

## **SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Cabinet **DATE:** 9<sup>th</sup> March 2015

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**PORTFOLIO:** Health and Wellbeing – Cllr Sabia Hussain

### **PART I** **NON-KEY DECISION**

#### **CARE ACT 2014 – IMPLICATIONS FOR CHARGING POLICY**

##### **1 Purpose of Report**

To present to Cabinet for their review and ratification changes to Slough's charging policy for Adult Social Care in order to comply with the requirements of the Care Act 2014.

##### **2 Recommendation(s)/Proposed Action**

The Cabinet is requested to resolve:

- (a) That Slough's policy on charging for care in care homes will continue unchanged.
- (b) That Slough will continue not to charge for carers' support, though this would be reviewed by autumn 2016 when a considered view can be taken following implementation of the revised Carers' Strategy during 2015.
- (c) That Slough will review the option to charge self-funders who ask it to arrange their non-residential care by autumn 2015 following changes to social care processes and pathways.
- (d) That Slough adopts the policies on Deferred Payment Agreements and Top-ups in Care Homes (Appendices A and B).

##### **3. The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

###### **3a. Slough Joint Wellbeing Strategy Priorities**

The recommendations in this report are required to comply with the Care Act.

By ensuring that further development of the charging policy for Adult Social Care will be undertaken in the context of developing and implementing the Carers' Strategy, and of changes to social care processes and pathways, they support the priorities of the Slough Joint Wellbeing Strategy (SJWS).

### 3b Five Year Plan Outcomes

The recommendations in this report support the development and implementation of the Carers' Strategy and of changes to social care processes and pathways, which contribute to the Five Year Plan's outcomes:

- More people will take responsibility and manage their own health, care and support needs.

### 4 Other Implications

#### (a) Financial

The proposals are expected to be cost neutral.

The policies on Deferred Payment Agreements and Top-up in Care Homes mean that the Council's financial interests in those arrangements will be more secure.

#### (b) Risk Management

<b>Risk</b>	<b>Mitigating action</b>	<b>Opportunities</b>
Legal	None	
Property	None	
Human Rights	None	
Health and Safety	None	
Employment Issues	None	
Equalities Issues	None	
Community Support	None	
Communications	Information on Deferred Payment agreements and Top-ups is being prepared. Consultation is not required because these policies have already been consulted on nationally. The managed approach to charging policy for carers and self-funders limits the reputational risk to the council. Consultation may be necessary on final proposals.	
Community Safety	None	
Financial	Contained within this report	
Timetable for delivery	Contained within this report	
Project Capacity	None	
Other	None	

(c) Human Rights Act and Other Legal Implications

There are new legal responsibilities in the Care Act that will need to be met from April 2015. The Care Act Programme Board is working to ensure Slough has compliance with these new legal responsibilities.

There are no Human Rights Act implications arising from the recommendations contained in this report.

(d) Equalities Impact Assessment

The Care Act will principally benefit older age groups, who predominantly require both domiciliary and residential care, though disabled adults aged 18-65 will also benefit as a result of the Act.

An Equalities Impact Assessment has been prepared, which shows that the recommendations contained in this report in respect of Deferred Payment Agreements will have a positive impact on those entering residential care (predominantly people aged 65 or over). No negative impacts have been identified in respect of the current proposals.

## 5 Supporting Information

### 5.1 **The Care Act 2014 Overview**

The Care Act received Royal Assent on 14 May 2014. The aim of the Act is to reform and consolidate the law relating to care and support for adults dating back to the National Assistance Act 1948.

The main aspects of the Act are:

- brings care and support law into one statute
- re-focuses care and support by promoting wellbeing and preventing and delaying needs to reduce dependency instead of only intervening at crisis point
- puts carers on the same legal footing as the person they are caring for
- extends financial support to those who need it most, and protects people from excessive care costs through a cap on care costs
- aims to ensure that people do not have to sell their homes in their lifetime to pay for residential care, by providing for a new deferred payments scheme
- provides for a single national threshold for eligibility to care and support
- supports people with information, advice and advocacy to understand their rights and responsibilities, enabling them to access care when they need it, and plan for their future needs
- guarantees continuity of care when people move between areas
- includes new protections to ensure that no one goes without care if their provider fails, regardless of who pays for their care
- is built around people and outcomes that matter to them and promoting personal budgets
- clarifies entitlements to care and support and gives new options in relation to charging
- puts safeguarding adults on a statutory footing

- simplifies the care and support system and processes to provide local authorities and care professionals the freedom and flexibility to integrate with other local services.

## 5.2 Implications for Charging Policy

The Act contains provisions that will require Slough to consider changes to its charging policy for adult social care. Specifically, the Act:

1. Gives councils discretion to decide circumstances where they will not charge for care provided in a care home
2. Allows councils to charge carers for support they receive
3. Allows councils to charge for arranging services for people who fund their own care ('self-funders') in non-residential settings
4. Introduces a universal Deferred Payment Agreements scheme, and allows councils to charge interest and administration fees for operating the scheme
5. Introduces a legal entitlement to choice of accommodation in residential settings, and formalises the right in certain circumstances to pay a 'top-up' fee for accommodation that is more expensive than the council would fund.

## 5.3 Charging for Care in a Care Home

At present, Slough must financially assess people it places in a care home, and where indicated charge them in accordance with the national Charging for Residential Accommodation Guide (CRAG). Debts that arise are considered on an individual basis.

The Care Act gives councils discretion to decide circumstances where they will not charge for this type of care.

Slough has the option either:

1. To pre-determine circumstances in which no charge will be made, or
2. To continue with current policy and practice

It is **recommended** to continue with current policy and practice (option 2). Slough cannot afford to reduce income, and would be open to challenge by pre-determining exceptions. We will continue to consider any potential future debts on an individual basis.

## 5.4 Charging for Carers Support

The Care Act gives carers the same rights as those they care for, to have their needs assessed and where they meet eligibility criteria to receive some publicly-funded support. Slough is proposing to put in place interim arrangements from April 2015, which will enable us to take a more strategic view about meeting carers' needs of carers going forward as the scale of demand for this support is not clear at present.

Under the Act, councils will be able to charge for support they provide to carers. However, it is anticipated that in most cases, the financial cost of support will be relatively modest, and the Care Act Statutory Guidance gives a fairly strong steer against charging.

The options are:

1. To decide now on charging policy for carers' support, or
2. To make no charge at present, develop the carers' strategy, and review carers' charging policy within 18 months of the Act coming into force.

Option 2 is **recommended**. Carers are central to the prevention agenda, and Slough needs time to develop and implement its revised carers' strategy as part of that agenda. 'Loss' of income through not charging could be more than offset by the financial consequences if people decide they can no longer provide informal care. Current policy will be not to charge, though this would be reviewed by autumn 2016 when a considered view can be taken.

## 5.5 Charging Self-funders for Arranging Non-Residential Care

The Act gives the council the power to charge self-funders who ask it to arrange their care. For technical reasons, from April 2015 this applies only to non-residential settings. It is anticipated this will be extended to residential settings from April 2016.

Slough is currently arranging non-residential care for 34 people. The introduction of the Care Account and Cap from April 2016 may provide an incentive for more people to ask the council to do this. We have identified approximately 150 people currently arranging their own non-residential care, plus approximately 70 arranging care in a care home: a total of 220, about half of whom are likely to be eligible for some publicly-funded support under the Dilnot-related reforms from April 2016. Slough will begin early assessments of self-funders for the Care Account in autumn 2015.

Slough is also changing the social care processes and pathways in line with the Care Act and some of these changes will not be implemented until part way through 2015/16. Work is also underway to both improve the offer from the voluntary and community sector and deliver improved information, advice and advocacy services and all these changes will occur during 2015/16.

The options are:

1. Introduce a charge now, in anticipation of changes to social work processes, or
2. Develop social work processes, and review charging policy for autumn 2015 when early assessments are due to begin; there will probably be a need to consult on any proposed charges.

Option 2 is **recommended**. Charging policy can be developed in a managed way alongside service developments, without diverting resources needed for April 2015 implementation and also allows us time to undertake consultation in a timely manner if this is required. There is a small risk that more people than anticipated would approach the council to arrange their care.

## 5.6 Universal Deferred Payment Agreements

The Care Act introduces a universal Direct Payment Agreements (DPA) scheme to reduce the risk that someone entering a care home will have to sell their home during their lifetime to pay for their care. Slough, like other councils, already offers DPAs. But the Act establishes clear and consistent criteria for who is entitled to a DPA, and how the scheme must operate.

The draft policy attached as Appendix A sets out Slough's proposed approach going forward. Because we are awaiting some technical guidance from DoH it may be necessary to make some technical amendment to the policy as currently drafted.

A DPA is a mortgage, normally secured by a legal charge against the person's property. It enables a person to defer their care home fees until a later date. This can delay the need to sell their home as they make the transition into care. The council recovers the amount owed when the property is sold.

The only form of security that Slough is required to accept under the Act is a first charge on the person's home registered with the Land Registry. But councils are encouraged to consider other appropriate forms of security. The draft policy lists certain recognised forms of security that Slough will consider, such as a secured third-party guarantee or assignment of a life assurance policy. Other forms of security, such as a second charge where there is a pre-existing shared equity arrangement, may be considered case by case.

Because a DPA is secured the financial risk is very low. Currently, Slough has 14 open DPAs and typically agrees around 8 new ones each year, which are administered on behalf of the council by Arvato. The duration of a DPA can vary from a few months to several years, with an average between 2 and 3 years. The average annual deferral is approximately £28,000. Under the new provisions in the Act, it is anticipated that the annual number of DPAs might more or less double.

Slough's current DPA agreement provides for a £250 set-up charge. This has not always been collected, but will be followed up for all existing agreements. Under the Act, Slough will be able to charge the full cost of putting the agreement in place as well as reasonable costs incurred during the life of the arrangement, such as revaluation fees. From April 2015, it is proposed to charge a fixed fee of £595 plus disbursements (typically the cost of registering a charge on the Land Register and property valuation fees). The fee will be reviewed annually in line with inflation.

## **5.7 Policy on 'Top-up' Fees in Care Homes**

The Act establishes a right for people in care homes to choose where they wish to live. Councils must ensure that a person has genuine choice and that at least one option is available and affordable within their personal budget. However, the person must also be able to choose alternative options, including a more expensive setting where a third party is willing and able to pay a 'top-up'. (In certain limited circumstances people are able to pay their own 'top-up'.) The council also has discretion to agree a DPA to fund a 'top-up', subject to the proposed arrangement being sustainable.

The draft policy attached as Appendix B formalises these arrangements.

The main risk is that, if the party paying the 'top-up' ceases to make payments, the council is responsible for the full cost of the placement. It is then faced with a decision whether or not it is appropriate to move the person to an alternative, less expensive placement that can meet their needs. It can also pursue any outstanding debt, if necessary through the courts.

At present, Slough, like most other councils, contracts with the care home only for the council's normal fee, leaving the third party to pay the 'top-up' direct to the provider. The Care Act Statutory guidance recognises that this increases the council's risk and

that councils need to have oversight of the entire arrangement. The guidance states that councils should contract with the provider for the full cost of the placement, and either:

1. Include the 'top-up' as part of the person's income in their financial assessment, or
2. Require the third party to sign an agreement to pay the 'top-up' direct to the council.

Option 2 is **recommended** on the basis that this is the national guidance and will give the Council full oversight of costs especially with the introduction of the care cap.

## 6 **Comments of Other Committees**

Not applicable

## 7 **Conclusion**

The Cabinet is requested to approve the recommendations contained in the report.

## 8 **Appendices Attached**

A – Policy on Deferred Payment Agreements

B – Policy on Top-ups in Care Homes

## 9 **Background Papers**

None

## APPENDIX A

### **SLOUGH BOROUGH COUNCIL: POLICY ON DEFERRED PAYMENT AGREEMENTS April 2015**

#### The purpose of DPAs

The universal DPA scheme has been introduced with the aim that people should not be forced to sell their home in their lifetime to pay for their care. A DPA is a loan secured by a legal charge against the property, through which a person can defer paying the costs of their care until a later date. This can delay the need to sell their home as they make the transition into care.

#### Who is entitled to a DPA?

Subject to adequate security (see below) and acceptance of terms and conditions, Slough will offer a DPA where a person meets all three of the following criteria at the point of applying for a DPA:

- The care planning process has determined that they have eligible needs that are best met in a care home, or in supported living accommodation (including extra care housing)
- The value of their assets, excluding their home, is below the upper threshold set in regulations by the Department of Health (for 2014-15 £23,250, but reviewed annually)
- Their home is not disregarded for purposes of financial assessment, eg because a spouse or dependent relative as defined in the regulations is living there.

Entitlement to a DPA applies equally to people whose care is wholly or partly council-funded and to people who fund the costs of their own care.

Slough may, at its discretion, offer a **discretionary** DPA, subject to adequate security (see below on security) and acceptance of terms and conditions, where:

- A person is marginally above the upper threshold, or
- Paying for care would leave them with limited realisable assets, or
- A person wishes to use the equity in their home to pay for 'top-ups' as set out in the council's policy on choice of accommodation and additional payments, subject to evidence that the top-up arrangement is sustainable (see below on sustainability).

#### What can the DPA be used to pay for?

DPAs are intended to pay for the costs of care and cannot be used for any other purpose. The costs of care include:

- Care home fees
- Support and rental costs in supported living accommodation
- Any administration fees and other disbursements Slough may add to the amount deferred (see below on interest and charges)

A DPA cannot be used to pay for additional services that a care home may offer residents. Nor can it be used to pay for mortgage payments in respect of supported living accommodation.

## How much can be deferred?

The maximum amount that can be deferred is the '**equity limit**'. This will be calculated using the following formula:

Value of property  
less 10%  
less the lower threshold set in regulations by the Department of Health (currently £14,250)  
less any other charges.

To determine the value of the property, Slough will obtain a valuation, the cost of which will be added to the deferred amount unless the person has agreed to pay this separately. The person who has applied for the DPA may, if they wish, obtain an independent valuation. If an independent assessment finds a value substantially different to the council's valuation, an appropriate valuation will be agreed before proceeding with the DPA.

Normally, a person will be able to defer up to the full amount they are paying for their care. They are not obliged to defer the full amount, and may choose to defer less than this if they wish to pay some of the costs from their income or savings.

However, where a person intends to use a DPA to pay for a 'top-up', Slough reserves the right to limit the amount that can be deferred, if it deems that is necessary to ensure that the DPA is sustainable (see below). In these circumstances, the amount a person can defer would not be less than the 'core' cost of care, ie without the 'top-up'.

## Sustainability

In considering a request for a discretionary DPA, Slough will consider with the person the sustainability of the proposed arrangement. Among the factors that will be considered are:

- the likely period the person would want the DPA for
- the equity available
- the period of time they would be able to defer their care costs for - when they would reach the 'equity limit'
- when they might reach the threshold for help with their care costs
- the sustainability of their contributions from other sources
- the flexibility to meet future care needs - how their needs and possibly the costs of care might change, and how increased costs would be funded.

## Effect of DPA on financial assessment

While a DPA is in effect the maximum 'disposable income allowance' used in a person's financial assessment will be £144 per week. They may, however, choose to keep a lower amount.

Slough will have regard to reasonable costs such as insurance and property maintenance when carrying out a financial assessment.

## Security

Slough will accept the following forms of security:

- A first legal charge on the property on the Land Register

Slough may at its discretion accept other forms of security, including:

- A third-party guarantor, subject to the guarantor providing an appropriate form of security
- Assignment of life assurance policy

In considering other forms of security, Slough will consider each case on its merits. Where an asset offered as security is jointly-owned, both owners' consent to the charge will be required. Both owners will be signatories to the charge agreement and must agree not to object to the sale of the property for the purpose of repaying the debt due to the council. Where another party has a beneficial interest in the asset offered as security, similar consent will be required.

Slough will arrange for the security to be revalued when deferral reaches 50% of its most recent valuation, and the cost of this will be added to the deferred amount unless the person has agreed to pay this separately.

## Interest and charges

Compound interest will be charged on the deferred amount including administration fees and other charges that have been added to the deferred amount until the debt is repaid. Interest will continue to accrue even when the 'equity limit' has been reached.

Interest will be charged at a variable rate in line with the 'national maximum interest, which is normally reviewed 6-monthly. Slough will set out in writing the initial rate of interest and will also inform the person in writing if the rate of interest changes.

If Slough pursues outstanding debts through the County Court, interest will accrue on debts at the County Court rate.

Slough will charge an administration fee for setting up the loan. This will be at a flat rate, which will be reviewed annually and published along with all other fees and charges. It will also charge other reasonable one-time fees during the course of the agreement, including but not limited to:

- Valuation and re-valuation fees
- Land Registry charges and associated costs
- Removal of charges

Slough also reserves the right to recover costs associated with pursuing debt through the Court.

## Making the DPA

Once an agreement in principle has been reached, Slough will issue a hard copy of a contract. The person requesting the DPA will have 30 days to consider and raise any questions about the terms of the contract.

## Mental Capacity

Slough will assure itself that the person requesting the DPA has the requisite mental capacity to enter into such an agreement.

Where a person who lacks capacity has either a Finance and Property Attorney or a Deputy, evidence of this will be required before the representative can sign the DPA on the person's behalf.

Where the person who lacks capacity is unrepresented, an application must be made to the Court of Protection:

- A family member willing to take up the role may make a Deputyship
- In the absence of such a candidate an application may be made for a Panel Deputy to be appointed
- Slough may take the view that it will apply for Deputyship, depending on the Council's resources and the composition and value of the person's assets

## While the DPA is in place

Slough will:

- Provide statements 6-monthly or on 28 days' notice
- Include any interest or fees to be deferred when calculating progress towards the equity limit
- Reassess the value of security when 50% is reached
- Review the arrangement with the individual if the amount deferred reaches 70% of the value of the security.

The person who has agreed to the DPA must:

- If contributing to the costs of care, tell the council of changes in income or savings
- Tell the council about relevant changes in care and support needs
- If there is a disregard in their financial assessment, tell the council of a change in circumstances that would affect this
- Ensure appropriate maintenance and insurance arrangements, and provide the council with details of these
- Obtain the council's consent for anyone to move into the property
- Tell the council if they intend to sell the property and when it is sold
- Tell the council if they, or someone acting on their behalf, intends to repay the full amount due.

## Cessation of deferrals

In the event that:

- The person becomes eligible for council-funded care, either because of depletion of assets or because of a property disregard
- No longer needs to be in a care home or supported living
- They breach predefined terms and conditions

Slough reserves the right to stop deferring costs. Slough will give 30 days' notice of its intention to stop deferring costs, but will not demand repayment.

Slough will stop deferring costs, but interest and administration charges can still be deferred:

- When the person reaches the equity limit, or
- Is no longer in a care home or supported living.

### Termination of the DPA

A DPA may be terminated in three ways:

- When the property (or form of security) is sold and the council is repaid
- At any time by the individual, or someone acting on their behalf, by repaying the full amount due (this can happen during a person's lifetime or when the agreement is terminated through the DPA holder's death)
- When the person dies and the amount is repaid to the LA from their estate.

On termination, the full amount due (including care costs, any interest accrued and any administration fees and other disbursements) must be paid to the council. Responsibility for arranging for repayment of the amount due (in the case of payment from the estate) falls to the executor of the will.

If the person decides to sell their home, they must tell the council in writing of their intention, and when the property is sold. They will be required to pay the amount due to the council from the proceeds of the sale, and Slough will relinquish the charge on their property.

If the person, or someone acting on their behalf, decides to repay the full amount due, they must tell the council of their intention in writing. Slough will relinquish the charge on the property on receipt of the full amount due.

If the deferred payment is terminated due to the person's death, the amount due to the council must be either paid out of the estate or paid by a third party. If the person's executor, family, or a third party wish to settle the debt by other means Slough will accept an alternative means of payment provided this payment covers the full amount due. Slough will wait 2 weeks from death before requesting repayment. After 90 days, when repayment falls due, Slough reserves the right to take active steps to recover. Interest will continue to accrue on the amount owed to the local authority after the individual's death and until the amount due to the local authority is repaid in full.

## APPENDIX B

### **SLOUGH BOROUGH COUNCIL: POLICY ON TOP-UPS IN CARE HOMES April 2015**

#### Introduction

Where the care planning process determines that a person's needs are best met in a care home, the Care and Support and After-care (Choice of Accommodation) Regulations 2014 require the council to provide for the person's preferred choice of accommodation, subject to certain conditions.

Slough will ensure that a person has genuine choice and that at least one option is available and affordable within their personal budget. However, they must also be able to choose alternative options, including a more expensive setting, where a third party (or in certain limited circumstances the person themselves) is willing and able to pay a top-up' for the additional cost.

#### Additional Costs ('Top-up' Payments)

If an individual chooses a setting that is more expensive than the personal budget, a statement will be issued setting out how the difference between the personal budget and the actual cost will be met.

In most cases, a **third party** will need to agree to pay the additional cost (**'top-up' payment**). A person may pay their own 'top-up' only in the following circumstances:

- where their home is subject to a twelve-week property disregard
- where they have entered into a Deferred Payment Agreement with Slough (NB: there is not a legal entitlement to a DPA for 'top-up' payments, but Slough will endeavour to agree such arrangements subject to adequate security)
- where the accommodation being offered is funded under section 117 of the Mental Health Act 1983 but not to their liking and they can find accommodation they prefer and pay the difference in cost.

In these cases, having made sure that the individual understands the full implications of this choice, that the person paying the 'top-up' is willing and able to meet the additional cost for the likely duration of the arrangement, Slough will contract with the provider for the full cost of the arrangement.

Slough will require the person paying the 'top-up' to enter into a legally-binding agreement to pay the top-up to the council at the frequency set out in the agreement. The agreement will cover:

- the additional amount to be paid
- the amount specified for the accommodation in the personal budget
- the frequency of the payments
- the payments are to be made to Slough Borough Council
- the provisions for reviewing the agreement
- the consequences of ceasing to make payments
- how any increases in the charges the provider may make will be dealt with
- how any changes in the financial circumstances of the person paying the 'top-up' will be dealt with.

### The Amount to be Paid

The amount of the 'top-up' will be the difference between the actual costs of the chosen provision and the amount set in the personal budget (see above).

### Frequency of Payment

Payments will normally need to be made on a monthly basis.

### Reviewing the Agreement

'Top-up' agreements will normally be reviewed on an annual basis. However, other events may arise, eg as part of the care planning process, that would prompt a review of the 'top-up' arrangements.

### Consequences of Ceasing to Make Payments

If the person who has agreed to pay the 'top-up' ceases to make payments, Slough will take appropriate steps to recover the payments due wherever possible. If agreement cannot be reached, Slough will pursue outstanding debts through the County Court, and reserves the right to recover costs associated with pursuing debt through the Court. Interest will accrue on debts at the ***national maximum interest rate***. If County Court proceedings ensue, interest will then accrue at the County Court rate.

If payments are not maintained, the individual for whose care the 'top-up' is due may be moved to an alternative accommodation that would be suitable to meet their needs and affordable within the personal limit.

### Changes in Provider Charges

Slough will negotiate price changes with the provider as part of its normal contract management process, and will seek to keep any increase in charges to the lowest appropriate level.

However, there is no guarantee that cost increases will automatically be shared evenly should the provider's costs rise more quickly than the amount Slough would have increased the personal budget. Cases will be considered on an individual basis.

### Changes in Financial Circumstances

Slough will consider sympathetically genuine unforeseen changes in financial circumstances. The person who has agreed to pay the 'top-up' must contact Slough in writing as soon as their circumstances change, or they become aware that their circumstances will change (eg by notice of redundancy).