



Appendix 'B'

# Equality Analysis Toolkit

**Implementing the Care Act – approval of a new  
Deferred Payment Policy**

**Issue type: 3.3 Cabinet Member for Adult and Community  
Services Decision Making Session**

**Meeting: Cabinet Member for Adult and Community Services  
Thursday, 15th January, 2015**

**For Decision Making Items**

## **What is the Purpose of the Equality Decision-Making Analysis?**

The Analysis is designed to be used where a decision is being made at Cabinet Member or Overview and Scrutiny level or if a decision is being made primarily for budget reasons. The Analysis should be referred to on the decision making template (e.g. E6 form).

When fully followed this process will assist in ensuring that the decision-makers meet the requirement of section 149 of the Equality Act 2010 to have due regard to the need: to eliminate discrimination, harassment, victimisation or other unlawful conduct under the Act; to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard means analysing, at each step of formulating, deciding upon and implementing policy, what the effect of that policy is or may be upon groups who share these protected characteristics defined by the Equality Act. The protected characteristics are: age, disability, gender reassignment, race, sex, religion or belief, sexual orientation or pregnancy and maternity – and in some circumstances marriage and civil partnership status.

It is important to bear in mind that "due regard" means the level of scrutiny and evaluation that is reasonable and proportionate in the particular context. That means that different proposals, and different stages of policy development, may require more or less intense analysis. Discretion and common sense are required in the use of this tool.

It is also important to remember that what the law requires is that the duty is fulfilled in substance – not that a particular form is completed in a particular way. It is important to use common sense and to pay attention to the context in using and adapting these tools.

This process should be completed with reference to the most recent, updated version of the Equality Analysis Step by Step Guidance (to be distributed ) or EHRC guidance - [EHRC - New public sector equality duty guidance](#)

Document 2 "Equality Analysis and the Equality Duty: Guidance for Public Authorities" may also be used for reference as necessary.

This toolkit is designed to ensure that the section 149 analysis is properly carried out, and that there is a clear record to this effect. The Analysis should be completed in a timely, thorough way and should inform the whole of the decision-making process. It must be considered by the person making the final decision and must be made available with other documents relating to the decision.

The documents should also be retained following any decision as they may be requested as part of enquiries from the Equality and Human Rights Commission or Freedom of Information requests.

Support and training on the Equality Duty and its implications is available from the County Equality and Cohesion Team by contacting

[AskEquality@lancashire.gov.uk](mailto:AskEquality@lancashire.gov.uk)

Specific advice on completing the Equality Analysis is available from your Directorate contact in the Equality and Cohesion Team or from Jeanette Binns

[Jeanette.binns@lancashire.gov.uk](mailto:Jeanette.binns@lancashire.gov.uk)

## **Name/Nature of the Decision**

Approval is being sought for the implementation of a new Deferred Payment Scheme in response to the requirements of the Care Act 2014.

## **What in summary is the proposal being considered?**

The Care Act 2014 established a requirement for a Deferred Payment Scheme which all Local Authorities must have implemented from April 2015. The establishment of the Deferred Payment Scheme will mean that people should not be forced to sell their home in their lifetime to pay for their care. By entering into a Deferred Payment Agreement (DPA), a person can 'defer' or delay paying the costs of their care and support until a later date. Deferring payment can help people to delay the need to sell their home, and provides peace of mind during a time that can be challenging or even a crisis point in their life as they make the transition into residential or nursing home care.

It should be stressed from the outset that the payment for care and support is deferred and not 'written off' – the costs of provision of care and support will have to be repaid by the individual, or by a third party on their behalf, at a later date.

The new scheme will have national eligibility criteria which replaces the existing eligibility criteria for deferred payments devised separately by local authorities including Lancashire County Council. Local authorities are required to follow this new national guidance on the eligibility criteria for a deferred payment. There has however been some discretion allowed on how the scheme will be implemented locally.

In particular the regulations provide for Council's to charge interest on the loan from the commencement of the loan, where at present interest is charged by Lancashire County Council from when the debt becomes due following the death of the client or upon termination of the contract.

The Cabinet Member for Adult and Community Services will be asked to approve the new Deferred Payments Scheme for Lancashire County Council.

Is the decision likely to affect people across the county in a similar way or are specific areas likely to be affected – e.g. are a set number of branches/sites to be affected? If so you will need to consider whether there are equality related issues associated with the locations selected – e.g. greater percentage of BME residents in a particular area where a closure is proposed as opposed to an area where a facility is remaining open.

The new scheme will affect any person or their representative who applies for a Deferred Payment under the scheme across the County and does not relate to any separately identified specific geographical area within Lancashire.

**Could the decision have a particular impact on any group of individuals sharing protected characteristics under the Equality Act 2010, namely:**

- Age
- Disability including Deaf people
- Gender reassignment
- Pregnancy and maternity
- Race/ethnicity/nationality
- Religion or belief
- Sex/gender
- Sexual orientation
- Marriage or Civil Partnership Status

In considering this question you should identify and record any particular impact on people in a sub-group of any of the above – e.g. people with a particular disability or from a particular religious or ethnic group.

It is particularly important to consider whether any decision is likely to impact adversely on any group of people sharing protected characteristics to a disproportionate extent. Any such disproportionate impact will need to be objectively justified.

The Department of Health has produced an impact assessment on the Care Act regulations covering the provisions that give local authorities a duty to offer deferred payments incorporating an equality impact assessment.

The Department of Health equality impact assessment concluded that:

Deferred payment agreements benefit people in residential care and their families. The population using care is almost exclusively disabled (physically or mentally) and is predominantly female and aged 75+.

Deferred payment agreements will predominantly benefit homeowners with low income and / or savings, who tend to belong to lower and middle socioeconomic groups.

Deferred payment agreements will not differentiate on the basis of race, however ethnic minorities are less likely to use residential care and because of this may make fewer agreements.

Deferred payments will not differentiate on the basis of faith, however charging of interest may pose a barrier to faith groups who have objections on religious grounds.

There are no grounds for a differential impact on sexual orientation, marriage or civil partnership. Deferred payment agreements will not differentiate on this basis.

The detailed Department of Health equality impact assessment that accompanied the final Care Act regulations relating to Deferred Payments (published in October 2014) can be found at the following link:

[http://www.legislation.gov.uk/ukia/2014/312/pdfs/ukia\\_20140312\\_en.pdf](http://www.legislation.gov.uk/ukia/2014/312/pdfs/ukia_20140312_en.pdf)

If you have answered "Yes" to this question in relation to any of the above characteristics, – please go to Question 1.

If you have answered "No" in relation to all the protected characteristics, please briefly document your reasons below and attach this to the decision-making papers. (It goes without saying that if the lack of impact is obvious, it need only be very briefly noted.)

### **Question 1 – Background Evidence**

What information do you have about the different groups of people who may be affected by this decision – e.g. employees or service users (you could use monitoring data, survey data, etc to compile this). As indicated above, the relevant protected characteristics are:

- Age

- Disability including Deaf people
- Gender reassignment/gender identity
- Pregnancy and maternity
- Race/Ethnicity/Nationality
- Religion or belief
- Sex/gender
- Sexual orientation
- Marriage or Civil Partnership status (in respect of which the s. 149 requires only that due regard be paid to the need to eliminate discrimination, harassment or victimisation or other conduct which is prohibited by the Act).

In considering this question you should again consider whether the decision under consideration could impact upon specific sub-groups e.g. people of a specific religion or people with a particular disability. You should also consider how the decision is likely to affect those who share two or more of the protected characteristics – for example, older women, disabled, elderly people, and so on.

Deferred payment agreements will be subject to eligibility criteria, notably whether someone needs residential care and whether they have limited liquid assets. Beyond this the scheme will not actively discriminate on the basis of equalities characteristics such as age, gender, sexual orientation, belief or socio-economic status. However it is likely there will be a differential level of uptake of deferred payments across different population groups.

Deferred payment agreements benefit people in residential care and their families. The take up of deferred payment agreements should reflect the makeup of people in care homes. In Lancashire the number of people resident in residential or nursing care as at 31<sup>st</sup> March 2014 is as follows:

Residents aged 65 and over	4,788
Residents aged 18 - 64 with a Physical Disability	189
Residents aged 18 - 64 with Mental Health needs	323
Residents aged 18 - 64 with a Learning Disability	266

These clients are almost exclusively disabled (physically or mentally) with substantial care needs being eligible for local authority support. These clients are

predominantly aged 65+ with approximately 75% being female. This is generally accepted to reflect two factors:

- increased longevity amongst women is associated with a higher prevalence of age-specific disability;
- women are more likely to survive male spouses and have less access to informal care.

Deferred payment agreements will not differentiate on the basis of race, however ethnic minorities are less likely to use residential care and because of this may make fewer agreements. The Joseph Rowntree Foundation note that the proportion of the minority ethnic population living in care homes is smaller than the white population living in care homes, and that older people from ethnic minorities are more likely to be living in larger households and a household with one or more carer. Based on this, it may be the case that the white population is more likely to use residential care and therefore to seek deferred payment agreements.

Deferred payment agreements may be compared to a loan. The Council proposes to charge a rate of interest that is sufficient to cover the borrowing costs, as allowed by regulations. Deferred payments will not differentiate on the basis of faith, however charging of interest may pose a barrier to faith groups who have objections on religious grounds.

It is noted that the payment of interest and charges on deferred payments may present a barrier to Muslim care users. This is because of the tenets of Sharia (Islamic) law, which prohibit the payment of interest.

## **Question 2 – Engagement/Consultation**

How have you tried to involve people/groups that are potentially affected by your decision? Please describe what engagement has taken place, with whom and when.

(Please ensure that you retain evidence of the consultation in case of any further enquiries. This includes the results of consultation or data gathering at any stage of the process)

The Department of Health conducted an engagement exercise over Autumn 2011 with care users and members of the care and support sector on reform of social care. This encompassed discussion of proposals for universal deferred payment agreements.

The engagement found support for deferred payments; a workshop on social care



funding reform involving representatives from local authorities and disabilities groups noted that “Universal deferred payments would give people additional choices and flexibility in meeting their care costs and there was strong support for them”.

Local authorities are required to follow new national guidance on the eligibility criteria for a deferred payment. There has however been some discretion allowed on how the scheme will be implemented locally with the expectation that the council has a local policy for Deferred Payments.

Three events were held where suppliers of residential and nursing care services in Lancashire were asked to provide insight into what clients may value from the new policy, and how clients may respond to the policy. Similarly, consultations have also been held with the Financial Assessment team, who support clients under the current deferred payment scheme.

In particular, these sessions highlighted the particular issues arising where clients lack mental capacity and are required to engage with a formal process, with the potential for there to be no Lasting Power of Attorney or Court appointed Deputy at the time they enter into residential or nursing care. The workforce capacity plan has been updated to reflect the possible need for additional resource within the Safeguarding Adults Finance team to support clients in this situation.

In view of the faith issues raised and the fact that we have concentrations of Muslim populations in Lancashire, it is intended that the Muslim community are identified as requiring specific communications as part of the Council's wider communications plan regarding the Care Act.

### **Question 3 – Analysing Impact**

Could your proposal potentially disadvantage particular groups sharing any of the protected characteristics and if so which groups and in what way?

It is particularly important in considering this question to get to grips with the actual practical impact on those affected. The decision-makers need to know in clear and specific terms what the impact may be and how serious, or perhaps minor, it may be – will people need to walk a few metres further to catch a bus, or to attend school? Will they be cut off altogether from vital services? The answers to such questions must be fully and frankly documented, for better or for worse, so that they can be properly evaluated when the decision is made.

Could your proposal potentially impact on individuals sharing the protected characteristics in any of the following ways:

- Could it discriminate unlawfully against individuals sharing any of the protected characteristics, whether directly or indirectly; if so, it must be amended. Bear in mind that this may involve taking steps to meet the specific needs of disabled people arising from their disabilities
- Could it advance equality of opportunity for those who share a particular protected characteristic? If not could it be developed or modified in order to do so?
- Does it encourage persons who share a relevant protected characteristic to participate in public life or in any activity in which participation by such persons is disproportionately low? If not could it be developed or modified in order to do so?
- Will the proposal contribute to fostering good relations between those who share a relevant protected characteristic and those who do not, for example by tackling prejudice and promoting understanding? If not could it be developed or modified in order to do so? Please identify any findings and how they might be addressed.

There are two areas where those with protected characteristics may potentially be disadvantaged, explained as follows:

- 1) Deferred payment agreements may be compared to a loan. The Council proposes to charge a rate of interest that is sufficient to cover the borrowing costs, as allowed by regulations. Deferred payments will not differentiate on the basis of faith, however charging of interest may pose a barrier to faith groups who have objections on religious grounds.

It is noted that the payment of interest and charges on deferred payments may present a barrier to Muslim care users. This is because of the tenets of Sharia (Islamic) law, which prohibit the payment of interest.

- 2) Where a person lacks capacity to request a deferred payment, a Deputy or Attorney (a person with a relevant Enduring Power of Attorney or Lasting Power of Attorney) may request a deferred payment on their behalf.

If a family member requests a deferred payment and they do not have the legal power to act on behalf of the person, then the person and the family

member should receive information and advice on how to obtain this, through Lasting Power of Attorney and Deputyships.

Where the Council is the Deputy for a person, then the Council Deputy may apply for deferred payments where this is in the best interests of the person. The Council must not enter into deferred payment agreements with a person lacking the requisite mental capacity unless the proper arrangements are in place.

#### **Question 4 –Combined/Cumulative Effect**

Could the effects of your decision combine with other factors or decisions taken at local or national level to exacerbate the impact on any groups?

For example - if the proposal is to impose charges for adult social care, its impact on disabled people might be increased by other decisions within the County Council (e.g. increases in the fares charged for Community Transport and reductions in respite care) and national proposals (e.g. the availability of some benefits) . Whilst LCC cannot control some of these decisions, they could increase the adverse effect of the proposal. The LCC has a legal duty to consider this aspect, and to evaluate the decision, including mitigation, accordingly.

If Yes – please identify these.

The Council is currently seeking to review its Charging Policy for the use of the Safeguarding Adults Finance (SAF) Team, whose role involves:

- Application to Court of Protection or DWP to become formally involved in a person's financial affairs;
- On-going management of finance and property affairs including investments and asset sales, including welfare support required under roles as Court-Appointed Deputy.

#### **Question 5 – Identifying Initial Results of Your Analysis**

As a result of your analysis have you changed/amended your original proposal?

Please identify how – For example:

Adjusted the original proposal – briefly outline the adjustments

Continuing with the Original Proposal – briefly explain why

Stopped the Proposal and Revised it - briefly explain

The original proposal has not been changed to reflect the two areas identified at question 3, as it may create greater inequity to create separate provisions for these two groups to counteract the impact of the policy on them. i.e.

- 1) Not charging interest on the basis of faith
- 2) Not allowing choice on the basis of mental capacity

Following consultation, we were able to identify the mitigation at point 2 below.

### **Question 6 - Mitigation**

Please set out any steps you will take to mitigate/reduce any potential adverse effects of your decision on those sharing any particular protected characteristic. It is important here to do a genuine and realistic evaluation of the effectiveness of the mitigation contemplated. Over-optimistic and over-generalised assessments are likely to fall short of the “due regard” requirement.

Also consider if any mitigation might adversely affect any other groups and how this might be managed.

- 1) The Department of Health has during the legislative passage of the Care Act 2014 added in a new Section 36 to allow deferred payment agreements to be offered in a manner that would make them compliant with Sharia law. There were mixed views in response to the consultation as to whether it was necessary to enact this or not and as such it has decided not to enact it for April 2015. The Department of Health intends to engage further with the Muslim community to understand whether there would be a demand for a Sharia-compliant scheme, and if so what would be required of it.
- 2) In order to facilitate the use of the SAF team additional resource has been identified in the workforce capacity plan for the Care Act, so that charges to individuals relating to the use of the SAF team may be minimised, and access to the team can be ensured. This relates to those clients for whom it is deemed it is in their best interest to enter into a deferred payment agreement, but who lack the capacity to make the decision and do not have a legally appointed Lasting Power of Attorney or Deputy to make the decision on their

behalf.

### **Question 7 – Balancing the Proposal/Countervailing Factors**

At this point you need to weigh up the reasons for the proposal – e.g. need for budget savings; damaging effects of not taking forward the proposal at this time – against the findings of your analysis. Please describe this assessment. It is important here to ensure that the assessment of any negative effects upon those sharing protected characteristics is full and frank. The full extent of actual adverse impacts must be acknowledged and taken into account, or the assessment will be inadequate. What is required is an honest evaluation, and not a marketing exercise. Conversely, while adverse effects should be frankly acknowledged, they need not be overstated or exaggerated. Where effects are not serious, this too should be made clear.

In order for the Council to be compliant with the Regulations and Guidance supporting the provisions of the Care Act 2014, the Council will need to agree an appropriate policy in relation to the offer of Deferred Payment Agreements in Lancashire. The policy that is being recommended is in keeping with the guidance and regulations, and where discretion is allowed, it has been applied in a manner which does not aim to discriminate against those with protected characteristics.

### **Question 8 – Final Proposal**

In summary, what is your final proposal and which groups may be affected and how?

- 1) Deferred payment agreements may be compared to a loan. The Council proposes to charge a rate of interest that is sufficient to cover the borrowing costs, as allowed by regulations. Deferred payments will not differentiate on the basis of faith, however charging of interest may pose a barrier to faith groups who have objections on religious grounds.

It is noted that the payment of interest and charges on deferred payments may present a barrier to Muslim care users. This is because of the tenets of Sharia (Islamic) law, which prohibit the payment of interest.

- 2) Where a person lacks capacity to request a deferred payment, a Deputy or

Attorney (a person with a relevant Enduring Power of Attorney or Lasting Power of Attorney) may request a deferred payment on their behalf.

If a family member requests a deferred payment and they do not have the legal power to act on behalf of the person, then the person and the family member should receive information and advice on how to obtain this, through Lasting Power of Attorney and Deputyships.

Where the Council is the Deputy for a person, then the Council Deputy may apply for deferred payments where this is in the best interests of the person. The Council must not enter into deferred payment agreements with a person lacking the requisite mental capacity unless the proper arrangements are in place.

### **Question 9 – Review and Monitoring Arrangements**

Describe what arrangements you will put in place to review and monitor the effects of your proposal.

The financial assessment team will monitor any enquiries from those who feel prohibited from using that scheme based on faith.

Any increased usage of the SAF team will be monitored to ensure that there continues to be resource within the team to support individuals through the DPA process.

Additionally, the take-up of the scheme will be monitored across all nine of the protected characteristic groups.

Equality Analysis Prepared By      Khadija Saeed

Position/Role                              Care Act Finance & Systems Lead

Equality Analysis Endorsed by Line Manager and/or Chief Officer  
Tony Pounder, Head of Care Act Implementation

Decision Signed Off By

Cabinet Member/Chief Officer or SMT Member

**Please remember to ensure the Equality Decision Making Analysis is submitted with the decision-making report and a copy is retained with other papers relating to the decision.**

Where specific actions are identified as part of the Analysis please ensure that an EAP001 form is completed and forwarded to your Directorate's contact in the Equality and Cohesion Team.

Directorate contacts in the Equality & Cohesion Team are:

Karen Beaumont – Equality & Cohesion Manager

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Contact for Office of the Chief Executive and the County Treasurer's Directorate

Thank you