

Ref. No.	PE/AS/5
Category:	
People	Yes
Place	
Corporate	
In Constitution	

# Direct Payments and Individual Service Funds Policy

## Policy Details

What is this policy for?	The purpose of this policy is to set out the responsibilities of the Council in relation to direct payments and Individual Service Funds, with a structure for their application in the provision of care and support services for adults eligible for services and/or support.
Who does this policy affect?	In accordance with Sections 31, 32 and 33 of the Care Act, the Council must promote direct payments when considering <u>any</u> care and support functions in respect of a person. Sections 11.8, 11.30, 11.31, 11.32, and 11.33 of the Care Act Statutory Guidance lay out the Council's further obligation to consider Individual Service Funds.  Responsibility for applying this policy sits with everyone carrying out adult social care and support functions on behalf of the Council.
Keywords	Adult social care; Direct Payments; Individual Service Funds; care assessment; financial assessment; personal budgets
Author	Michael Ford, Policy and Projects Officer.
Dorset Council policy adopted from	Dorset County Council. This policy applies across the Dorset Council area.
Does this policy relate to any laws?	<a href="#">Care Act 2014</a> Sections 31 to 33 Care Act 2014: <a href="#">Care and support statutory guidance</a> Chapters 11 and 12 <a href="#">Mental Capacity Act 2005</a>
Is this policy linked to any other Dorset Council policies?	Charging and Financial Assessment, Recovery of Debts, Transport Provision and Charging.
Equality Impact Assessment (EqIA)	2014/15 The Department of Health published its Equality Impact Assessment on the Care Act 2014 in May 2014. The EqIA will be updated when the policy is reviewed for Dorset Council.
Other Impact Assessments	None.

## Status and Approvals

Status	Live	Version	V2
Last review date	September 2016	Next review date	October 2019
Approved by (Director)	Director Adult and Community Services (Dorset County Council)	Date approved	May 2015
Member/ Partnership Board Approval	Executive Advisory Panel / Cabinet (Dorset County Council)	Date approved	May 2015

## Adult and Community Services

# Direct Payments and Individual Service Funds Policy

Purpose	<p>The Care Act 2014 created a new statutory principle designed to embed direct payments as the default method to deliver care and support, ensuring that choice and control is placed in the hands of the person. If direct payments are refused/rejected or are inappropriate for that individual, Individual Service Funds will be offered.</p> <p>Giving the person choice and control over their care is paramount. The Council will encourage the person to assume control and will promote direct payments and Individual Service Funds to enable them to do this.</p> <p>The purpose of this policy is to set out the responsibilities of the Council in relation to direct payments and Individual Service Funds, with a structure for their application in the provision of care and support services.</p>
Scope	<p>In accordance with Sections 31, 32 and 33 of the Care Act, the Council must promote direct payments when considering <u>any</u> care and support functions in respect of a person. Sections 11.8, 11.30, 11.31, 11.32, and 11.33 of the Care Act Statutory Guidance lay out the Council's obligation to consider Individual Service Funds.</p>
Areas of responsibility	<p>Responsibility for applying this policy sits with everyone carrying out care and support functions on behalf of the Council.</p>
Related Policies	<p>Transport policy</p> <p>Wellbeing policy</p> <p>Prisons policy</p> <p>Charging and Financial Assessment policy</p> <p>Recovery of Debts policy.</p>
Keywords	<p>Direct Payment; Individual Service Fund; Personalisation; Nominated person; Mental capacity; Eligible care and support needs.</p>

Glossary of  
Terms /  
Definitions

Term	Definition
Dorset, the Council, we, ourselves, us	Dorset Council (the 'local authority')
The Care Act	The Care Act is a major reform of the law about care and support. It puts people and their carers in control and it limits the amount anyone will have to pay towards the costs of their care.
Policy	A policy is a set of principles, rules and guidelines that help the Council make decisions and that let people know what they can expect from us.
Outcome	<p>An outcome can be summarised in a short statement about what it is important for a person to achieve which will maximise independence and self-determination.</p> <p>Achieving outcomes should be empowering for the person and create independence from long-term intervention and funded services.</p>
Direct Payment	Direct payments are monetary payments made to individuals who request to receive one to meet some or all of their eligible care and support needs.
Individual Service Fund	An Individual Service Fund is an internal system of accounting within a service provider that makes the personal budget transparent to the individual or family. This helps provide flexible support by making the organisation accountable to the individual.
Personalisation	Personalisation means that every person who receives support, whether it is provided by the County Council, or funded by themselves, will have choice and control over the 'shape' of that support in all care settings.
Eligible needs	'Eligible' needs are those needs for care and support which Dorset may be <u>required</u> to meet by the Care Act. Although the Council has powers to meet any other needs, the

	<table border="1"> <tr> <td></td> <td>determination of 'eligible' needs is important in helping people to access care and support.</td> </tr> <tr> <td>Capacity</td> <td>The Mental Capacity Act protects people who are unable to make decisions for themselves. This could be for reasons such as a mental health condition, a severe learning disability, a brain injury, or a stroke.</td> </tr> </table>		determination of 'eligible' needs is important in helping people to access care and support.	Capacity	The Mental Capacity Act protects people who are unable to make decisions for themselves. This could be for reasons such as a mental health condition, a severe learning disability, a brain injury, or a stroke.
	determination of 'eligible' needs is important in helping people to access care and support.				
Capacity	The Mental Capacity Act protects people who are unable to make decisions for themselves. This could be for reasons such as a mental health condition, a severe learning disability, a brain injury, or a stroke.				
Legislation and legal requirements	<p>The <a href="#">Care Act 2014</a></p> <p>The <a href="#">Human Rights Act 1998</a></p> <p>The <a href="#">Disability Discrimination Act 1995</a></p>				
Equality impact assessment	<p>The Department of Health published its equality impact assessment on the Care Act 2014 in May 2014. Below is an extract from Table 2 on page 13.</p> <p>“The primary objective of the proposals set out in the Care Act 2014 is to support people who use care and support and their carers to maintain their health, wellbeing and independence for as long as possible. As part of the overall objective of improving quality of care and experience, proposals are also intended to strengthen and enhance the social care market.”</p>				

## **1.0 Provision of Direct Payments and Individual Service Funds Principle**

- 1.1 The core purpose of adult care and support is to help people to achieve the outcomes that matter to them in their life. Underpinning all of the 'care and support functions' carried out by the Council is our focus on the needs and goals of the people concerned. This applies in all cases where the Council assesses an eligible need for care or support and ensures that control for meeting those needs is placed with the person.

## **2.0 Making Direct Payments and Individual Service Funds (ISF) Available**

- 2.1 Direct payments and ISFs will be offered at the earliest opportunity in the assessment and support planning process. Direct payments will not be made available to people serving custodial sentences; however, people in bail accommodation and approved premises who have not been convicted are entitled to direct payments, as they would have been whilst in their own homes.

- 2.2 A person can use their own resources to purchase additional support if they choose to do so. When considering arranging their own care and support through a direct payment or ISF the person will be provided with information in an accessible format covering:

- a) What direct payments and ISFs are;
- b) How to request a direct payment – including the use of 'suitable persons' to manage the payment;
- c) An explanation of the direct payment agreement;
- d) The responsibilities involved in managing a direct payment and being an employer;
- e) Making arrangements with care providers;
- f) The availability of support to set up and manage a direct payment, including employment and payroll support;
- g) Case studies and evidence on how direct payments can be used to meet eligible needs innovatively;
- h) How to request an ISF;
- i) Information and advice on how the ISF arrangement works and any contractual requirements, how the provider will manage the budget on behalf of the individual, and advice on what to do if a dispute arises;
- j) Consideration will be given to using real local examples that illustrate how other people have benefitted from ISF arrangements.

- 2.3 When considering a request for a direct payment or ISF from a person with mental capacity to make a decision about a direct payment or ISF, the Council will agree to a direct payment or ISF if the following four conditions are met:

- 1) The person has capacity to make the request and in the case of direct payments, where there is a nominated person, that person agrees to receive payments;
- 2) The Council is not prohibited under section 33 of the Care Act from meeting the person's needs by making direct payments;

- 3) The Council is satisfied that the person, or nominated person, is capable of managing direct payments either by themselves, or with whatever help and support is available;
- 4) The Council is satisfied that making direct payments or an ISF is an appropriate way to meet the person's needs.

2.4 In considering a request from a nominated person for a direct payment or ISF for a person without mental capacity to make a decision about direct payments or ISFs, the Council will agree to a direct payment or ISF if the following five conditions are met:

- 1) The nominated person is authorised under the Mental Capacity Act 2005, and if not, then there is at least one person who is authorised to support the request;
- 2) The Council is not prohibited under section 33 of the Care Act from meeting the person's needs by making direct payments to the nominated person;
- 3) The Council is satisfied that the nominated person will act in the person's best interest in arranging care and support with the direct payment or ISF;
- 4) The Council is satisfied that the nominated person is capable of managing direct payments either by themselves, or with whatever help and support is available;
- 5) The Council is satisfied that making direct payments or an ISF to the nominated person is an appropriate way to meet the person's needs.

2.5 Where a decision has been made to refuse a request for a direct payment or ISF, the person in need of care and support (or their nominated person) will receive the reasons for the refusal in a format accessible to them, stating which conditions have not been met and what they may need to do in the future to obtain a positive decision, together with details of how to access the appeals process.

2.6 Where a decision has been made to refuse a request for a direct payment or ISF, the Council will continue with the care planning process so it can agree with the person how best to meet their eligible needs without a direct payment or ISF.

2.7 A person will not be forced to take a direct payment or ISF against their will, but instead will be informed of the alternative choices available to them.

### **3.0 Calculating the Direct Payment or Individual Service Fund Amount**

3.1 The gross amount of the direct payment or ISF will be equivalent to the County Council's estimate of the reasonable cost of securing the provision of the service concerned to meet the needs for which it has a duty or power to meet. However, this may be increased in exceptional circumstances if there is a preferred, more flexible option requested by the person that would lead to better outcomes, and the cost of this option provides value for money and the additional cost is therefore reasonable.

3.2 In estimating the reasonable cost of securing the required support, the County Council will take into account the associated costs incurred without which the service could not be provided lawfully. For example, recruitment costs; national insurance contributions; holiday; sick and maternity pay; insurance; payroll services; and criminal record checks. However, if a service of the required standard can be secured more cost-effectively in another way without

unreasonably restricting choice and control, the County Council may limit the amount payable accordingly.

- 3.3 Where a person disagrees with the amount of direct payment or ISF proposed, the person will be informed of their right to pursue the matter through the appeals procedure.

#### **4.0 The Person's Contributions**

- 4.1 The person will be assessed for charges in the same manner as if they were receiving services directly provided by the Council.
- 4.2 Where the person is receiving the direct payment in their own right, the amount payable will be net of any assessed contribution. The person is required to pay their contribution into the direct payment account on a regular basis.
- 4.3 Where the direct payment is made to a nominated person who does not have legally delegated authority to act in financial matters on behalf of the beneficiary (for example, by way of a court appointed deputy, or under a power of attorney) or the account from which the beneficiary's payment is to be made is not an account held jointly with the nominated person, the payment will be made gross and any financial contribution recouped from the service user in the usual way.
- 4.4 Where an ISF is paid to a nominated ISF Provider, the payment will be made net of any assessed contribution. The person is required to pay their contribution directly to their ISF Provider on a regular basis.
- 4.5 Contributions will not be sought for aftercare services provided under section 117 of the Mental Health Act 1983.

#### **5.0 Administering Direct Payments**

- 5.1 The person receiving the service, and any nominated person appointed, will be required to open a separate bank account for the management of the direct payment and to keep full records of any monies received and spent and services received. A holding account service managed on behalf of the Council may be used to provide a payment service on behalf of the beneficiary.
- 5.2 The Council must be satisfied that the direct payment is being used to meet eligible care and support needs and therefore will have systems in place to monitor direct payment usage. Where practical, and with the person's agreement, we will seek to combine direct payments with another form of state support (such as personal health budgets) so that the person does not receive multiple payments, each with their own monitoring regime.
- 5.3 In addition to establishing that only the agreed outcomes are being met with direct payment funds, the Council will ensure that, where required, employer obligations to HMRC for PAYE, and National Insurance and legal obligations relating to the national minimum wage are being met. A check will be made to ensure appropriate employer's liability insurance is in place. Specific regard to the legal use of self-employed carers and personal assistants will be made.
- 5.4 The Council's practice will be that, except in exceptional circumstances, the monitoring process takes place six months after a direct payment has been initiated and annually

thereafter. In cases where the direct payment beneficiary has demonstrated an ability to manage their accounts without concern the Council may opt to reduce the monitoring frequency.

- 5.5 Under the terms of the agreement, the Council will recover unspent monies as well as monies inappropriately spent.

## **6.0 Administering Individual Service Funds**

- 6.1 The Council must be satisfied that the ISF is being used to meet eligible care and support needs and therefore will have systems in place to monitor usage usage. Where practical, and with the person's agreement, we will seek to combine ISFs with another form of state support (such as personal health budgets) so that the person does not receive multiple payments, each with their own monitoring regime.

- 6.2 The Council's practice will be that, except in exceptional circumstances, the ISF shall be financially audited on an annual basis. In cases where the ISF Provider has demonstrated an ability to manage ISFs without concern the Council may opt to reduce the monitoring frequency.

- 6.3 Under the terms of the agreement, the ISF Provider will return any unspent monies that are not required for delivery of outcomes.

## **7.0 Using the Direct Payment and ISF**

- 7.1 Direct payments and ISFs are designed to be used flexibly and innovatively and the Council will not place any unreasonable restriction on the use of the payments as long as they are being used to meet eligible care and support needs. However, direct payments and ISFs must not be used in the following circumstances:

- Paying for goods or services not related to the care needs identified in the support plan. For example: accommodation rental costs; mortgage payments; everyday food and drink; travel costs (unless this is part of the agreed support plan); fines; debts; leisure activities not related to achieving identified outcomes;
- Purchasing of tobacco, alcohol or any illegal substance or activity;
- Buying long-term residential care. However, additional services for people in a residential home can be accessed through a direct payment or ISF. For example, alternative day time activities;
- Paying for care services from a spouse or partner, or a close relative living in the same household except in exceptional circumstances. However, we may consider the payment of part of a direct payment to a family member in the same household for administrative support;
- Paying for frequently used services ordinarily provided by the Council. This restriction does not apply to purchasing services from another local authority. Direct payments may be used to purchase services directly from the Council in agreed circumstances.

- 7.2 Although direct payments or ISFs cannot be used to pay for adults to receive long-term care in care homes, they can be used to enable people to purchase a short stay in residential care,



provided this does not exceed 4 consecutive weeks in a 12 month period. When periods of residential stays are separated by less than 4 weeks, they will be added together for the purposes of calculating the number of consecutive weeks in the 12 month period.

- 7.3 The Council will continue to make direct payments to meet existing contractual obligations for up to 4 weeks in the event of hospitalisation. It is expected that the recipient will negotiate a reduced rate with the provider, if possible. The Council will continue to pay the ISF to meet existing contractual obligations in the event of hospitalisation. The ISF Provider is contractually obliged to return any unspent money that has not been required to deliver care and support either during hospital admission or post-discharge. Particular regard will be given to maintaining the direct payment or ISF recipient's employment arrangements with carers and personal assistants, to ensure continuity of care following hospital discharge.
- 7.4 In cases of hospitalisation, the Council will explore with the person, their carer(s) and the NHS available options to ensure that the health and care needs are being fully met in the best way possible.
- 7.5 In the event that a nominated person managing the direct payment should require a hospital stay, an urgent review will be carried out to ensure that the person receiving the service continues to receive care and support.

## **8.0 Reviewing Direct Payments and Individual Service Funds**

- 8.1 In addition to monitoring direct payments and ISFs to ensure that they are being used to meet care and support needs, the Council will also review the making of the direct payment or ISF within six months of the first payment. Where relevant the first review will be combined with an initial care review 6-8 weeks after the sign-off of the personal budget and plan. This review is to ensure that the person is comfortable using the direct payment or ISF and experiencing no issues. This review will be incorporated with the initial review of the care and support plan and used to identify any long-term support arrangements that may be necessary.
- 8.2 Further reviews will be made no later than every 12 months. Where practical these reviews will be combined with the direct payment or ISF monitoring process.
- 8.3 Where a direct payment is being allocated to an authorised person, or where a family member is being paid for providing administrative support, the review will include all of these parties whenever possible and practicable, as well as the person in need of care and support.
- 8.4 The outcome of the review will be written down and a copy given to all parties. Where there are issues that require resolving, the resolution method will be agreed, unless there are exceptional reasons why this is not possible.

## **9.0 Ending Direct Payments or ISFs**

- 9.1 Direct payments or ISFs will only be ended as a last resort and only when the Council has taken all reasonable steps to address any situations leading to the decision to end the direct payment or ISF.
- 9.2 A minimum notice period of 4 weeks will, except in exceptional circumstances, be given before direct payments or ISFs are ended.

9.3 Direct payments may be ended for the following reasons, after due regard to the conditions in paragraph 8.1 above. In all cases, the Council will ensure that alternative arrangements are in place to meet the care and support needs of the person before the direct payment is ended:

- A person to whom direct payments are being made to purchase support for themselves, or on behalf of someone else, decides they no longer wish to receive direct payments;
- The person receiving direct payments is no longer capable of managing direct payments, even with appropriate support;
- The person receiving direct payments no longer needs the care or support for which the direct payments are being made;
- The person fails to comply with a condition imposed under the regulations to which the direct payment is subject, or, in exceptional circumstances, the Council believes it is no longer appropriate to make the direct payment. For example, it is apparent that the direct payment has not been used to achieve the outcomes on the support plan;
- The person receiving direct payment loses mental capacity. However, when the person receiving direct payment loses mental capacity the Council may continue with the direct payment if someone is willing to act on their behalf, but this arrangement will be treated as temporary and closely monitored;
- The person loses mental capacity on a permanent basis. The Council may, using its discretion, consider making a direct payment to a nominated person instead, provided that person is authorised elsewhere under this policy.

9.4 ISFs may be ended for the following reasons, after due regard to the conditions in paragraph 8.1 above. In all cases, the Council will ensure that alternative arrangements are in place to meet the care and support needs of the person before the direct payment is ended:

- A person for whom an ISF is being paid to purchase support for themselves, or someone acting as their authorised representative, decides they no longer wish to receive an ISF;
- The person receiving an ISF is no longer capable of managing their ISF, even with appropriate support;
- The person receiving an ISF no longer needs the care or support for which the ISF is being paid;
- The person fails to comply with a condition imposed under the regulations to which the ISF is subject, or, in exceptional circumstances, the Council believes it is no longer appropriate to make the ISF. For example, it is apparent that the ISF has not been used to achieve the outcomes on the support plan;
- The person receiving ISF loses mental capacity. However, when the person receiving ISF loses mental capacity the Council may continue with the ISF if someone is willing to act on their behalf, but this arrangement will be treated as temporary and closely monitored;

- 9.5 Direct payments will also be ended for the following reasons. In all cases the Council will ensure that alternative arrangements are in place to meet the care and support needs of the person before the direct payment is ended:
- Direct payments to a nominated person will be discontinued where the person receiving the service regains capacity on a long-term or permanent basis;
  - When the person, or nominated person, is placed by the courts under a condition or requirement relating to drug and/or alcohol dependency as defined in The Care and Support (Direct Payments) Regulations 2014.
- 9.6 When ending a direct payment or ISF where a person has lost capacity, and there is no-one else to manage the direct payment, or where a person needs additional support to terminate arrangements, the Council will provide appropriate support.
- 9.6 When the direct payment or ISF has ended, a final monitoring exercise to establish the extent of monies due to be returned to the Council (if any) will be undertaken. In calculating the amount to be returned, specific regard will be made to outstanding liabilities properly incurred during the period of the direct payment or ISF, and legitimately after the end of the direct payment or ISF, which may include redundancy commitments.

# Equality Impact Assessment



## Section 1 - Context Setting

### 1. Care Act Financial Policies (Now known as 'the proposal')

- Transport Charging
- Charging and Financial Assessment
- Choice of Accommodation and Additional Payments
- Deprivation of Assets
- Temporary Residents in Care Homes
- Deferred Payment Agreements
- Direct Payments
- Recovery of Debts

These policies form part of the new Care Act policy framework.

### 2. Service and lead officers:

Adult and Community Services:

Financial policy	Lead officer <sup>1</sup>
Transport Charging	Julie Caswell, Financial Support Manager
Charging and Financial Assessment	Michael Ford, Policy and Projects Manager
Choice of Accommodation and Additional Payments	Gillian Lacey, Contracts Manager
Deprivation of Assets	Nikki Fowler, Team Leader
Temporary Residents in Care Homes	Gillian Lacey, Contracts Manager
Deferred Payment Agreements	Julie Caswell, Financial Support Manager
Direct Payments	Jon Parvin, Senior Financial Assessment Officer
Recovery of Debts	Julie Caswell, Financial Support Manager

<sup>1</sup> The original Lead Officers are recorded here for accuracy, whereas the Action Plan reflects current responsibilities.

### **3. Officers involved in the EqIA:**

#### **Officers involved in the consolidated full EqIA;**

Penny Grigg, Housing and Support Project Officer,  
Michael Ford, Policy and Projects Manager  
Robin James, Service Development Officer  
Ashleigh Enright, Project Support Officer  
Julie Caswell, Financial Support Manager  
Adam Fitzgerald, Service Development Officer  
Gillian Lacey, Contracts Manager,  
Nikki Fowler, Team Leader,  
Jon Parvin, Senior Financial Assessment Officer,

#### **Officers involved in preparing screening documents:**

##### **Transport Charging Policy**

Julie Caswell, Financial Support Manager  
Emma Williams, Business Manager.

##### **Charging and Financial Assessment**

Michael Ford, Policy and Projects Manager,  
Penny Grigg, Housing and Support Project Officer.

##### **Choice of Accommodation**

Claire Eveleigh, Shared Lives Manager,  
Debbie Dunford, Community Care Officer,  
Gillian Lacey, Contracts Manager,  
Nikki Fowler, Team Leader,  
Diana Balsom, Service Development Officer.

##### **Deprivation of Assets**

Robin James, Service Development Officer,  
Melissa Lovell-Dyer, Locality Manager,  
Julie Caswell, Financial Support Manager.

##### **Temporary Residents in Care Homes**

Claire Eveleigh, Shared Lives Manager,  
Debbie Dunford, Community Care Officer,  
Gillian Lacey, Contracts Manager.

##### **Deferred Payment Agreements**

Claire Eveleigh, Shared Lives Manager,  
Debbie Dunford, Community Care Officer,  
Gillian Lacey, Contracts Manager.

## Direct Payments

Marie Baxter, Project Manager,  
Penny Grigg, Housing and Support Project Officer,  
Jon Parvin, Senior Financial Assessment Officer,  
Bev Arnold, Team Leader, Financial Support.

## Recovery of Debts

Julie Caswell, Financial Support Manager  
Michael Ford, Policy and Projects Manager.

### 4. What does the proposal assess?

The proposal and associated documents aim to ensure that the impact of changes in financial policies are identified, and if necessary mitigated, for people with protected characteristics under the Equality Act.

All the financial policies cited above have been written to comply with the Care Act 2014 and its associated Regulations and statutory guidance.

The financial policies are lengthy. They are based on statutory guidance from the Department of Health which provides local authorities with information about how they '**must**', '**should**', or '**may**', meet the legal obligations placed on them by the Act and the associated Regulations. As discussed with our elected members, our policies have been drafted in order to make sure that the County Council delivers what the statutory guidance says that it '**must**' and '**should**' do. This approach seeks to capture good social care practice, without putting the budget at unnecessary risk.

The draft policies are generally written so that the County Council's discretion or choice is not restricted further in the areas where the statutory guidance says how we '**may**' act to fulfil our legal obligations. It is planned that senior managers will write and maintain local procedures to guide staff about how to exercise their judgement in those areas. Because of this approach there is much less scope for negative impacts on groups with protected characteristics than there would be if our policies had been more 'Dorsetised'. However, we will need to ensure that our local procedures and practices underpinning the policies do not have negative impacts.

Screening documents have been submitted and this full EqIA consolidates the assessments of those documents and the possible impacts on protected groups under the Equality Act.

Existing:

New/proposed:



Changing/Update/revision

Other

## 5. What are the aims and objectives of the proposal?

Dorset County Council has a commitment to ensuring its financial policies comply with the Care Act 2014.

### **Charging and Financial Assessment Policy**

The new Charging and Financial Assessment policy is intended to make charging fairer and more clearly understood by everyone. The overarching principle is that people should only be required to pay what it is 'reasonably practicable for them to pay'. Therefore some people will be entitled to financial support based on a means-test and some will be entitled to free care. The policy is based on the following principles that will inform our decisions on charging. The principles are that the approach to charging for care and support needs should:

- ensure that people are not charged more than it is reasonably practicable for them to pay;
- be comprehensive, to reduce variation in the way people are assessed and charged;
- be clear and transparent, so people know what they will be charged;
- promote wellbeing, social inclusion, and support the vision of personalisation, independence, choice and control;
- support carers to look after their own health and wellbeing and to care effectively and safely;
- be person-focused, reflecting the variety of care and caring journeys and the variety of options available to meet needs;
- apply the charging rules equally so those with similar needs or services are treated the same and minimise anomalies between different care settings;
- encourage and enable those who wish to stay in or take up employment, education or training or plan for the future costs of meeting their needs to do so; and
- be sustainable for us to offer in the long-term.

The other policies covered by this EqIA can be described as follows:

- **Transport** The purpose of the transport policy is to set out how the County Council will charge for transport services where someone is in receipt of the high rate of mobility component of Disability Living Allowance (DLA) or Personal Independence Payment (PIP) and may therefore be able to contribute towards the cost of their services.
- **Choice of Accommodation** The care and support planning process will have determined what type of accommodation will best suit a person's needs. Where

the type of accommodation is one of those specified in Regulations, the person will have a right to choose the particular provider or location, subject to certain conditions.

- **Deprivation of assets** The County Council has the power to charge for the provision of care if people have deprived themselves of assets with the intention of reducing care costs and it also has the discretion to refuse to assist with the funding of care costs.
- **Temporary Residents in Care Homes** The policy sets out how the County Council has decided to exercise its discretion under the Care Act to charge people who require care in a residential or nursing home on a temporary basis.
- **Deferred Payment Agreements** People can request that charges for the full cost of their care are loaned to them by the County Council, with a 'legal charge' placed on their property in order to secure the County Council's financial interest.
- **Direct Payments** The Care Act creates a new statutory principle designed to embed direct payments as the default method of delivering care and support, ensuring that choice and control is placed in the hands of the person receiving care. The County Council will encourage the person to assume control and will promote direct payments to enable them to do this. The purpose of the policy is to set out the responsibilities of the County Council in relation to direct payments, with a structure for their application in the provision of care and support services.
- **Recovery of Debts** The Care Act introduces a modern legal framework for the recovery of any debts that have accrued as a result of the County Council meeting a person's eligible needs. Section 22 of the Health and Social Services and Social Security Act (HASSASSA) 1983 was revoked from April 2015 and no new debts can be recovered under that provision. New powers are provided under Section 69 of the Care Act. The reason for the change was that the powers under HASSASSA were unilateral. They allowed a local authority to place a charge against a person's property but did not give the person the opportunity to seek alternative means for payment. The new powers provide equal protection for both the local authority and the person. The policy explains the need for the County Council to act reasonably at all times and includes a section about dealing with debts that have arisen as a result of a person's lack of mental capacity.

## 6. Who will be involved in the implementing and/or delivery of the proposal?

The proposal is far-reaching and involves a wide range of County Council staff and partners in its implementation and delivery. The main groups involved are identified below:



### **Transport**

Day services staff; fieldworkers; finance staff; transport services staff, external providers of transport.

### **Charging and Financial Assessment**

The policy will require the involvement of a range of staff, including staff in operations; financial support; staff providing information and advice; staff in corporate finance, legal services and Tricuro. Partners and other staff will also be involved.

For example:

- **Residential Payments – implementing the changes to the charging process**

Teams concerned with the detail of contracts, processes, how we arrange placements, undertake financial assessments, and communicate both internally and externally with service users.

- **Residential Payments – financially assessing the third party for affordability of top-up and reviewing**

Teams who communicate with third parties and confirm top-up amounts with providers; Teams who undertake staff training.

### **Choice of Accommodation**

Operational, brokerage and finance staff; staff who have contact with third parties; and people seeking financial information and advice, including for the purposes of longer-term planning.

### **Deprivation of assets**

Legal Services; operational staff; senior managers.

### **Temporary Residents**

Staff who have contact with service users; families; advocates, and people who provide and seek financial information. The Business Improvement Team that updates internal communications and processes.

### **Deferred Payment Agreements**

Financial support teams; Legal Services; Valuations and Estates; Insurance and Risk Management staff; staff who have contact with service users and their representatives; third parties.

### **Direct Payments**

A range of teams will be involved including field work teams, financial support teams and third party organisations administering financial accounts on behalf of service users.

### **Recovery of Debts**

A range of teams will be involved at different stages of the recovery process. Operational staff, Financial Support staff, and Accounts Receivable and Legal Services staff.

## 7. Who could experience an impact (either negative or positive) with the implementation of the proposal?

- Service users, carers and their families.
- County Council employees implementing the policies.
- Those with Power of Attorney and Financial Agents.
- Providers of care, including care homes; Shared Lives Providers; Extra Care providers, providers of advocacy services and informal supporters.



Forward together 

## Section 2 - Information Gathering

### 1. What, data, information, evidence, research was used in this EqlA?

The financial policies are based on work carried out with elected members since 2012 in, first, a Policy Development Panel and then, an Executive Advisory Panel. The Panel began by assembling and analysing an 'evidence base' as follows:



Charging for  
Non-Residential Social



Charging for  
Residential Social



'Fairer Contributions'  
Carreport to Policy Devel

More recent work has focussed on the protected characteristics:



EQIA Stats  
Summary.pdf

There has also been a national impact assessment:

DH Impact Assessment Care and Support Legal Reform (Part 1 of the Care Bill) **IA No:** 6107  
dated 9/10/2013



T:\Strategic Services  
- Commissioning Mana

### 2. What data do you already have about your service users, or the people your proposal will have an impact on?

Data about our service users is included within the first four reports above.

The State of Dorset data set also refers to the evidence sources relevant to Dorset decision makers:



We know the recorded age, gender and ethnicity of existing service users on the Adult Social Care database. There is also data about:

- service users in receipt of high rate DLA Mobility Allowance;
- current cases that are being investigated under Deprivation of Assets processes. This represents a very small group that is considered to be statistically inadmissible in terms of EqIA analysis;
- current demographics for older people and people with a Learning Disability in Dorset;
- projected future demand for services to meet dementia needs and the increased numbers of older people;
- current placements in residential care by gender, including source(s) of income and financial commitments;
- young disabled people in transition.

### **3. What engagement or consultation has taken place as part of this EqIA?**

The national, open consultation on the Care Act 2014 (Cap on Care Costs and Appeals) was published on 4 February 2015 and it closed on 30 March 2015. This was designed to inform the national direction to mitigate any negative impacts of the national policy.

The County Council consulted with the public about financial policies and the Carers' Short Breaks Service from 13 February to 16 March 2015. This extended our evidence base further and led to a report to the Cabinet recommending policy changes to take into account the outcome of the consultation:

<https://www.dorsetforyou.com/care-act-consultation>

### **4. Is further information broken down by Protected Characteristics required to help inform this proposal?**

No, but improvements in data capture and reporting will be necessary to underpin the action plan.



## Section 3 - Assessing the Impact

Section 149 of the Equality Act 2010 states that a public authority must, in carrying out its functions, have due regard to the need to:

- Eliminate all forms of discrimination; harassment and victimisation that are prohibited by the Equality Act 2010;
- Advance equality of opportunity;
- Foster good relations.

### 1. What does the consultation, data, evidence tell us about the likely impact on any equality group?<sup>1</sup>

The finance policies are considered to have a neutral impact on all groups, as described below:

Protected characteristic	Positive impact	Negative impact	Neutral impact	Unclear	Please explain the impact
Age	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<p>Finance policies are more likely to apply to older people as this group is more likely to need services.</p> <p>The proposal to remove public subsidy will result in a minority of people paying significantly more for services. That minority will consist mainly of older people who have been means-tested as being able to afford to pay.</p> <p>In overall terms, the proposal to remove public subsidy was the result of best practice guidance to ensure a level playing field between people receiving a direct payment and people receiving a commissioned service. It was one of the issues covered in the Dorset public consultation and it is not assessed to be discriminatory.</p>
Disability	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<p>People who receive the high rate mobility element of Disability Living Allowance (DLA) or Personal Independence Payment (PIP) are</p>

<sup>1</sup> This will include impacts upon workforce including staff transferring under TUPE to a new service provider

Protected characteristic	Positive impact	Negative impact	Neutral impact	Unclear	Please explain the impact
					expected to contribute towards the mobility-related costs of their services. However, the policy affects service users regardless of whether they have a disability.
Gender Reassignment	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	The County Council's contracts are Equality Act compliant. The changes to finance policies are considered to affect transsexual people in the same way as the rest of the population that uses services.
Pregnancy and Maternity	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	The 'pregnancy and maternity' characteristic has been considered particularly in relation to people in residential care and supported housing. The incidence is very low indeed and bespoke person-centred solutions has been/would be the preferred approach.
Race and Ethnicity	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	The finance policies have been written to comply with the Care Act and its Regulations and statutory guidance, so that they affect people equally, regardless of faith or ethnicity.  The Dorset evidence base shows that smaller percentages of people from ethnic minorities receive services from the County Council than the percentages of those people in the population of Dorset as a whole. This is primarily due to the fact that people from ethnic minorities are currently, on average, comparatively younger and therefore less likely to need services at the present time.  The policies are underpinned by universal requirements to communicate and provide advice and information. Our Care Act Information and Advice policy and the EqIA action plan reflects our commitment to ensuring that those universal requirements are fulfilled.  The County Council's contracts are Equality Act compliant.
Religion or Belief	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	The finance policies are considered to affect people equally regardless of their religion or belief.  The action plan covers work to develop information and advice and 'shape the

Protected characteristic	Positive impact	Negative impact	Neutral impact	Unclear	Please explain the impact
					market' which will help to ensure that people can make choices that reflect their religious beliefs.  The County Council's contracts are Equality Act compliant.
Sex	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	More female than male people will be affected due to the longevity of the female population. However, the policies are considered to apply in a way that is gender neutral.
Sexual Orientation	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	Whilst the policies themselves promote equality, there is a need to promote the benefits of disclosing sexual orientation in client records etc. Some older clients may be less willing to provide information. Non- disclosure can have a negative impact on people's rights (or their partner's rights) to income, allowances, property disregards, etc. The action plan reflects this.  Where we exercise local discretion in applying policies we will seek to do so according to agreed principles and ensure that discretionary arrangements are documented and monitored.
Other socially excluded groups (Carers, rural isolation, low income, military status)	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	In autumn 2015 a review will be carried out which will consider evidence from the operation of the Care Act finance policies in practice, including on other socially excluded groups.



## Section 4 - Action Plan, Monitoring and Communication

What plans do you have in place, or are developing, that will mitigate the likely identified negative impacts?

Objective / Outcome	Revised SMART Action following meeting on 6 <sup>th</sup> August 2015	Lead officer	Original Deadline	October Update	Revised Deadline
<p>1. Areas where local discretion is exercised do not adversely affect people with protected characteristics.</p>	<p>Undertake a review with the Executive Advisory Panel of the impact of the exercise of local discretion, focused on the areas that were subject to local consultation and on local practices and procedures.</p> <p>Consider evidence from the operation of the Care Act finance policies in practice, including on other socially excluded groups; and how third party contributions made under the 'Choice of Accommodation' policy are working in practice.</p>	<p>Policy &amp; Projects Manager</p>	<p>1 April 2016</p>		
<p>2. Transport assessment processes are Care Act compliant.</p>	<p>Awareness of the Transport policy is raised among fieldworkers.</p> <p>A review is carried out of the operation of the Transport Policy.</p>	<p>Financial Support Manager</p>	<p>30 September 2015</p>	<p>Findings have shown that more needs to be done to raise awareness of the policy amongst fieldworkers and to write a procedure.</p>	<p>1 April 2016</p>

Objective / Outcome	Revised SMART Action following meeting on 6 <sup>th</sup> August 2015	Lead officer	Original Deadline	October Update	Revised Deadline
There is evidence that the Transport Charging policy meets assessed needs.				<p>Therefore the Workforce Capacity Project will develop the content and training that is provided for new staff and will ensure that key messages from all the charging policies are included.</p> <p>A re-working of Finance Training is subject to the Care Act Part 2 reforms but will include the key Transport Charging conditions specified in the policy.</p>	
3. There is evidence that the client's contribution towards transport costs is affordable and reasonable	A review is carried out to establish whether assessments take a holistic view of transport needs, including personal requirements and social care needs. This is considered and signed off by a manager and recorded on the CM54 or R1. To establish whether the client's contribution is fair, we will look to evidence from complaints and compliments as a source of substantiation.	Locality Teams	30 September 2015	A review of the operation of the policy has not taken place because there is currently no way of auditing the fair application of the charge. However the implementation of peer and management audits of assessments and reviews, under the ACCoRD programme, will encourage this review of its operation amongst workers.	1 April 2016
4. Vulnerable adults are protected from financial abuse.	Mental Capacity checks are featured throughout the assessment and reviews process which are recorded on the supported assessment and reviews form and signed by a manager. The 'Assessment of Mental Capacity form' is used to record the evidence	Locality Teams	1 April 2016	There is no overall monitoring of capacity decisions because they happen all the time across all sectors of social care. However, Dorset County Council is working to set up audits of how the MCA is used which will include looking at assessments of people's capacity.	1 April 2016



Objective / Outcome	Revised SMART Action following meeting on 6 <sup>th</sup> August 2015	Lead officer	Original Deadline	October Update	Revised Deadline
	for a decision about a person's capacity and is recorded on SHARE. In the case of a Care Act financial assessment Dorset Advocacy will provide an advocate and report quarterly to the contract monitoring team.				
<p>5. Effectively communicate the updated policies to all stakeholders and customers.</p> <p>Information is available to all, in accessible formats, and people are protected from financial abuse, including through safeguarding and advocacy arrangements</p>	<p>All finance policies, most specifically those dealing with; deprivation of assets, protection from financial abuse and deferred payments are clear, accessible and in a language and format that meet a client's needs.</p> <p>Links are made to national easy-read resources in all appropriate places.</p> <p>Information on MLMC and SAIL is reviewed every six months and is available in different formats. Customers and stakeholders can feedback via the feedback kite on the MLMC website which will evidence if improvements need to be made.</p>	<p>Care Act Programme Team/Financial Support Manager/Locality Teams and Information and Engagement Manager</p>			
<p>6. The best interests of temporary residents in care homes are protected.</p>	<p>A review is carried out to establish the extent to which advocacy services and Mental Capacity Assessments are available to people taking up temporary</p>	<p>Locality Teams/Commissioning Managers</p>	<p>1 April 2016</p>	<p>Dorset County Council is working to set up audits of how the MCA is used, which will include looking at assessments of people's capacity, and will aim to treat temporary</p>	<p>1 April 2016</p>

Objective / Outcome	Revised SMART Action following meeting on 6 <sup>th</sup> August 2015	Lead officer	Original Deadline	October Update	Revised Deadline
	residence in care homes. Evidence of this is recorded in a care plan review by the person arranging the care or, in the case of a financial assessment; the results will be recorded on AIS by the member of staff undertaking the finance assessment.			residents of care homes as a separate group for any audit.	
7. Limit the potential for conflicts of interest that arise where a provider of care is also an Appointee.	Update corporate guidance and recommend that providers of care should not be Appointees, except in very exceptional circumstances which are documented and monitored. Residential care providers have been issued with new contracts with a clause requiring them not to act as appointees.	Monitoring Team/ Heads of Service	1 April 2016	Work is underway on supported living and supported lodgings schemes to ensure that providers are not acting as appointees.  The re-commissioning of support at home services is due to go live at the end of June and the condition will be built in to this which will ensure that monitoring measures are in place.	1 April 2016
8. The market is developed to ensure choices that meet needs can be offered to all client groups.	Undertake robust equality monitoring and improved identification of protected characteristics to ensure needs can be met in a range of accommodation. The use of the improved Monitoring formats would be instituted by contracting and commissioning leads which feeds corporate and market research. Commissioners will ensure equality monitoring is specified so contracts utilise them in contract reviews.	Commissioning Managers	1 April 2016	A PAN Dorset Quality Assurance contract will be looking at provider reporting, due to start in June. Commissioning will agree demarcation of the monitoring forms to ensure that the commissioning team have sight of them.	1 April 2016

Objective / Outcome	Revised SMART Action following meeting on 6 <sup>th</sup> August 2015	Lead officer	Original Deadline	October Update	Revised Deadline
9. Provide clarity about the current 'choice of accommodation' and our 'Market Shaping' plans.	If choices are currently limited for some groups due to market deficiencies this should be illustrated by examples on Dorset for You, and My Life My Care as part of the communication on the Care Act – alongside our plans for longer term 'Market Shaping'.	Commissioning Managers/ Brokerage/ MLMC editor	30 September 2015		
10. The market is developed where there are gaps in provision.	Unmet need is monitored and used to inform commissioning plans in dialogue with providers.	Commissioning Managers	1 April 2016	Commissioners are leading on a piece of work which will map the priority needs across the County.  The new Engagement and Peer Support post within commissioning will facilitate more engagement with our stakeholders and explore new ways of engaging with people who have protective characteristics.	1 April 2016
11. Deferred Payment Agreements are available for all people where this is appropriate.	Deferred Payment processes are developed for those in Shared and Extra Care Housing	Financial Support Manager/ Legal Services	30 September 2015		
	Review best practice in relation to Sharia-compliant Care Act finance policy.	Financial Support Manager/ Legal Services	1 April 2016		

Objective / Outcome	Revised SMART Action following meeting on 6 <sup>th</sup> August 2015	Lead officer	Original Deadline	October Update	Revised Deadline
12. Improvements are made to the quality of management information for decision-making and commissioning.	Encourage the completion of religion, transgender and sexual orientation fields in client records to provide an evidence base to underpin policy making.	Performance and Business Improvement Teams.	1 April 2016	The requirements to capture, monitor, review and utilise this data are currently being fed in to the requirements of the new Central Management System.	1 April 2016
13. The Care Act Recovery of Debts policy operates properly alongside the corporate Debt Recovery policy.	A review of the operation of the two policies will be based on case studies and carried out by the financial support manager.	Financial Support Manager	1 April 2016	A review of the operation of the two policies has been delayed due to the financial restructure. By 1 April we will have a more robust structure in place to review the policies and to start developing our debt management strategies alongside this.	1 July 2016
14. Data is used to inform the development of policies and the design of services	Proposals for new policies or services, or changes to existing policies or services, are underpinned by a sound evidence base	Care Act Implementation Manager	1 April 2016	The Carers Survey has informed the PAN Dorset Carers Strategy. Care Act stocktakes and reports to the Executive Advisory Panel are also used to inform the development of policies and the design of services. On-going work will continue to ensure that we understand all data being collected to maximise its effectiveness.	1 April 2016

This proposal has been subject to national and local communications work. The Government has run a national campaign to launch the Care Act. In Dorset we have publicised the Care Act through our public consultation; GP surgeries; local media; 'Your Dorset' newspaper and 'My Life My Care' and Dorsetforyou websites.

A number of changes to our draft policies were made as a result of the consultation. We amended our proposed policy on refunds for 'missed attendances' so that it is more accommodating to people with personal or medical emergencies. We also amended our proposed policy on charging for the Carers' Short Breaks Service, so that the charge for this will be borne neither by the carer nor by the cared-for person, until a holistic review has been carried out of all services for carers.

We plan to continue the work to engage with the public. The outcome of the consultation will be available to the public as a report to the Cabinet on a Dorsetforyou web page. A press release may be issued.

DRAFT



## **Section 5 - Decision Making Process**

After consideration please state your final recommendations based on the findings from this EqlA. This will be used to inform the decision making process. Include any examples of good practice and positive action taken.

**This EqlA was approved by:**

**Date:**

**Review date:**