Council's Deferred Payment Policy).
- 9.2 A flat rate fee is to be paid by anyone receiving that service. It is not subject to financial assessment unless the fee brings financial hardship and in such cases a financial assessment will determine whether the fee is affordable and does not affect the customer's protected income bracket.

10. Light Touch Financial Assessment

- 10.1 When deciding whether or not to undertake a light-touch financial assessment, the Council will consider both the level of the charge it proposes to make, as well as the evidence or other certification the person is able to provide. This will be considered at the Care Needs assessment and communicated to the Financial Coordinator as a referral. The Council must inform the person when a light touch assessment has taken place and make it clear that the person has the right to request a full financial assessment should they wish.
- 10.2 Once an individual has been found to have eligible needs for care services a referral for financial assessment will be made. The financial assessment is conducted by a Financial Coordinator who will initially source information on the individual's income from The Department of Work and Pensions through data sharing protocols. The individual will be notified in writing of the outcome of the assessment and offered the opportunity to provide evidence of income and expenditure to complete a more detailed assessment to firm up the light touch financial assessment. Where a Care Manager deems it is necessary for a home visit the Financial Coordinator will do so.
- 10.3 Financial Coordinators will normally invite an individual into the office to conduct the assessment process where this is requested by the individual. Home visits can be offered where the customer is unable to visit an office or where a Care Manager requests this.
- 10.4 Where an individual is considering deferring charges against their property a face to face discussion with the Financial Coordinator must take place and the individual is always recommended to seek independent financial advice.

11. Care Cost Top ups

- 11.1 The Council will not usually cover the costs of care top ups due to customer choice. It is expected that any Third Party Top up will be sustainable before the Council will agree to support the placement. (refer to the Council's CareTop up Policy).

12. Carers

- 12.1 Carer's care services will be paid as a Direct Payment or commissioned on behalf of the Carer and will not attract a charge.
- 12.2 Carers will be directed to the third sector for welfare benefit advice and assistance.
- 12.3 Carers will not be required to provide audit documents if receiving their care services as a "Carer" through a direct payment from the Council.

13. Transport

- 10.1 A customer with eligible need for transport is expected to use any mobility payment they receive as an initial contribution towards their transport needs. If this does not fully meet their needs support can be offered through a financial assessment review and/or direct payment. (refer to the Council's Adult Social Care Transport Policy)

14. Income Collection Methods

- 14.1 The Care Act provides that councils may recover such charges as they consider reasonable in respect of relevant services.
- 14.2 Where the Council commissions services for an individual in the community or short or long term care, it is responsible for paying the agreed fee to the care provider. There are two main ways for the Council to pay:
- The Council can pay the full fee, and then collect charges from the customer according to the assessed contribution; or
 - If all three parties agree (customer, the Council and the care home) then the customer and the Council can each pay respective shares of the fee directly to the care home. This is called 'client contribution'.
- 14.3 Adult Services offer a range of options to collect income, including: invoice, Direct Debit, bankers' Standing Order, online payments, telephone payments and net Direct Payments.

15. Debt and Debt Avoidance

- 15.1 The Council will actively pursue debt. Final demand invoices will dispatch automatically on unpaid invoices.

Appendix 1

Adult Services – Community Charging Explained

Customers will be financially assessed as individuals. Any capital or income jointly held will be treated as owned 50/50.

The amount of the weekly charge is calculated by taking 97% of the Service User's disposable income, after all disregards have been made.

Services which are charged for at an assessed rate in accordance with this policy are: Home Care, Day Care, Night Care, Telecare, Services provided through Care4CE, Supported Living and Extra Care Housing, and care provided through a Personal Budget or Direct Payment.

Services which are charged for at a flat rate are:

- Admin fee for Money Management Services
- Deferred Payment fee.

In addition charges for Supporting People are assessed using the same means-tested assessment.

An assumed flat rate charge applies for Meals (per meal) and Transport (per trip) – even when the care is provided through a direct payment. Cheshire East Council does not commission Meals or Transport but may offer a direct payment to meet eligible unmet need.

All Service Users are offered a combined Financial Assessment, Welfare Benefit Check and if necessary a Disability Expenditure Assessment at the time of assessing the charge. Carers will be directed to the third sector for welfare benefit advice and assistance.

Service Users with capital and savings above the upper capital limit, as defined by the Care Act 2014 are required to pay the Standard Charge of the service or be supported to source appropriate care privately. They may choose to access Council commissioned services.

An assumed level of income is calculated on any capital or savings above the lower capital level as defined in the The Care and Support (Charging and Assessment of Resources) Regulations 2014 at the rate of £1 per week for every £500 up to the upper capital limit.

There is no set maximum weekly charge.

No amount of earned income is included in the financial assessment.

The service user's basic level "Applicable Amount", plus a 25% buffer is disregarded in the financial assessment. This disregard provides sufficient income to meet an individual's daily living and leisure costs as set out in the Office of National Statistics

Family Spending Survey 2010.

Users with an income lower than this disregard are not charged.

Direct Payments are normally paid net of the customer's weekly contribution and the customer is expected to pay their contribution into the direct payment account first with the Council making up the direct payment to afford the required care. Direct Payments will be audited. (refer to the Council's Personal Budget/Direct Payment Policy).

The customer's weekly Direct Payment contribution must be paid in full every week even where care is not provided for a full week. Should services be suspended during a full week (Saturday to Friday) then charges are not levied to the customer.

Where a customer is billed for their contribution the same principle applies that the full contribution is billed for services received for only part of a week (Saturday to Friday) in Extra Care Housing and Supported Living Services.

Where a service user is receiving Income Support as one of a couple, an individual financial assessment will be applied using the Single Person's Income Support rates, and disregards. Charges for Extra Care Housing are individual.

The financial assessment takes into account all income plus that from the following disability benefits:

Employment and Support Allowance, Severe Disability Premium of Income Support, Attendance Allowance, Disability Living Allowance (DLA) Care Component, Personal Independence Payments (PIP) Daily Living, Constant Attendance Allowance (CAA), War Widows, War Disability and Exceptionally Severe Disablement Allowance (ESDA).

The higher rate of AA, DLA Care is only be taken into account when care services are provided or assessed as required in the support plan either on a 24 hour basis or during the day and during the night. Where services are provided only during the day or only during the night, and where higher rates of AA/DLA is in payment, the difference between the higher/enhanced rate and the middle/standard rate is disregarded.

PIP Daily Living is taken fully into account regardless of services provided day or night.

The Mobility Component of DLA or PIP is not included in the financial assessment. This also applies to the Mobility Supplement of a War Pension, but is considered within the Transport Assessment.

Income is assessed net of any Income Tax, Child Benefit, Carer Premiums and National Insurance contributions, and net of any Housing Costs or Council Tax less any Housing Benefit or Council Tax support.

Service Users in receipt of War Disability Pension or War Widows pension have a further £10 disregarded. War Widows Special Pension is disregarded completely.

A Disability Expenditure Assessment can be requested where the customer has additional costs supported by evidence, which is not funded by the care and support package

provided by the Council. Disability Expenditure is applied at the rate of £10 or £4 per week reflecting the level of disability benefit the customer receives. DEA of a max equal to the Disability Benefits in payment can be offered unless in very exceptional circumstances and subject to senior officer authority.

The agreed weekly expenditure is disregarded in the financial assessment and cannot exceed the service user's disability benefit payment. Expenditure for night care is only taken into account if services are provided by the authority during the night.

Service Users in receipt of services funded by the Independent Living Fund which comes to an end 1st July 2015 are not currently charged, as they already have their income and benefits taken into account in the ILF financial assessment. When ILF devolves to Councils to manage, ILF customers will be subject to charges in the normal way within the Council's charging policy.

Service Users who receive care services provided under Section 117 of the Mental Health Act cannot be charged.

Service Users suffering from any form of Creutzfeldt Jakob Disease (CJD) will be exempt from charge.

Appeals against the assessed charge are dealt with under Adult Social Care's Complaints Procedure.

Appeals against the amount of disability related expenditure allowed in the financial assessment will be dealt with by the Business Support & Finance Team Manager and Service Manager and will require documentary evidence of additional customer expenditure. Where there remains an impasse, with the customers consent, Cheshire Centre for Independent Living may be approached for an independent assessment of the situation.

Where a Service User refuses, or decides not to provide financial information for a charge assessment, they will be charged the standard charge for their care services.

Where a customer has an interest in a second property which they do not live in, the asset will be taken into consideration as capital and the customer is likely to be deemed to be a full cost payer. In exceptional circumstances and at the Council's discretion, community charges can be deferred in agreement with the customer against the property.

The Charging Policy will be reviewed from time to time, to ensure it remains consistent with Adult Social Care's policies, and continues to provide an appropriate level of income towards the cost of services.

Standard Charges, customer contributions and Direct Payments will be reviewed annually.

This Policy applies to all Users of Non-Residential Services, aged 18 years and above

It is assumed that an individual has on average £4 per trip available for Transport or approximately £10 per week in addition to any Mobility payments. Additional costs associated with eligible transport needs will be assessed within the personal budget and

will NOT be disregarded as a disability related expense. Ref: Framework - Office National Statistics - Family Expenditure Survey 2006 - 2008.

Where an individual claims more than the standard allowable Disability Expenditure Allowances, the following framework should be used to calculate and verify additional amounts. If moving to verify actual expenditure the standard allowable Disability Expenditure Allowance is removed and replaced.

It is assumed that an individual can afford their food costs and only in exceptional circumstances would the Council offer to cover up to £3 per meal.

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PROCEDURE TITLE	Deferred Payment Scheme Policy (Appendix B)
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PURPOSE	The purpose of the Deferred Payment Policy is to explain the parameters applied when the Council allows Adult Social Care customers the opportunity to defer charges against the value of their property.
SCOPE	<p>Commissioned long term residential or nursing care services externally provided – applied where a customer has a property interest which the Council is able to treat as part of the financial assessment.</p> <p>This policy is followed by staff involved in dealing with the deferred payment and legal charge processes and offered to customers (or their legal representatives) in long term care supported by Cheshire East Council with appropriate property interest.</p>
POLICY SUPPORTED	Debt, Top-Up, Charging Policy, and Write-off Procedures
RESPONSIBILITIES	<p>Care Manager</p> <p>Financial Coordinator</p> <p>Social Care Business Support and Finance</p> <p>Contracts</p>
ENQUIRY POINT	Alison McCudden, Senior Manager – Business Support and Finance
KEYWORDS	Deferred Debt, Deferred Agreement, Debt Recovery, Enforced Sale

PROCEDURE APPROVAL			
APPROVED BY		POSITION	
SIGNATURE	Version 4/amc/6.2.15	DATE APPROVED	

COMMUNICATING WITH CUSTOMERS OR CARERS

When following this policy, if you need to communicate with customers or carers, it is essential that the communication is made in a way that is understandable to them. For example, where people may be from a different ethnic origin, it is essential to find out whether or not their first language is English. If it is not, it will be appropriate and essential to enquire whether written or spoken communications need to be, or would best be, in their first language.

If the customer has a learning disability, you will need to make sure that any written communication is in an appropriate form, for example 'easy read', and consider whether it would be advisable to have an Advocate available for any discussions.

Our Communication and Information Strategy requires that we should make information accessible to all. We have, therefore, contracted with a number of organisations to provide translation and interpretation services, and to transfer information into alternative formats such as large print or Braille. If you are unsure about the conventions which are acceptable to people from other cultures or religions, guidance is available from Communications: communications@cheshireeast.gov.uk.

Definitions & Abbreviations

Assessed Contribution	The amount that the customer is required to pay towards the cost of their care and support services.
CRAG	Department of Health Charging for Residential Accommodation Guidance – replaced by Schedule 1 and Schedule 2 of The Care and Support (Charging and Assessment of Resources) Regulations 2014.
Deferred Payment Agreement (DPA)	DPAs are offered by Cheshire East Council under The Care Act 2014. DPAs are a consensual agreement between the customer and the Council that enable the customer to defer payment of the difference between the full cost charge and the assessed contribution against the value of the property, i.e. they cannot defer the portion of the charge that they are deemed liable to pay due to other capital and income known as the Assessed Contribution. The documentation consists of a DPA Application Form and a Written Agreement, which is registered as a legal charge.
Options Form	This is the form the Customer completes in order to apply for a Deferred Payment.
Customer	The customer receiving the service, and where appropriate the term 'customer' shall also include reference to any person who has power of attorney next of kin, or who is legally entitled to act on behalf of the customer.

Legal Charge (LC)	A legal charge is applied to a property subject to deferred charges. The legal charge prevents the property being sold without that deferred debt being repaid. A legal charge can be invoked without the customers consent in order to secure monies owed to the Council for residential services provided where the customer won't pay. It cannot be applied where the debt has accrued because of non-payment of assessed charges, other than related to care home provision. The Council cannot force someone to sell their property during their lifetime, but it does mean that when the property is sold the Council have registered a financial interest in the proceeds of the sale. The Council's deferred offer requires provision to be made to settle the debt promptly. Legal charge may also refer to "Charging Order" or Judgement against a debt.
Written Agreement	The written agreement is the document signed by the customer and sealed on behalf of the Council and registered against the individual's property as a legal charge. The agreement ends once equity has been exhausted in the property, if the customer dies or if the customer is no longer supported by the Council for their care or if the property is sold. The Council may in some circumstances terminate a DPA by giving notice.
Top up	<ul style="list-style-type: none"> A top up is usually covered by a Third Party and not by the customer from their income or capital. Where a third party agrees to pay the care home top up, a formal agreement should be entered into between the Care Home, the Third Party and the Council. Third party top up can not be paid from the customer's capital or income. Where a care home offers to defer the top up, then the Council would expect the Care Home to defer all charges without the need for Council support. Where there is a Council DPA in place - it is expected that all Council debt will be covered as first priority at the end of the agreement. In some cases a customer may choose a care home with a higher weekly price than that agreed by the Council in their Standing Offer Contract. In these cases, the customer who has opted to defer charges against the property interest may be allowed by the Council to defer the weekly top up.
Form A Restriction	In order to enter into a DPA Cheshire East Council must be able to register a legal charge on the property in order to secure its interests in relation to the deferred

	<p>debt. The requirement for a legal charge to secure the debt owed to the local authority is set out in section 34 of the Care Act 2014. Some properties may have a Restriction registered on the Proprietorship Register part of the Title Register, for example where there are Tenants in Common. In these circumstances it is necessary for all the legal owners of the property to sign the Deferred Payment Agreement in order to register a Legal Charge. If there is only one legal owner of the property then it will be necessary for the legal owner to remove the Restriction. If the legal owner(s) do not co-operate regarding this issue a Deferred Payment Agreement cannot be offered.</p>
Administrative Charge	<p>The Council levy's a one off charge to cover the cost of dispersals and administration of the deferred scheme – this charge is deferred and is subject to repayment along with the deferred charges and any interest that applies at the end of the agreement. The admin charge is payable on all deferred arrangements regardless of their duration as the costs of land registry checks and legal time are included. This fee is expected to be paid from disregarded capital below the lower capital threshold. The administrative fee will attract interest charges.</p>
Interest	<p>Interest applies to Deferred Payments under The Care Act legislation. The rate is set at the Market Interest Rate as defined by The Care Act and is reviewed every 6 months. Where a Deferred debt falls to be settled but the customer does not do so, the Council applies interest at 1% above base capped at 8% to the debt.</p>
Equity Statement	<p>The Council has a duty to provide the customer with a statement every 6 months detailing the equity remaining in the property. Where equity is exhausted, the deferred agreement will come to an end and it is expected that the debt will be repaid at that point.</p> <p>The Council will allow deferred payments up to the lower capital limit and less 10% of the property value. This limit is described as the 'equity limit'.</p>

Cheshire East Council - Deferred Payment Scheme

1. Background

- 1.1 The Care Act 2014 comes into effect from April 2015. One of the new requirements of the Care Act is that Local Authority Adult Social Care services must offer the option of deferred payments in certain circumstances. A deferred payment is a way of postponing some of the costs of care by effectively offering a loan against the value of a service user's house or other property that they might wholly or partially own. To be eligible, service users' individual circumstances are assessed by the local authority against a set of national criteria. This means that from 1 April 2015 people may not need to sell their home in their lifetime to pay for the costs of care. The loan will be subject to interest charges from the start at the market rate.
- 1.2 From April 2015, all councils in England are required to provide a deferred payment for local residents who go to live in residential or nursing care, have an legal interest in a property, or who own a significant asset in their own right and have other assets below the upper capital limit set by the Department of Health. The customer must also have been deemed to have eligible care and support needs for permanent residential or nursing care as determined by a professional care manager
- 1.3 This Policy sets out Cheshire East Council's Deferred Payments Scheme from 1st April 2015.
- 1.4 For further information about the Care Act and deferred payments please see:

www.careandsupportregs.dh.gov.uk

www.gov.uk/government/publications/care-act-2014-part-1-factsheets

2. Deferred Payment Scheme in Cheshire East Council

- 2.1 Cheshire East Council's deferred payments scheme is consistent with the Care Act 2014 and supporting Regulations and statutory guidance The legal context to this Policy is set out below at section 24. The principles underpinning the scheme are:
- To ensure that those who have been assessed as needing care may not need to sell their property to pay for care whilst they are within a Deferred Payment Agreement with the Council.
 - That those who can afford to pay a contribution towards care would be required to do so.

- To ensure that residents are fully informed about deferred payments and eligibility.
- That the scheme is self-financing and sustainable.

2.2 A DPA must be offered to those who meet all of the following criteria -:

- Anyone whose eligible care needs are to be met by the provision of Local Authority supported care in a care home. This is determined when someone is assessed as having eligible needs. This should comply with choice of accommodation regulations and care and support planning guidance and so take reasonable account of a person's preferences.
- Anyone who has less than (or equal to) £23,250 (£118,000 from April 2016) in assets excluding the value of their home (i.e. in savings and other non-housing assets); and
- Anyone whose property or asset interest is not disregarded, for example their previous home is not occupied by a spouse or dependant relative as defined in regulations on charging and support (please see 4.3). The disregards are set out in Schedules 1 and 2 of the Care Act Regulations.

3. Services covered by this scheme

- 3.1 This scheme covers residential and nursing care services. Cheshire East Council may also consider extending the deferred payment scheme to people receiving other care services at its discretion. A decision on extending eligibility to the scheme will be subject to approval at Director level.

4. The 12 week property disregard

- 4.1 Where a person has been assessed as having eligible needs for residential or nursing care and owns a property, during the first 12 weeks stay in residential accommodation, the capital value of the property is not taken into account. The 12 week property disregard starts from the point that the customer/relatives and professional care manager agree permanent care is needed. This may pre-date a permanent placement (where a placement is still being sourced, or where panel approval is awaited).
- 4.2 After 12 weeks, unless the property is subject to a statutory disregard, the property is taken into account as a capital resource.
- 4.3 A statutory disregard will apply where, for example, the property is occupied by a spouse, partner, or close relative who is incapacitated or aged 60 or over. There are also circumstances where a carer resides in a property and the circumstances are such that the Council can apply its discretion to disregard

the property. However, there are circumstances where occupation of the property will not lead to the property being disregarded where the Council has investigated the case and established that the occupation is a 'deprivation of capital' (please see section 21).

- 4.4 During this 12 week period the Council will provide advice and information about deferred payments through the Financial Coordinator who will; guide the person or their Power of Attorney for independent financial advice, provide detailed information about Cheshire East Council's deferred payment scheme such as administrative charges, terms and conditions, interest applicable and equity statements. Detailed specific Information will be provided in communications between the service user and the council including by letter.

5 Eligibility for a Deferred Payment Agreement

- 5.1 Cheshire East Council must offer a DPA where the person receiving care (residential or nursing) meets the eligibility criteria and is able to provide adequate security for the deferred payment.

Under the Care Act and supporting Regulations a DPA will be offered to anyone who meets the following eligibility criteria, from April 2015:

- Where the person has eligible care needs which should be met through residential or nursing care.
 - Has capital of less than £23,250 (in 2015/16, increasing to £118,000 2016/17). Capital includes savings and other non-housing assets, excluding the value of the person's main home.
 - Where the main home is taken into account as part of the financial assessment (those people not entitled to an automatic property disregard as explained in previously at 4.3)
- 5.2 To qualify for a DPA the person living in residential or nursing care must have the mental capacity to enter into a DPA. Where the person lacks mental capacity then the person entering into the DPA must be legally appointed to manage their finances, for example Deputyship or Lasting Power of Attorney.
- 5.3 Where the individual is eligible for a DPA the local authority may exercise discretion to refuse a DPA where for example:
- The Customer or representative does not cooperate with the requirements of the scheme offer.
 - The Council is unable to secure its debt using an appropriate method such as property charge.
 - The property is uninsurable
 - Where someone wants to defer more than they can provide adequate security for.

- Where there is insufficient equity in the property.

5.4 There may also be circumstances when the Council decides not to continue with a DPA and in these cases a financial assessment review would be conducted to determine the customers contribution, for example:

- The person has exhausted their equity in the property.
- Where a spouse/dependent relative or other moves into the property after the Deferred Payment Agreement is in place without agreement with the Council.
- Where a review of the customers circumstances demonstrate the Deferred Arrangement can end such as entitlement to Continuing Health Care or where the customer dies.
- Where a person does not comply with the terms and conditions of the agreement.

This is not an exhaustive list.

6. How much can be deferred

6.1 The Council will defer weekly the actual cost to the Council of residential or nursing care less any financially assessed contribution from the customer.

6.2 The Council will allow deferred payments to accrue against the property value up to the lower capital limit (currently £14,250 rising to £17,000 in 2016) plus 10% of the property value to cover sale costs (sale costs will be shared across the interested parties if a property is jointly owned). The maximum amount that can be deferred against a property is the 'equity limit'.

For Example: A property is valued at £200,000

The Council would deduct:

10% of the property value for sale costs £20,000

And the lower capital limit of £14,250

In this scenario the "equity limit" which can be deferred is £165,750

6.3 In some cases a customer may choose a care home with a higher weekly price than that agreed by the Council. In these cases the customer who has opted to defer charges against their property may be allowed by the Council to defer the weekly top up. This will only be acceptable where:

- The property is actively marketed;
- There is sufficient equity in the property to cover the full cost of the care home's price for a minimum of three years.
- Once the customer's capital has been exhausted and they can no longer afford to pay a top up the customer may have to move to an alternative care home.

7. Assessment of Applications

- 7.1 All applicants for a DPA must complete Cheshire East Council's options form. When assessing whether the Council is able to offer a DPA the Council will have regard to the following:
- The likely duration of the DPA and sustainability.
 - Equity available in the property
 - Contributions which may be made from a person's savings
 - The period of time a person would be able to defer weekly care costs
 - Rental of empty property options
 - How the customer intends to maintain the property and keep it safe to retain value.
- 7.2 All applicants for a DPA must cooperate fully with the Financial Assessment and complete the property questionnaire form in full, disclosing full and accurate information about the customers' circumstances and finances.

8. Obtaining Security

- 8.1 The Council is required to have adequate security in place when deciding whether a person is entitled to a DPA. The onus is on the person applying for a deferred payment, that they or their representative provides evidence that they are able to give the Council adequate security. Where the person owns a property this security will usually be in the form of a legal charge on the property. In cases of jointly owned properties the Council will require all of the owners' full agreement and cooperation to the charge being registered against the property.
- 8.2 The Council has discretion to accept other forms of security on a case by case basis, for example from a third party guarantor. This discretion will not be offered universally. The Council will need to be satisfied that there is adequate security to protect the interests of the Council and that the debt is secure.

9. Charges

- 9.1 Interest is mandated and set nationally under The Care Act 2014. Interest will apply to a DPA from the beginning until the close of the agreement. The interest rate for deferred payments is based on the cost of government borrowing - more formally, the 15-year average gilt yield, as set out by the Office for Budget Responsibility twice a year in their Economic and Fiscal Outlook report. The final interest rate is derived by adding this gilt yield rate to the default component (0.15%).
- 9.2 For example: Based on gilt rates of 3.1%, the interest rate would be 3.25% once the default component is added in.

- 9.3 The Council applies a subsidised administrative fee for arranging the deferred payment to cover some of the costs of providing the deferred scheme – this is currently set at £400.
- 9.4 The Administrative fee is deferred and subject to interest but would be paid from the lower capital threshold (currently £14,250 and £17,000 from April 2016).
- 9.5 Administrative fees covers some of the costs of providing a DPA, including:
- The cost of registering and lifting a charge with the Land Registry
 - Legal dispersals, including any Land Registry searches.
 - Costs of valuing and re-valuation of the property.
 - Staffing, management and legal costs
- 9.6 All charges and fees will be clearly set out within the Deferred Payment Agreement and correspondence.

10. Property valuation

- 10.1 Under the deferred payment scheme the customer will be expected to provide a valuation of the property or asset against which payments will be deferred. This should be an estate agent valuation or a specialist independent valuation. The Council may in some cases seek to value the property to confirm value. The cost of valuation(s) will be paid for by the deferred payment applicant or their representative.
- 10.2 The Council may re-value the property periodically during the lifetime of the DPA to ensure the agreement is valid and that the equity limit is not exceeded or where the value of the property will affect the sustainability of the Deferred Payment Agreement.
- 10.3 The Council will provide equity statements at least annually and will notify the customer/representative in advance of the equity being exhausted. It is expected that the customer/representative notifies the Council of any change in the property – such as transfer, sale, building works, damage etc.
- 10.4 Disputes about property valuation will be dealt with under the Complaints procedure. The Director of Adult Social Care has the ultimate decision.

11. Deferred Payment Agreement

- 11.1 Successful applicants will be required to enter into a Deferred Payment Agreement (DPA) with the Council. The Council can enter into an Agreement with residents, who are the owner(s) of a property or their representative who holds a Power of Attorney or a Deputy appointed by the Court of Protection, providing the application conditions are fulfilled, as described in this scheme.

11.2 The Deferred Payment Agreement will set out the following terms:

- Interest rates and how interest will be worked out against the deferred payment
- How the agreement can be terminated
- Circumstances on which the Council can refuse to pay any more care fees
- Details of the property charge or any other form of security
- Information on the effects of taking out a Deferred Payment Agreement
- Restrictions on what the deferred amount can be spent on
- How problems should be resolved if either party feels the terms of the agreement have been broken

12. Conditions of entering into a Deferred Payment Agreement

12.1 The Deferred Payment Agreement takes effect upon the applicant's or duly appointed representative signing the Deferred Payment Agreement. A certified copy of the appointment of a Power of Attorney or order from the Court of Protection appointing a Deputy will be accepted as evidence of authorisation to sign on behalf of the applicant.

12.2 The person entering into the DPA will also be required to abide by a number of conditions:

- That the property is maintained in reasonable standard of repair and condition. The Council expects property subject to a DPA to be maintained to retain value, if not the property may be condemned and enforce sale action would follow.
- All outgoings associated with the property (e.g. Council tax, service charges, ground rent, insurance) are paid.
- That any net rental income derived from letting the property during the period of the scheme will be assessed in accordance with Department of Health statutory guidance.
- That the person receiving care and/or their representative acknowledges that they have received the Council's advice that they should seek independent financial advice before committing themselves to this agreement.
- That the client makes a full application for assistance on the Council's designated application form, and provides any evidence required by the Council in support of the application.

- Where the property is jointly owned, the co-owners as well as the applicant must agree to the Council's form of charge.
- That the applicant or representative notifies the Council of any change in circumstances which would affect the value of property or the sustainability of the deferred payment. This includes informing the Council of when someone intends to move into the property.
- Reasonable costs associated with securing, insuring and maintaining the property must be met by the customer. In exceptional circumstances the financial assessment may be adjusted to allow necessary expenditure up to £144 per week allowance.
- The customer is responsible for ensuring that there is up to date insurance on the property at all times, and provide a copy of the policy if requested by the Council.

13. Financial assessment of contributions

- 13.1 Applicants entitled to a deferred payment will be assessed to make a weekly financial contribution towards the costs of care from their assessable income and capital (for example, savings and investments).

14 Letting the Property

- 14.1 Where the customer does not want the property sold during their lifetime and the property would otherwise be empty they may agree with the Council to let the property under a short term lease. The rental income generated (along with any other income), less any reasonable expenses of letting the property, must be paid to the Council in the customers assessed weekly charge in order to reduce the accruing debt.
- 14.2 Customer's should be advised that no letting agreement should be entered into or keys given to a prospective tenant before the DPA and legal charge has been entered into.
- 14.3 A copy of any proposed tenancy agreement must, in all cases, be approved by the Council's Legal Team. The property may only be let on an assured short hold tenancy if it is to be subject to a DPA.
- 14.4 If the property is already let, legal advice should be sought before proceeding any further with the DPA.
- 14.5 A valid buildings insurance policy must remain in place throughout the duration of the DPA and tenancy, and the Council's interest should be noted on the insurance policy.

- 14.6 In the event that the property is mortgaged, the customer should inform the mortgagee that the property has been let to a tenant; failure to do so could result in a breach of mortgage conditions and potential action by the mortgagee which could affect the security of the Council's interest in the property.
- 14.7 Properties that are let to tenants must be in good repair and free from significant hazards as defined in the Housing Act 2004. Information and advice is available for customers from the Council's Strategic Housing Team, including home improvement loans which are made available by the Council and by external partners.

15. Bi Annual Reviews and Deferred Payment statements

- 15.1 The Deferred Payment arrangements will be reviewed 6 monthly to assess the value of the property and ensure that there is adequate security to protect the Council's legal charge on the property and/or any other asset accepted as security.
- 15.2 In addition to reviewing the deferred payment a 6 monthly statement will be sent to the person entitled to the deferred payment and/or their representative. This statement will set out: the amount of fees deferred; interest and administrative charges to date; total amount due and equity available in the property. The statement will record the amounts deferred and progress towards the deferred payment upper limit.

16. Terminating the Deferred Payment Agreement

- 16.1 The Deferred Payment Agreement can be terminated in a number of ways:
- Voluntarily by the person receiving care or someone acting on their behalf paying the full amount that is due
 - When the property (or other form of security) is sold
 - When the equity in the property is exhausted.
 - When the person receiving care dies.
 - When the person receiving care is no longer financially supported by the Council.
- 16.2 Where the agreement is voluntarily terminated the Council will require written notice of termination (the full terms under which the agreement can be terminated will be set out in the Deferred Payment Agreement)
- 16.3 On termination the full amount due (care charges, interest accrued, administrative and legal fees) will be paid to the Council.
- 16.4 If the person decides to sell the property they must notify the Council. They will be required to pay the Council immediately from the proceeds of the sale.

- 16.5 The Social Care Business Support and Finance Team will send the following information to the legal representative or the Executor of the customers' estate when notified of the intention to sell or on termination of the DPA:

Actual or provisional debt, broken down to show:-

- Amount derived from payment of fees
- Other associated costs (listed by item)
- Interest charged and date of effect

This should be sent after fourteen days of receiving notice of death.

- 16.6 The deferred payment will automatically come to an end on a person's death. The debt can either be paid from a person's estate or by a third party, for example a family member may choose to settle the debt rather than sell the deceased's property. If the agreement is terminated through a person's death the total amount due becomes payable within 90 days after the person dies.
- 16.7 If the property is sold during the agreement term or the customer dies during the agreement term this will terminate the Deferred Payment Agreement. The accrued debt which must be re-paid in full from the sale proceeds.
- 16.8 Once Debt is recovered the Social Care Business Support and Finance Team will notify the Legal Team who will remove the DPA or LC from the customer's title.

17. Reassessments following repayment to the Council

- 17.1 If a Deferred Payment Agreement is terminated, because for example the deferred payment is repaid, the Council shall undertake a reassessment of the persons social care needs and finances. The purpose of the reassessment would be to ensure, for example; that the person receiving care continues to have eligible care needs and identify where the Council has a continuing responsibility to fund or arrange care.
- 17.2 If the property sale proceeds during the placement and there are sufficient funds for the Customer to become a self funder, Cheshire East Council may end its contract with the care home and the placement may be private. The Council will seek to recover deferred charges.

18. Refusing an application

- 18.1 The Council can refuse a request for deferred payment. In such circumstances the decision will be notified in writing to the applicant and/or their personal representative. The decision will set out the grounds for refusal and provide for appeal rights. Should the Council be unable to offer a DPA then the customer will be invoiced the full cost of their care. Should these invoices not be paid in accordance with the Councils normal payment terms, Cheshire East Council will reserve the right to commence debt recovery proceedings in order to obtain judgment for the debt and enforce the judgment by way of a Charging Order

registered against the property. Consideration will then be given as to whether an application for an Order for Sale will be made. The Council may levy the appropriate legal charges for dispersal costs in these circumstances. Reasons for refusing a deferred payment can include:

- There is insufficient equity in the property to fund the deferred payment
- The applicant or their representative has failed to provide all of the relevant information to process the application
- There is no-one with capacity or legal authority to enter into a deferred agreement.
- The Council is unable to place a legal charge on the property which would secure the deferred payment
- The customer does not cooperate with the requirements of the DPA.
- The customer is seeking a top up that does not meet the criteria set out at section 6.3

18.2 Should the customer decline to accept a DPA or, having indicated their willingness to enter into a DPA, not complete and returned the DPA within the twelve week disregard period, the customer will be invoiced the full cost of the care plus any associated legal costs actually incurred. Cheshire East Council will reserve the right to commence debt recovery proceedings in order to obtain judgment for the debt and enforcement by way of a Charging Order registered against the property. The Council will then consider making an application to enforce the sale of the property in order to pay the debt from the proceeds of sale.

19. Review and Appeals

19.1 The decision on the outcome of the application for a DPA can be reviewed. The grounds for review could include:

- The decision to refuse the application failed to take into account any new information which would have led to a revision of the decision.
- There are eligible care costs which the Council have failed to take into account

19.2 Requests for a review should be made within 20 working days of being notified of the outcome of the application for a Deferred Payment Agreement. This period can be extended if there are exceptional circumstances.

19.3 If the person is dissatisfied with the outcome of the review, they can then appeal within 20 working days of being notified of the outcome of the review. This period can be extended for exceptional reasons.

19.4 If the person remains dissatisfied with the outcome of the appeal then they can request that this matter is dealt with under Cheshire East Council's Adults Social Care Complaints procedure.

20. Information and advice

- 20.1 The Council will provide advice and information in person to those who wish to enter into a deferred arrangement with the Council – this will be done through a Financial Coordinator. General information and advice about deferred payments will be made available through a variety of channels; for example, web, leaflets. Information and advice will be provided during the 12 week property disregard period and at other stages during the care and financial assessment process.
- 20.2 Advice and information also includes financial advice and under the Care Act all local authorities are required to ensure that people have access to independent financial advice.
- 20.3 The Council can signpost people to appropriate independent financial services to access quality advice around investment for later life care cost planning. Information will be provided on the sale of any property subject to deferred charges.

21. Deprivation of Assets

- 21.1 In circumstances where a property is transferred to another person at a time when the transferor knows, or ought to have known, that they will be in need of Local Authority funded care, and transfers the property in order to qualify for financial help from the local authority, is likely to be the subject of the “deprivation of assets” rule.
- 21.2 If any member of staff suspects that a customer has deliberately given away assets in order to reduce or avoid care home fees, they will commence investigations to establish the facts and when necessary present their findings to the Legal Team for a decision. The Council has the power to treat the customer as if they still have those assets; this is known as notional capital. The Council can periodically check that the property is still owned by the customer. There is no set time limit within which giving away property or savings is treated as deprivation of capital. The most significant factor is to establish the intention behind the transfer. If a “significant” reason, not necessarily the main reason was to avoid paying for care fees the Council has the right of further investigation and to treat the property according to their findings as a result of that investigation.
- 21.3 These procedures can also be applied in situations where assets that would have been treated as capital have been converted into those that are not. If the customer does not agree with Cheshire East Council’s decision regarding deprivation of capital they can request that the decision is reviewed by the Director of Adult Social Services and Independent Living.

22. Non Payment of Deferred Debt

- 22.1 In the event of non payment of outstanding debt:

- If the debt is not repaid immediately then interest will be payable after the termination of the contract at 5% above base capped at 8%. The Council reserves its right to commence debt recovery proceedings in circumstances where the debt has not been paid within a reasonable period.
- Following the death of the customer if after 56 days of the termination of the agreement Probate has not been applied for the Council will consider referring the matter to an independent solicitor to apply for Probate and administer the estate in order to receive payment for the outstanding debt.
- If an executor/personal representative has been granted Probate or Letters of Administration they will have a period of three months to pay the debt owed to the Council.
- If the debt is not paid and the property has not been sold within six months of Grant of Probate, the executor/personal representative will be required to engage with the Council and provide evidence of the efforts that have been made to sell the property including what efforts are to be made in the immediate future. The Council reserves the right to commence litigation if there is a reasonable belief that insufficient efforts are being made to sell the property.
- If the executor/personal representative does not co-operate with this process then the Council will exercise its discretion when considering litigation.
- If litigation is considered to be appropriate then the Council will commence debt recovery proceedings against the executor/personal representative and apply to the court to enforce the sale of the property.

23. Monitoring and Review

23.1 This policy will be reviewed in twelve months unless an earlier review is indicated due to changing circumstances.

24. Legal Context

- The statutory regime for deferred payment agreements is set out at section 34 to 36 of the Care Act 2014. This provides the definition for a deferred payment agreement at section 34(2) and also explains that the Regulations provide conditions as to when the local authority is required to offer a deferred payment agreement and when it is permitted to.
- The Care and Support (Deferred Payment) Regulations 2014 provide the specific conditions required in relation to deferred payment agreements.

- The Department of Health has provided Statutory Guidance dated October 2014 in support of both the Care Act and the supporting Regulations.
- Section 2 of the Regulations sets out the circumstances when a local authority is required to offer a deferred payment agreement. This includes the specific eligibility criteria that a resident must satisfy in order to be offered a deferred payment agreement.
- Section 3 of the Regulations sets out the circumstances when the local authority is permitted to enter into a deferred payment agreement without there being a specific requirement to do so.
- Section 4 of the Regulations sets what form of security amounts to 'adequate security' sufficient to enable a deferred payment agreement to be entered into. Further, it explains that the local authority can accept other forms of security at its discretion.
- Section 5 of the Regulations Loan to Value.
- Section 6 of the Regulations sets out the rules governing the resident's contribution.
- Section 7 of the Regulations sets out the rules regarding repayment of the deferred amount.
- Section 8 of the Regulations sets out the rules regarding termination of the deferred payment agreement.
- Section 9 of the Regulations sets out the rules regarding what interest a local authority may charge in addition to the deferred amount.
- Section 10 of the Regulations provides that the local authority may charge the adult its administration costs incurred in entering into the deferred payment agreement.
- Statutory Guidance October 2014 at Chapter 9 provides specific guidance in relation to deferred payment agreements.
- The Deferred Payment Agreement signed by both the local authority and the resident or their representative must satisfy the requirements set out in Regulation 11 of the Care and Support (Deferred Payment) Regulations 2014. The Statutory Guidance October 2014 at Chapter 9 provides additional guidance on what local authorities should include in the deferred payment agreement.
- In addition to Cheshire East Council's to-up policy and the Statutory Guidance October 2014 at Chapter 9, Annex A: Choice of Accommodation and additional payments deals with the circumstances when a resident is required to pay a top up how this can be facilitated.
- There are circumstances where a property may be disregarded in the financial assessment of a resident. The circumstances where the property is disregarded can be found in the Statutory Guidance October 2014 Annex B: Treatment of Capital, at point 34 to 44.
- Guidance in relation to the debt recovery process for unpaid charges is set out in the Statutory Guidance October 2014 Appendix D: Recovery of Debts.

- Statutory Guidance Annex E: Deprivation of Assets provides guidance to local authority on how to approach a case where a deprivation of capital may have taken place.
- The Council's policy in relation to Top Up's is in accordance with the Care and Support and Aftercare (choice of Accommodation) Regulations 2014.

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PROCEDURE TITLE	Direct Payment Policy (Appendix C)
PURPOSE	The purpose of the Direct Payment Policy is to explain the parameters and process applied when the Council allows Adult Social Care customers the opportunity to receive a cash budget for their care as an alternative to commissioned care services to meet eligible unmet needs.
SCOPE	This policy is followed by staff when a customer is found to have eligible unmet needs for care services – the customer (or their legal representatives) should be offered the option of a Direct Payment to meet their needs.
POLICY SUPPORTED	Personal Budget, Charging, Suitable Person, Carers, Debt
RESPONSIBILITIES	Care Manager Financial Coordinator Social Care Business Support and Finance Contracts Team Cheshire Centre for Independent Living Managed Account and Brokerage.
ENQUIRY POINT	Alison McCudden, Service Manager – Social Care Business Support and Finance Nicola Phillips, Service Manager, Adult Social Care
KEYWORDS	Direct Payment, Suitable Person,

PROCEDURE APPROVAL			
APPROVED BY		POSITION	
SIGNATURE	Version4/23.2.15/amc	DATE APPROVED	

COMMUNICATING WITH CUSTOMERS OR CARERS

When following this policy, if you need to communicate with customers or carers, it is essential that the communication is made in a way that is understandable to them. For example, where people may be from a different ethnic origin, it is essential to find out whether or not their first language is English. If it is not, it will be appropriate and essential to enquire whether written or spoken communications need to be, or would best be, in their first language.

If the customer has a learning disability, you will need to make sure that any written communication is in an appropriate form, for example 'easy read', and consider whether it would be advisable to have an Advocate available for any discussions.

Our Communication and Information Strategy requires that we should make information accessible to all. We have, therefore, contracted with a number of organisations to provide translation and interpretation services, and to transfer information into alternative formats such as large print or Braille. If you are unsure about the conventions which are acceptable to people from other cultures or religions, guidance is available from Communications: communications@cheshireeast.gov.uk.

Direct Payment Policy

Document Summary: This document outlines Cheshire East Council's approach to Direct Payments - the cash element of a Personal Budget and is part of the Personal Budget Policy.

Direct Payments

1. Glossary of terms

Best Interests Assessment	An assessment to determine and evidence what would be in a person's best interest, in relation to a specific decision, where the person has been determined, using a mental capacity assessment, as lacking the capacity to make that decision themselves.
Direct Payments	Money paid (in lieu of a commissioned service) to a person to purchase social care services they are eligible to receive.
Social Care Business Support and Finance	The team responsible for conducting financial assessments for people receiving services from Cheshire East Council and overseeing payment of the Direct Payment
Mental Capacity Assessment (MCA)	The assessment used to determine if a person has the capacity to make a particular decision.
Cheshire East Council/the Council	The organisation that arranges care and Support.
Social Care Services	Social Care covers a wide range of services provided by Cheshire East Council, Partners and the independent sector to eligible people either in their own homes or in a care home.
Suitable Person/Representative/Third Person	A person who has been legally nominated as being suitable to receive a Direct Payment to purchase services for someone who has been determined as lacking the capacity to consent to a Direct Payment, or who doesn't want to manage it themselves. The Suitable Person becomes responsible for the on-going management of the Direct Payment in the best interests of the customer.

1 Policy document

1.1 This is a policy document, and may be amended or changed in accordance with Democratic procedures. Nothing in this policy is intended to fetter the discretion of the Council.

2 Scope

2.1 This policy is intended to assist officers of Cheshire East Council involved in carrying out social care need assessments and financial assessment, reassessments, reviews, support planning, audit or who are otherwise involved in the arrangement and administration of services for people with assessed eligible community care needs and provide a clear framework to the Council's Direct Payment offer.

3 Purpose

3.1 Cheshire East Council is committed to increasing the number of people receiving Direct Payments and to ensure that (where appropriate) people have access to the choice that Direct Payments bring.

3.2 A Direct Payment is funding given by the Council to eligible individuals so that they themselves can pay for the services that will meet their assessed eligible unmet community care needs. This policy outlines the benefits and responsibilities that arranging, managing and paying for services brings to individuals who choose to take up the offer of Direct Payments.

4. Introduction to Direct Payments

4.1 In April 2003, the Government published guidance on Direct Payments. All councils have had (with certain caveats and protections in place) a legal duty, since 2003, to offer people who are eligible for community care services the choice of receiving Direct Payments to manage their assessed eligible unmet community care needs. This policy follows the updated Direct Payment Guidance contained within the Care Act 2014 and the Care and Support (Direct Payments) Regulations 2014 and includes the Council's offer as consulted on during December 2014 and January 2015. Direct Payments promote independence, choice and inclusion by enabling people to purchase the assistance or services that the Council would otherwise provide.

4.2 With the exception of people requiring permanent residential care, Direct Payments should always be considered when deciding how to meet a person's assessed eligible community care needs. However, the Department of Health guidance states that Direct Payments may be offered in permanent residential care to purchase day opportunities, support or activities. However, it is the expectation of Cheshire East Council that, when funding a residential placement, the holistic needs of the individual are met by the service provider unless exceptional circumstances can be demonstrated.

4.3 The principle of Direct Payments is that, once a person has been assessed as having eligible unmet needs for services or equipment from a local authority social care department, then s/he can choose to receive the money to purchase the service or equipment, instead of having it provided or arranged directly by the Council.

4.4 Each individual in receipt of services can use the Direct Payment to secure the services they require to meet their needs, as set out in their support plan. Direct Payments are offered as an alternative to traditional care services or they can be offered for elements of an individual's care while other elements are covered by care packages in another way.

4.5 The Care Act 2014 introduces a new responsibility to Councils to treat Carers in the same way as those requiring care. Direct Payments can be offered to Carers to meet their assessed eligible needs.

4.6 There may be instances where the person being cared for does not have eligible needs but their carer does have eligible needs in his or her own right. The carer would therefore receive a support plan that covers their needs. The carer in this circumstance can request a direct payment and use it to pay for replacement care for the cared for adult, if the carer's eligible needs would be met by such provision.

4.7 However, if the cared for adult has eligible needs of his or her own, then the carer cannot use their direct payment for replacement care because such care would form part of the cared for adult's own needs.

5. Eligibility, Consent and Capacity

5.1 Who is eligible to receive Direct Payments?

Under the legislation, councils have a power (although not a duty) to make Direct Payments to:

- Older and disabled people aged 16 and over in line with the Council's 'Prioritising Need' policy
- A person with parental responsibility for a child
- Carers aged 16 and over
- An appropriately appointed suitable person.
- People ("restricted patients") who are conditionally discharged under the Mental Health Act 1983. Such people are offenders who have been detained in hospital under the Mental Health Act 1983 and who remain liable to recall to hospital if necessary for their own health and safety or the protection of others.
- People who are compelled to receive a service as a result of any of the following legislative provisions relating to mental disorder:
 - Supervised community treatment, guardianship or on leave of absence from a hospital in which they are detained under the Mental Health Act 1983.
 - Supervision by a social worker or probation service as a result of a supervision order made under the Criminal Procedure (Insanity) Act 1964.
 - An offender released on licence under the Criminal Justice Act 1991, which includes a requirement to accept treatment for a mental health condition.
 - An offender on a community rehabilitation order under the Powers of Criminal Courts (Sentencing) Act 2000, which includes a requirement to accept treatment for a mental health condition; and
 - An offender on a community order or serving a suspended prison sentence under the Criminal Justice Act 2003, which includes a requirement to accept treatment for a mental health condition

5.2 Who is excluded from Direct Payments?

Direct Payments may not be made to certain people whose liberty to arrange their care is restricted by certain mental health or criminal justice legislation as follows:

- offenders on a community order or serving a suspended prison sentence under the Criminal Justice Act 2003, which includes a requirement to accept treatment for drug or alcohol dependency.
- an offender on a community rehabilitation order or a community punishment and rehabilitation order or a community punishment and rehabilitation order under the Powers of Criminal Courts (Sentencing) Act 2000, which includes a requirement to accept treatment for drug or alcohol.
- offenders released from prison on licence under the Criminal Justice Act 1991, the Criminal Justice Act 2003 or the Crime (Sentences) Act 1997 subject to an additional requirement to undergo treatment for drug or alcohol dependency.
- people subject to equivalent restrictions in mental health or criminal justice legislation – in any other UK Jurisdiction.

5.3 Consent and Capacity - People who receive direct payments are responsible for arranging and managing their own or another person's care. This may involve legal responsibilities, for example, employing staff. They need to maintain appropriate records and account to the Council for how direct payment monies are spent.

5.4 Before people consent to receive direct payments, they should be fully advised about their rights and responsibilities in relation to direct payments. Consent must be given voluntarily and no one should feel forced or obliged to accept a direct payment if they do not wish to do so.

5.5 Where there is any doubt about a person's ability to consent to direct payments, the Local Authority must assess whether or not the person has capacity to consent before making Direct Payments available. Service users who would otherwise have no-one to support them should be offered an advocate. In such cases, staff must refer to the Mental Capacity Act 2005 and its accompanying Code of Practice.

5.6 Inability to consent to receiving a direct payment does not mean a person with eligible needs cannot receive a direct payment provided that a suitable person is appointed to manage the direct payments on their behalf.

5.7 In the case of people who are unable (including those who lack the requisite mental capacity to consent - please refer to Mental Capacity Act 2005 and Code of Practice) to manage their own Direct Payment, an appointed **Suitable Person** can receive a Direct Payment to secure services to meet the assessed eligible community care needs of the individual. People may also ask carers or others to help or support them in managing their Direct Payment where they have capacity to request this. This may include helping them to secure the services they require.

6. Representatives or suitable persons

6.1 The Council (Care Manager) will make the decision about whether or not someone is considered a suitable person to manage the Direct Payment on behalf of the person who cannot consent or is not able to manage their Direct Payment. Someone may be considered suitable if any of the following applies:

- there are no substantiated allegations of financial abuse or neglect.
- there is no reason to believe they pose a risk to the person in receipt of services.
- they are capable of managing the Direct Payment.

- they will work in accordance with the Children's Acts (1989 and 2004) and Mental Capacity Act (2005).
- they have parental responsibility and there are no substantiated allegations of financial abuse or neglect.
- there is a suitable Trust in place whereby the representative or suitable person acts as trustee holding property for the benefit of the Direct Payment recipient.
- there is a valid registered lasting (or enduring) power of attorney and there are no substantiated allegations of financial abuse or neglect.
- there is a Court Appointed Deputy and there are no substantiated allegations of financial abuse or neglect.

6.2 It would not be considered suitable for someone who is being paid from the Direct Payment account (e.g. as a Personal Assistant or Care Provider) to also act as the representative or Suitable Person.

6.3 If a Personal Assistant is being employed, then the representative must be able to comprehend relevant legislation and the responsibilities of being an employer. In these circumstances, the representative is the employer and is responsible for all elements of the Direct Payments and employment law relating to this.

6.4 Episodic / Fluctuating Conditions - People with an episodic or fluctuating condition, may still be able to manage their Direct Payment. However, some people with these conditions may prefer to nominate an individual (e.g. a relative, friend or professional advisor) to assist them with managing their Direct Payments when their condition becomes acute.

7. Using Direct Payments

7.1 What a Direct Payment CAN be spent on - Guiding Principles

The Council cannot draw up an exhaustive list as to how people can/cannot spend their Direct Payment. Each case must be decided on its own merits and documented in the customer's support plan, based on the following key principles. The service, activity or item proposed should:

- be clearly linked to the outcomes identified in the Support Plan to meet the person's assessed eligible community care needs.
- be able to show how it will keep the individual healthy, safe and well.
- be affordable and proportionate to the assessed eligible community care needs of the person.

7.2 Examples

The Direct Payments scheme has been designed to apply to a wide range of community care services in accordance with the Care Act 2014 and the Care and Support (Direct Payments) Regulations 2014. These **could** include:

- Employing a Personal Assistant to help the individual with their daily living requirements.
- Support to meet assessed eligible community care needs as identified in the Support Plan. Usually, people will be expected to fund actual activities from their income. However, occasionally, there may be circumstances where the activity itself

meets an assessed critical or substantial need and, in such cases, a Direct Payment may be given for the activity itself as well as for the paid support he or she will need to access that activity.

- In exceptional circumstances, to purchase equipment or an item of the person's choice that would enable them to meet their assessed eligible care need themselves. The person sources their choice of equipment and agrees with the Council that it is suitable to meet their assessed eligible care needs. The Direct Payment awarded is the cost of the item to Cheshire East Council, based on the Catalogue
- The person is expected to make up any shortfall associated with choice either themselves from disregarded income or capital, or seek a third party to support the additional costs.
- Respite care – The purpose of respite is to provide an alternative to regular informal care, usually in order to facilitate carer relief. Direct Payments can be made to an individual who has been assessed as having an eligible need for respite. Direct payments cannot currently be used to pay for long term care home placements. However, they can be used to purchase a short term stay, provided this does not exceed a period of four consecutive weeks in any 12 month period. It may be that respite is taken in a private residential setting, or it may take place within the home with support from a carer. A Direct payment could be made to cover the cost of the support the person will need while they are away from home, or the cost of the care provided in the home, while the main informal carer is away. Alternatively, it might also be possible to use the payment to fund the support to meet assessed eligible community care needs while on holiday (without the main informal carer). There may be exceptional circumstances when the main informal carer will also go on holiday but will not be providing the assessed care. General holiday expenses, such as the hire of a caravan, hotel or travel will need to be funded from the person's own income. How the respite will take place will be agreed with the person and recorded in their support plan.

7.3 What a Direct Payment CANNOT be spent on:

Working within the above guiding principles, the following are things a Direct Payment **cannot** be spent on:

- purchasing services from Cheshire East Council,
- permanent residential care,
- an activity or item that exposes the individual to serious risk from someone else/themselves,
- funding support provided by anyone living in the same house except in exceptional circumstances,
- anything that is not covered by the support plan,
- any type of illegal activity,
- any services provided by the NHS,
- a substitute for Disabled Facilities Grants,
- a self-employed Personal Assistant, or
- Gambling
- Paying off personal loans
- Redundancy pay for a Personal Assistant

- anything else that is not an assessed eligible community care need

8. Employment of Personal Assistants

8.1 Cheshire East Council strongly recommends that a Direct Payment recipient planning to employ anyone (including family members) conducts an Enhanced DBS check. Cheshire East Council insists that a DBS check is conducted where it is intended for a Personal Assistant to be employed in a household where there are children (under 18 years). The Personal Assistant should not be employed until this DBS check is completed. Cheshire Centre for Independent Living maintain a register of Personal Assistants who are DBS checked.

8.2 **Employer's Responsibilities and Legislation** - If a Direct Payment is used to employ a Personal Assistant, the Direct Payment recipient must act as a responsible employer and make arrangements in line with employment legislation. The Council (Care Manager) must ensure there is sufficient allocation of funds to cover requirements such as small contingency for holiday pay/maternity leave/replacement care, Debarring Service Check, Insurance, etc. As an employer, it is the responsibility of the Direct Payment recipient and not the Council to ensure all legislation is adhered to and all necessary insurance is taken out and necessary training completed. Advice and support around costing contingencies can be offered through the Council's contracted Direct Payment and Personal Budget Support Service through Cheshire Centre for Independent Living. The Direct Payment recipient must ensure that they retain sufficient funding from the Direct Payment to cover their potential employer responsibilities. The Direct Payment recipient is strongly urged to obtain their own independent legal advice as to their responsibilities as an employer.

8.3 All employers must register with HM Revenue and Customs, regardless of whether any tax and national insurance contributions are being paid.

8.4 **Employing someone residing in the same household** - The 2009 Direct Payment Regulations excluded the payment from being used to pay for care from a close family member living in the same household, except where the local authority determined this to be necessary. While the Care and Support (Direct Payments) Regulations 2014 maintain this provision regarding paying a family member living in the same household for care, it provides a distinction between 'care' and 'administration/management' of the direct payment. This allows people to pay a close family member living in the same household to provide management and/or administrative support to the direct payment holder in cases where the local authority determines this to be necessary. This is intended to reflect the fact that in some cases, especially where there are multiple complex needs, the direct payment amount may be substantial.

8.5 The management and administration of a large payment, along with organising care and support can be a complex and time consuming task. This allows family members performing this task to be paid a proportion of the direct payment, similar to what many direct payment holders pay to third-party support organisations, as long as the local authority allows this. Care Managers should refer people to Cheshire Centre for Independent Living for advice and guidance.

8.6 The local authority should be satisfied that it is necessary to make the payment to the family member to provide this service and that the direct payment will only be used for administration and management of the payment. The circumstances and payment amount should be decided and agreed with the person requiring care and support, the family member, local authority and any other person (i.e. advocate), with the local authority taking steps to ensure all parties agree.

8.7 These decisions should be recorded in the care and support plan and include the amount of the payments, their frequency and the activities that are covered. This arrangement must also be taken into account during allocation of the personal budget so that the amount remains sufficient to meet the person's needs.

9. **Sourcing Care.** The Council (Care Manager) can provide information on care available in the market to meet the needs of the individual. The individual can be signposted to Cheshire Centre for Independent Living who is able to assist the individual with detailed Support Planning in order to create a package of care from within the allocated budget to meet the individual's needs.

10 Managing a Direct Payment

10.1 - **Frequency of Payments.** Direct Payments will be paid into the individual's Direct Payments bank account in line with our billing periods every 4 weeks, in advance.

10.2 - **Payment methods.** Payments will be made via the BACS system (an electronic transfer of funds between the Council's and the individual's Direct Payments bank account). Payment will be made net of the customer's assessed weekly financial contribution.

10.3 - **Bank Accounts.** Direct Payments will only be paid into a separate and appropriately named bank account, which will be used solely for the purpose of managing Direct Payments. This is to ensure that the individual does not confuse their personal funds with their Direct Payment funds and will allow efficient record keeping, monitoring and auditing, both for the individual themselves and the Council for audit purposes.

10.4 - **One-off payments.** In exceptional cases Direct Payments for respite, equipment and carers could be made as one-off payments as documented in the Support Plan.

10.5 - **Managed Accounts.** It is possible for people who have been assessed, under the Mental Capacity Act as lacking the requisite mental capacity to manage a Direct Payment to still receive one. An agreement might be reached with the Council whereby a relative or other carer can manage the person's Direct Payment account on their behalf under the Suitable Person policy. In such circumstances, a person who agrees to manage an account on behalf of someone, will be personally accountable for the individual's personal budget in the same way that the individual would have been had they had mental capacity to do so themselves.

10.6 If none of the above supports exist and a person has the requisite mental capacity to agree to a Direct Payment (or someone to do so on their behalf) the individual may choose a Managed Account offered by Cheshire Centre for Independent Living or any

other provider of such services – the individual will retain responsibility for responding to audit requests and instructing the managed account provider on day to day transactional activity.

10.7 - Contingency and Reserves. If the Direct Payment is paid as a weekly allocation, a contingency payment of up to 8 weeks worth of the weekly direct payment in advance can be paid by the Council into the Direct Payment account subject to the assessed eligible need of the customer. This should only be used for care services.

10.8 - Reserves. The Council will allow the Direct Payment recipient to retain an agreed reserve of 4 weeks DP monies in their Direct Payment account at any one time. The Direct Payment bank account will be audited regularly (as detailed in the Support Plan) and any obvious surplus in excess of the agreed reserve will need to be repaid to the Council.

10.9 - Mixed Packages of Care. Individuals may want to carry on receiving some services purchased via directly provided packages of care (arranged by Cheshire East Council) whilst purchasing their other services via a Direct Payment. In addition, there may be good reasons for the Council agreeing to provide part of a person's care package directly but making a Direct Payment in respect of certain parts of the care package. In such circumstances the customer's financial contribution will always be netted off the direct payment.

10.10 - Contributions to Care. All Direct Payments are subject to the Council's Charging policy. Following financial assessment by the Council, the individual must make their personal contribution towards their Direct Payment (if applicable) into their Direct Payment bank account as per the Direct Payment Agreement 4 weekly in advance. A Direct Payment will not be paid if the assessed contribution is greater than the Direct Payment amount. The Assessed Contribution is the first element of payment with the Direct Payment making up the difference to ensure the support needs can be afforded. If the assessed contribution is less than the Direct Payment, the amount of the contribution will be deducted from the Direct Payment before the payment is made. If it is found that the personal contribution has not been paid into the Direct Payment account, the individual will be liable for this amount. The council will follow its usual debt recovery procedure to reclaim unpaid client contributions and misspends.

10.11 The amount of care may vary each week; however, the weekly contribution is a fixed amount and should always to be paid into the Direct Payment account first. When a contribution is applicable to a respite payment, that contribution should also be paid into the Direct Payment bank account, normally charged at the community rate but in some cases where respite is the only service provided through a Direct Payment the respite charge will apply.

10.12 - Use of own resources. To purchase additional or enhanced services to those agreed in the support plan, the Direct Payment recipient can add to their Direct Payment from their own disregarded income or capital. Top up amounts to providers must not be paid for out of Direct payment monies or the individual's personal contribution. Top up payments should be funded by the customer (or a nominated third party) from disregarded income or capital only or by a third party.

10.13 - Self-Funders. If, after the financial assessment, the individual has to pay the full amount for their services, individuals may still decide to use the Council for support and advice on how to meet their own care needs but they would not be eligible for a Direct Payment.

11. Direct Payment Agreement

11.1 All recipients and/or suitable persons nominated must sign the Direct Payment Agreement before a Direct Payment can be made. The Direct Payment Agreement sets out the arrangements between the individual and the Council as to how a Direct Payment will be spent to achieve the outcomes detailed in the Support Plan. The agreement covers the payment, management; reviewing and auditing arrangements, which the Council, and individual will need to follow and refers to policies and other documents useful in the management of a Direct Payment.

12. Monitoring and Review of the Direct Payment

12.1 The Council will conduct an initial 12 week audit of a direct payment to see how the Direct Payment is being spent, to ensure unmet assessed eligible community care needs and outcomes are being met and that the Direct Payment is being used as detailed in the Support Plan and within the terms of the Direct Payment Agreement.

12.2 If at the initial audit it becomes clear the individual is struggling to understand their responsibilities in operating a direct payment, the Council (Financial Coordinator) can assist with further information, advice and support.

12.3 The Direct Payment recipient will be subject to regular audits in relation to the use and management of the Direct Payment – this may be annual for many cases but may be bi-annual for cases where the direct payment is being managed well. This is required to ensure that Council monies are being used for the purposes laid out in the support plan, the correct amounts are being used for each service and that accurate receipts and records are being kept. Any discrepancies will be investigated and resolved and any debt will be recovered by the Council.

12.4 The Council has the right to suspend or terminate the Direct Payment as a result of the findings of the audit of the Direct Payment account. An audit of the individual's circumstances may take place at anytime.

13. Review of care provision in the form of a Direct Payment

13.1 The Council's standard practice for reviews, as outlined in the Community Care Assessment and Care Management Procedure, should be followed. Consideration will be given to whether the recipient's Direct Payment bank account is being managed correctly, records and receipts are up to date, the monies are being used for the services for which they were intended, and the Direct Payment is adequately meeting the assessed eligible community care needs of the service user.

13.2 The Council has the right to increase, decrease, suspend or terminate the Direct Payment in line with regular review or reassessment of the recipient's assessed eligible community care needs. A formal review or reassessment of the individual's circumstances can be requested at anytime.

14. Audit of Direct Payments

14.1 The Council will provide information and advice to people who opt to take their care and support through the payment of a Direct Payment. It will be made clear to the person that the Direct Payment Account is auditable and the need for good record keeping on expenditure is important.

14.2 The Direct Payment will be audited initially at 12 weeks from it starting and any issues will be addressed by the Care Manager at this point in conjunction with the person and the Financial Coordinator.

14.3 Thereafter Direct Payments are usually audited annually but some accounts may be running well and therefore subject to a longer audit period. Some cases where they are not running smoothly will be subject to earlier audit.

14.4 A care manager or customer can request an audit at any time.

15. Recovery of Direct Payments

15.1 The Council reserves the right to recover Direct Payments, in line with the Council's debt recovery policy in the following circumstances:

- if the Direct Payment has not been used to meet agreed outcomes, as set out in the support plan,
- if the Direct Payment has not been used due to a temporary change in circumstances,
- if the Direct Payment recipient fails to meet any terms of the Direct Payment Agreement,
- if the Direct Payment recipient has failed to disclose other social care funding that should be taken into account when calculating the Direct Payment,
- if a Direct Payment has been overpaid or paid in error,
- if there is a surplus in the Direct Payment account, which has been accrued above the agreed amount,
- if the Direct Payment recipient has not met any condition which the Council has properly imposed in the Direct Payment Agreement or agreed letters.
- If, following termination of the Direct Payment, any Direct Payment monies remain in the Direct Payment account.

15.2 Unspent Direct Payments - If, after allowances for outstanding costs and personal assistant payment contingencies, there is found to be a build up of unused Direct Payment funds in the recipient's Direct Payment account, the recipient will be notified that these unspent monies will be recovered leaving 4 weeks payment in place.

15.3 Overpayments - If the Direct Payment recipient is no longer entitled to, or no longer wishes to receive a Direct Payment, and/or an overpayment has occurred due to an error on the part of the Council, the Direct Payment recipient will be notified that this overpayment will be recovered.

15.4 Wrongful Use of Direct Payments - Where it appears that the Direct Payment recipient has been using their Direct Payment for items or services other than those specified in their support plan, or as set out in the Direct Payment Agreement, or there is evidence of deliberate misuse of funds, the Council will undertake a full reconciliation Audit to ascertain the exact amount of money that has been inappropriately used and seek to recover it.

15.5 If Direct Payments have been inappropriately used (either intentionally or unintentionally) due to mismanagement of the Direct Payment account, or the Direct Payment recipient has shown themselves incapable or unwilling to manage their Direct Payment correctly, a review or reassessment will be undertaken as a matter of urgency. If the outcome is that the Direct Payment monies have been inappropriately used, the monies will be recovered.

16 Termination of Direct Payments

16.1 Terminating Direct Payments by the Direct Payment Recipient

If a Direct Payment recipient expresses a desire to terminate the Direct Payment, the reasons for the termination need to be provided to the Council. They will then work with the individual to plan how their assessed eligible care needs will be met in an alternative way.

16.2 Council Terminates Direct Payment

The Council reserves the right to terminate the Direct Payment if terms of the Direct Payment agreement are breached. If this happens, the recipient will be informed in writing. In such cases, the Council will then work with the individual to plan how their assessed eligible care needs will be met in an alternative way.

17. Further Information

17.1 Complaints & Feedback

The Council operates a Statutory Complaints procedure, which an individual may access should they experience dissatisfaction with their Direct Payment provision.

17.2 Social Care Business Support and Finance

The Council's Business Support and Finance Team are available to discuss any issues regarding the payments and the management of Direct Payments and are able to offer advice and guidance about Direct Payments.

The team can be contacted at:

Social Care Business Support and Finance

Cheshire East Council

Phone: 0300 123 5102

PROCEDURE TITLE	Care Top Up Policy (Appendix D)
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PURPOSE	The purpose of the Care Top up Policy is to explain the parameters and process applied when an individual chooses care and support which is more expensive than the Council's agreed rates.
SCOPE	This policy is followed by staff when a customer chooses more expensive care and support than is allocated to them in their personal budget to meet their eligible need. The policy covers short and long term permanent residential or nursing care in a care home and care services provided in the customers own home.
POLICY SUPPORTED	Charging for Social Care, Personal Budget and Direct Payment Policy, Deferred Payment Policy
RESPONSIBILITIES	Care Manager Financial Coordinator Care Arrangers Care Providers
ENQUIRY POINT	tba
KEYWORDS	Top up, Sustainability, Third Party, Self Funders

PROCEDURE APPROVAL			
APPROVED BY		POSITION	
SIGNATURE	Version2/13.02.2015/amc	DATE APPROVED	

COMMUNICATING WITH CUSTOMERS OR CARERS

When following this policy, if you need to communicate with customers or carers, it is essential that the communication is made in a way that is understandable to them. For example, where people may be from a different ethnic origin, it is essential to find out whether or not their first language is English. If it is not, it will be appropriate and essential to enquire whether written or spoken communications need to be, or would best be, in their first language.

If the customer has a learning disability, you will need to make sure that any written communication is in an appropriate form, for example 'easy read', and consider whether it would be advisable to have an Advocate available for any discussions.

Our Communication and Information Strategy requires that we should make information accessible to all. We have, therefore, contracted with a number of organisations to provide translation and interpretation services, and to transfer information into alternative formats such as large print or Braille. If you are unsure about the conventions which are acceptable to people from other cultures or religions, guidance is available from Communications: communications@cheshireeast.gov.uk.

Social Care Top Up Policy

Document Summary: This document applies to any care and support package supported by the Council to meet eligible unmet needs.

1. Glossary of terms

Best Interests Assessment	An assessment to determine and evidence what would be in a person's best interest, in relation to a specific decision, where the person has been determined, using a mental capacity assessment, as lacking the capacity to make that decision themselves.
Third Party Top Up	A third party is someone who agrees to pay a top-up to enable a relative or friend to go into a home or receive care at a rate which is higher than adult social care services can support.
Top up	A top-up is an additional payment usually made by a third party to the care provider which is in addition to the amount that the service-user is asked to pay from his or her own income and savings towards the care.
Cheshire East Council/the Council	The organisation that arranges care and Support.
Social Care Services	Social Care covers a wide range of services provided by Cheshire East Council, Partners and the independent sector to eligible people either in their own homes or in a care home.

1 Policy document

1.1 This is a policy document, and may be amended or changed in accordance with Democratic procedures. Nothing in this policy is intended to fetter the discretion of the Council.

2 Scope

2.1 This policy is intended to assist officers of Cheshire East Council involved in carrying out social care need assessments and financial assessment, reassessments, reviews, support planning, direct payment audit or who are otherwise involved in the arrangement and administration of services for people with assessed eligible care needs and provides a clear framework to the Councils position on Care Top Up payments.

2.2 The care and support planning process will determine the individual's eligible need and how best these needs can be met.

3 Charging for Care and Support in a Care Home

3.1 Where the Council has decided to charge and undertaken the financial assessment, it will support the person to identify options of how best to pay any charge. This may include offering the person a deferred payment agreement.

3.2 Where the Council is meeting needs by arranging care and support for an individual, it is legally responsible for contracting with the care provider. Where all parties are agreed it may choose to allow the person or their nominated Third Party to pay the provider directly for the 'top-up' where this is permitted.

4. Customer Choice and Additional Payments

4.1 In some cases, a person may actively choose a setting that is more expensive than the amount identified for the provision of the care and support in the personal budget. Where the person has chosen care and support that costs more than the personal budget, an arrangement will need to be made as to how the difference will be met. This is known as an additional cost or 'top-up' payment and is the difference between the amount specified in the personal budget and the actual cost. In such cases, the Council will arrange for the care, provided a third party, or in certain circumstances the person in need of care and support, is willing and able to meet the additional cost and this is sustainable.

4.2 The person has the right to choose the care provider that they wish to deliver their care and support, subject to certain conditions, provided that:

- the care and support is suitable in relation to the person's assessed needs;
- to do so would not cost the Council more than the amount specified in the adult's personal budget for care and support of that type;
- the care and support is available; and
- the provider of the care and support is willing to enter into a contract with the council to provide the care at the rate identified in the person's personal budget on the council's terms and conditions.

4.3 The Council should ensure that at least one option is available that is affordable within a person's personal budget. If no preference has been expressed and no suitable care and support is available at the amount identified in the personal budget, in exceptional circumstances the Council may arrange care at a more expensive rate and adjust the budget accordingly to ensure that needs are met. This would be treated as a temporary care arrangement and subject to review to secure care and support at the Council's agreed rates. Such temporary arrangements would be made at the best

affordable price, closest to the Council's current rate. In such circumstances, the Council cannot ask for the payment of a 'top-up' fee.

4.4 Where a person contributes to the cost of their care following a financial assessment they must not be asked to pay more than their assessment shows they can afford.

4.5 Where a person has chosen care and support that is more expensive, the Council will take steps to ensure that the person understands the full implications of this choice, by providing sufficient information and advice to ensure that they understand the terms and conditions. This should include for example that a third party, or in certain circumstances the person needing care and support, will need to meet the additional cost of that setting for the full duration of their stay and that should the additional cost not be met they may be moved to an alternative care provider.

4.6 The Council must ensure that the person paying the 'top-up' is willing and able to meet the additional cost for the likely duration of the arrangement, recognising that this may be for some time into the future. Therefore it must ensure that the person paying the 'top up' enters into a written agreement with the Council, agreeing to meet that cost. The agreement will include the following:

- the additional amount to be paid;
- the amount specified for the accommodation/care in the person's personal budget;
- the frequency of the payments;
- to whom the payments are to be made;
- provisions for reviewing the agreement;
- a statement on the consequences of ceasing to make payments;
- a statement on the effect of any increases in charges that a provider may make;
- a statement on the effect of any changes in the financial circumstances of the person paying the 'top-up'.

4.7 Where a person is receiving more expensive care and support solely because the Council has been unable to make arrangements at the personal budget cost, the personal budget must be adjusted to reflect this additional cost. The person would then contribute towards this personal budget according to the financial assessment. The additional cost provisions must not apply in such circumstances and the person cannot be asked to pay a top up fee where there is no other available care and support to meet that individuals needs.

4.8 The amount of the 'top-up' should be the difference between the actual costs of the preferred provider and the amount that the Council would have set in a personal budget to meet the person's eligible needs by arranging or providing accommodation of the same type.

4.9 Where an individual requests a care needs assessment from the Council, the Council will undertake a welfare benefit check and sustainability check of the care to be met in a care home, through assessment of the customers own assets and those of the nominated third party.

5. First party 'top ups'

5.1 The person whose needs are to be met by the accommodation may themselves choose to make a 'top-up' payment only in the following circumstances:

- where they are subject to a 12-week property disregard;
- where they have a deferred payment agreement in place with the Council. Where this is the case, the terms of the agreement should reflect this arrangement; or
- where they are receiving accommodation provided under S117 for mental health aftercare.

5.2 There will be cases where a person lacks capacity to express a choice for themselves. The Council would then act on the choices expressed by the person's advocate, carer or legal guardian in the same way they would on the person's own wishes, unless in the Council's opinion it would be against the best interests of the person.

6. Third Party Top ups

6.1 A person who has decided to choose more expensive care and support can use a third party to help pay for the services which are more expensive than the price the Council would normally pay. This is called a third party top up.

6.2 A third party is usually a family member or a friend, but it can be anyone. In some limited instances it can be the person receiving care themselves. By using this system, it allows the Council to help people to secure care and support of their choice.

6.3 Only one person can be named as being the third party contributor but this does not mean that family members cannot get together and agree to make the payment between them. It does however mean that only one member of the family is responsible for making the payment to the home and can be liable for any default on payment.

6.4 A third party top up can only be used when the cost of care is more expensive than the agreed contract rate set by the Council for that particular care provider.

6.5 The Third Party must be in a position to sustain the top up payments for the duration of the stay and cannot use the cared for persons assets or income to cover the top up payments.

7. Customers with savings below the threshold

7.1 Service users who have savings under £23,250 will be eligible for an assessment of means and, where necessary, financial assistance from the Council will be offered to meet the fees up to an agreed level.

7.2 Once assessed as needing care and support, a person may choose their preferred care provider. Where this is more expensive than the personal budget determined by the Council, as long as there is a Third Party willing to pay the extra cost – the care can be agreed.

7.3 The Council must be sure that this arrangement is sustainable for the duration of the anticipated care needs and if not the person may have to move care provider to one which does not require a top up or where the top up is affordable to the third party.

8. What is needed for a third party top up?

8.1 The Council cannot confirm a placement with a care provider where there is a top up requirement, until the following has been completed:

- a financial assessment, outlining the Customers finances (and where necessary the Third Party's finances to check sustainability of the top up). This will allow the Council to calculate the amount the customer will need to pay towards care on a weekly basis. A financial assessment of the customer is a requirement for all placements supported by the Council and is not just part of the third party top up system.
- a Top-up Agreement signed by the third party and the care provider Manager/authorised officer. The third party will agree to make the payment to the home for the agreed amount and will pay this themselves from their own resources directly to the home for the duration of the person's stay at the home. A copy of the Third Party Top Up Agreement must be held by the Care Manager on the individuals case records.
- The agreement must show:
 - the home address of the third party making the top up contribution
 - the signature of the third party making the top up contribution
 - the name of the person requiring care and support
 - the name of the care provider and signature of the care provider

9. Treatment of Private Placements

9.1 Self-funding/privately placed people are able to choose their own care from the care market. If arrangements are not sustainable then identifying a person who can assist with top up payments for the duration of the persons needs, is strongly encouraged at the point of choosing the appropriate care provision.

9.2 People with capital or savings above £23,250 would not normally qualify for funding support from the Council. However, individuals may request an assessment of need under the Care Act 2014.

9.3 Care providers are likely to undertake a sustainability check when accepting private customers or self-funders and should make the individual aware of their right to a care needs assessment under the guidance.

9.4 The Council would expect a private placement to be sustainable for at least 3 years paid from the individual's own capital, assets or savings and if this is not achievable would look to the customers nominated third party to commit to pay the care home top up costs (the difference between the contract rate agreed with the Council and the fee charged by the care home), once the customer's assets have reduced below £23,250. Otherwise the customer would have to move to a care home which accepted the Council's contract rate with a lower third party top up or no top up required.

10. Self-funders who ask the local authority to arrange their care

10.1 The Care Act 2014 enables a person who can afford to pay for their own care and support in full to ask the Council to arrange their care on their behalf. In supporting self-funders to arrange care, the Council may choose to enter into a contract with the preferred provider, or may broker the contract on behalf of the person. Where the Council is arranging and managing the contract with the care provider, it will need to ensure that there are clear arrangements in place as to how the costs will be met, including any 'top-up' element. The Council will need to ensure that the person understands those arrangements. Self-funders will have to pay for the costs of their care and support along with any administrative fee charged by the Council.

10.2 The Council can, in some circumstances agree to defer top up costs where the individual has property assets valued at greater than the total cost of care over a three year period – taking account of conveyance and deferred administrative fees. Please see the Council's Deferred Charge Policy for further information of Deferring charges.

11. Choice of accommodation and mental health after-care

11.1 Regulations made under section 117A of the Mental Health Act 1983 give people who receive mental health after-care broadly the same rights to choice of care and support as someone who receives care and support under the Care Act 2014. Where the cost of the person's preferred care and support is more than the Council would provide in a personal budget or local mental health after-care limit to meet the person's needs, then the Council will arrange for the care needs to be met, provided that either the person or a third party is willing and able to meet the additional cost.

11.2 For the purposes of section 117 after-care, references to a third party should be read as including the adult receiving the after-care because an adult can also meet the

additional cost when the Council is providing, or arranging for the provision of accommodation in discharge of the after-care duty.

11.3 In securing the funds needed to meet the additional cost, the Council will agree with the person (or their third party) and the care provider, that payment for the additional cost will be made directly to the care provider with the Council paying the remainder.

12 Financial arrangements

12.1 Following financial assessment the customer will be able to retain some money for personal use. The amount of this personal expense allowance is determined annually by the Government.

12.2 Everyone in permanent long term care is obliged to use their income and capital to maintain their care needs within the financial assessment of means. Where a customer has gifted property or assets or placed such assets out of the reach of charging, the council will treat the action as deliberate deprivation of assets and will generally treat that asset as notional capital which remains available to the customer to support their care. A husband has the duty to maintain his wife, and a wife her husband. There is no legal duty on sons or daughters towards their parents or parents to their sons or daughters, even when they are adults.

12.3 Where a customer owns a property/land or has an interest in such, this will be taken into account when determining how much the customer will have to contribute towards the cost of commissioned accommodation. However, advice and information can be provided should the customer wish to rent their empty property via the Housing Options Team. Any rental income will be taken into account by the Council in the customer's financial assessment.

13. Agreeing Top up payments

13.1 The amount of the top-up must be agreed at the time the person starts receiving care and support or when they go into a care home, but can be reviewed by care provider as long as they give notice to the third party and it is agreed between all parties. The care provider must notify the Council.

14. What happens next?

14.1 Once the Council has received a copy of the top up agreement from the third party and the financial assessment results, the Council will complete discussions with the care home and inform the Care Manager to arrange a moving date for the customer.

14.2 This will only happen after the Council is satisfied that the third party has the funds to make the payments agreed

Third Party Top up Agreement

(including where 12 week disregard applies)

I hereby agree to pay the top up fee in respect of

.....

Resident at.....

.....

The cost of the “top up” fee isper

Week at (Date)

The Top up is agreed at the rate at the time of the customer requiring care and support.

I (the signatory) agree to make the payments from the date of admission and I understand that this is an ongoing commitment for which I am liable until the service ends.

I understand that this “top up” cannot be paid from any monies that I hold, manage or receive for the resident other than as laid down in accordance with the provisions of the Care Act 2014, accompanying statutory guidance and the Care and Support and After-care (Choice of Accommodation) Regulations 2014.

I understand that should I fail to pay the “top up fee” for a period of more than 8 weeks, Cheshire East Council has the right to arrange for alternative residential accommodation to be provided, subject to assessment.

The third party top up is the difference between the agreed contract rate paid by Cheshire East Council and the charge made by the care provider. The “top up” payment excludes the service user’s personal allowance and the assessed contribution that the service user is required to make towards the cost of the Home and excludes any NHS Nursing fees.

Name.....

Address.....

.....

Signature.....

Date.....

Cheshire East Council suggests that you may wish to seek independent legal advice as to your commitment and obligation under this agreement.

This arrangement is agreed by the Care Provider
(name of care provider)

For (type of care)

Signed by Care Provider authorised officer

Date

IMPORTANT NOTE: Failure to pay the care provider the agreed top up could risk debt recovery action being taken and the need for the customer to move to an alternative care provider.

This agreement can be reviewed and changes must be communicated to The Council.

If the third party has a change in circumstances which puts the third party payments at risk, they must notify the Council as soon as possible.

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Care Act 2014

The Care Act will be implemented in two Phases. Phase One will be implemented in April 2015 and will include the following responsibilities and duties:

- A duty to promote people's wellbeing as the underlying principle that influences the way care and support functions are carried out.
- A duty to work to prevent and delay needs for care and support.
- A duty to provide an information and advice service about care and support.
- A requirement to carry out an assessment of both individuals and carers wherever they have needs, including people who will be "self-funders" meeting their own care costs; this will place carers' rights on the same footing as the people they care for.
- A duty to facilitate a vibrant, diverse and sustainable market of care and support provision and to meet people's needs if a provider of care fails.
- A national minimum eligibility threshold for support – a minimum level of need which will always be met in every council area.
- A requirement to offer a universal "deferred payment" scheme, where people can defer the costs of care and support set against the value of a home they own.
- A duty in some cases to arrange "independent advocacy" to facilitate the involvement of an adult or carer in assessing needs and planning for care.
- A duty to provide social care support to people in prisons and bail hostels.
- A duty to strengthen Safeguarding Adults Board and to make safeguarding "personal".
- Embedding the right to choice through care plans and personal budgets.
- A duty to give new assurances about continuity of care when people move from one area to another.

Phase Two will be implemented in April 2016 and covers the following key issues:

- Revised upper and lower capital limits.
- £72,000 cap on expenditure for individuals for meeting eligible needs.
- Care accounts.
- Financial support from Councils after reaching cap.
- Free care for life (zero cap) for those born with an eligible need or who develop one in early life.

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