

# Adult Social Care Charging for Care and Support Policy

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## Section 1 - Legislation And Government Guidance

The Care Act provides a single legal framework for charging for care and support. This enables a local authority to decide whether or not to charge a person when it is arranging to meet a person's care and support needs or a carer's support needs.

The Department of Health has provided Local Authorities with Statutory Guidance that has been used to determine Birmingham City Councils Charging for Care and Support Policy. This included guidance on:

- Sections 14, 17 and 69-70 of the Care Act 2014.
- the Care and Support (Charging and Assessment of Resources) Regulations 2014; and,
- the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014.

## Section 2- Principles of Birmingham City Council's Charging Policy

- The Care Act charging framework is intended to make charging for care and support fairer and more clearly understood by everyone with the overarching principle that people should only be required to pay what they can afford. With this in mind, the principles that determine Birmingham City Council's approach to its Charging Policy are:
  - to 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 their 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 in the long-term.

## Section 3 - Application of the Policy

### Who does this policy apply to?

This policy applies to most people with eligible needs and who are receiving care and support funded by the Council.

However, certain types of care and support must be arranged free and are therefore exempt from charges. These are summarised below:

- Intermediate care and enablement, which must be provided free of charge for up to six weeks.
- After-care services/support provided under section 117 of the Mental Health Act 1983
- Care and support provided to people with Creutzfeldt-Jacob Disease.

- Community equipment (aids and minor adaptations). Aids must be provided free of charge whether provided to meet or prevent/delay needs. A minor adaptation is one costing £1,000 or less.

### **Which types of care and support does this policy apply to?**

- Subject to certain conditions Birmingham City Council has a duty to arrange care and support for those with eligible needs and will charge under section 14 of the Care Act following a Person's needs assessment. In determining any charges, the Council will follow the Care and Support (Charging and Assessment of Resources) Regulations and have regard to the guidance.

The detail of how to charge is different depending on the type of care and support a person is receiving and this policy will apply to those:

- receiving care in a care home
- receiving care in their own home
- receiving care in another setting, for example shared lives or day centre
- receiving a direct payment

How the charge differs across the types of care and support is detailed later in this policy document, however, they share some common elements, which are set out in Section 4.

## **Section 4 - Charging Policy**

### **Capital Limits**

The financial limit, known as the "upper capital limit," exists for the purposes of the financial assessment. This is determined by the Department of Health and is currently set at £23,250. If, following an initial assessment, a person has assets below this level, the Council will then undertake a detailed financial assessment of their assets and will make a charge based on what is fair and reasonable.

In the financial assessment capital below the lower capital limit, which is currently set at £14,250, is disregarded in the assessment of what a person can pay.

A person with more in capital than the upper capital limit may pay the full cost of their care and support until their capital falls below the upper capital limit.

### **The Financial Assessment**

Where the Council has determined that the care and support provided will be subject to a charge, it will carry out a financial assessment of the person to see what they can afford to pay and, once complete, a breakdown letter will be provided. This will explain how the assessment has been carried out, what the charge will be and how often it will be made.

The Council will exercise its discretion in the carrying out of financial assessments to ensure that any contributions to the cost of care and support that a Person makes are made in accordance with the Council's duty to act under the general guidance issued by the Secretary of State: The Care and Support Statutory Guidance.

The financial assessment will apply from the date that the care and support commenced. If the financial assessment is completed after the start date, the charge will be back dated.

The charge will not be more than the cost that the Council incurs in meeting a person's assessed needs.

The Council will regularly reassess a person's ability to meet the cost of any charges to take account of any changes to their resources. A reassessment will be completed every April in line with changes to benefits paid by the Department for Work and Pensions and at other times according to individual circumstances or at the request of the person.

If a person lacks capacity to take part in the assessment, the Council will determine if the person has an appropriate person who will need to be involved, this will be either:

- Enduring Power of Attorney (EPA).
- Lasting Power of Attorney (LPA) for Property and Affairs.
- Lasting Power of Attorney (LPA) for Health and Welfare.
- Property and Affairs Deputyship under the Court of Protection; or
- Any other person dealing with that person's affairs (e.g. someone who has been given appointee-ship by the Department for Work and Pensions (DWP) for the purpose of benefits payments).

The financial assessment will include a person's capital and also take account of their income and financial commitments.

## Capital

- Capital can mean many different things. The following list gives examples of capital, but it is a guide only and not exhaustive. Also, some items of capital will need to be disregarded in the calculation of charges. Capital can include:
  - Buildings
  - Land
  - National Savings Certificates and Ulster Savings Certificates
  - Premium Bonds
  - Stocks and shares
  - Capital held by the Court of Protection, or a Deputy appointed by that Court
  - Any savings held in:
    - Building society accounts, Bank current accounts, deposit accounts or special investment accounts, SAYE schemes, Unit Trusts, Co-operatives share accounts, Cash.
  - Trust funds.

A capital asset is normally defined as belonging to the person in whose name it is held. However, where ownership is disputed, the Council will require written evidence to prove where the ownership lies. In the case of joint ownership being proven, the value will be divided equally unless otherwise determined and evidenced.

The Council will work out what value a capital asset has in order to take account of it in the financial assessment. This is usually the current market or surrender value of the capital asset, e.g., property, whichever is higher, minus:

- 10% of the value if there will be any actual expenses involved in selling the asset and
- any outstanding debts secured on the asset, for example a mortgage.

The Council will request a precise valuation in the event of disputes. In such cases a professional valuer will be asked to provide a current market valuation.

Where the value of a property is disputed, the Council will work with the person or their representative to obtain an independent valuation of the person's beneficial share of the property within the 12-week disregard period where a person is in a care home. This will enable the Council to work out what charges a person should pay and enable the person, or their representative, to consider whether to seek a deferred payment agreement.

If a person clearly has capital in excess of the upper capital limit, at the request of the person, the Council will not make a wider assessment. However, the Council will remain mindful of working with the person to plan ahead in terms of when the assets have been spent

down and a person may therefore fall below the upper capital limit. Where a person has assets between the lower and upper capital limits the Council will apply tariff income. This assumes that for every £250 of capital, or part thereof, a person is able to afford to contribute £1 per week towards the cost of their eligible care and support needs.

### **Example of Tariff Income:**

Nora has capital of £18,100.00 This is £3850.00 above the lower capital limit of £14,250.00. Dividing the £3850.00 by £250.00 produces a figure of £15.40. When calculating tariff income, the amount is always rounded up. This, therefore, gives a tariff income of £16.00 per week.

If a person has deprived themselves of capital in order to reduce the amount of charge they have to pay for their care, the person may be treated as possessing a capital asset and financially assessed on that basis.

The Council will apply all capital and property disregards as outlined in Annex B of the Care and Support Statutory Guidance.

The treatment of investment bonds is currently complex and therefore, the Council will require copies of investment agreements and may seek advice from Legal & Democratic Services to determine how this is treated in the financial assessment.

### **Income**

When considering income in completing the financial assessment, the Council will take account of the circumstances of how the care and support is being delivered. This is divided into:

- Care homes.
- All other settings

Charging a person in a care home is provided for in a consistent national framework. Whereas, when charging a person in all other settings, the Council has more discretion. This section firstly sets out some of the key common issues for the treatment of income and details those particular to each setting later. This is fully outlined in Annex C of the Care and Support Statutory Guidance.

The Council will only take into account the income of the cared-for person in the financial assessment of what they can afford to pay for their care and support. Where this person receives income as one of a couple, the starting presumption is that the cared-for person has an equal share of the income. However, the Council will consider the implications for the cared-for person's partner.

The Council will take into account all income unless it is stated as a disregard in the Care and Support Statutory Guidance. Disregarded income is detailed in Annex C of the Care and Support Statutory Guidance.

Income includes all benefits in payment by the Department for Work and Pensions unless the benefit is stated as a disregard in the Care and Support Statutory Guidance. However, the Council will ensure that in addition to the minimum guaranteed income or personal expenses allowance, a person retains enough of their benefits to pay, on receipt of proof (letters/statements/invoices/receipts) for the following outgoings:

- Mortgage payments
- Service charges

- Ground rent charges
- Lease charges
- Rent payments (after the deduction of Housing Benefit)
- Council Tax payments (after the deduction of Council Tax Exemptions/Council Tax Reductions/Council Tax Support)
- Buildings Insurance
- Housing Maintenance agreements (not including cover for white goods/equipment)

The Council will take into account any income from an annuity except where it is:

- purchased with a loan secured on the person's main or only home; or
- a gallantry award such as the Victoria Cross Annuity or George Cross Annuity.

Further details can be found in this regard in the Care and Support Statutory Guidance.

The Council will take into account income that is available from defined contribution pensions. The rules for how to assess pension income for the purposes of charging that the Council will adopt are:

- If a person has removed the funds and placed them in another product or savings account, they will be treated according to the rules for that product.
- If a person is only drawing a minimal income, then the Council will apply notional income choosing not to draw income, or according to the maximum income that could be drawn under an annuity product. If applying maximum notional income, the actual income will be disregarded to avoid double counting.
- If a person is drawing down an income that is higher than the maximum available under an annuity product, the actual income that is being drawn down will be taken into account.

If a person has an income that they have not claimed or deliberately deprived themselves of, for example, a person who has reached retirement age and has a personal pension plan but has not purchased an annuity or arranged to draw down the equivalent maximum annuity income that would be available from the plan, the Council will treat the person as having the income and will be included in the financial assessment accordingly. In order to do so, the Council must satisfy itself that the income would or should have been available to the person.

The Council will also ensure that in addition to the minimum guaranteed income or personal expenses allowance, a person retains enough of their benefits to pay for the following 'Disability Related Expenditure' where proof is provided (letters/statements/invoices/receipts or other proof) but this will not be included where a reasonable alternative is available at lesser cost such as free incontinence aids via the NHS, or where money is paid to a family member:

- Payment for any community alarm system
- Costs of any privately arranged care services required, including respite care as set out in the Care Plan
- costs of any specialist items needed to meet the person's disability needs

for example:

- Day or night care which is not being arranged by the local authority

- Specialist washing powders or laundry
- Additional costs of special dietary needs due to illness or disability (the person may be asked for permission to approach their GP in cases of doubt)
- Special clothing or footwear, for example, where this needs to be specially made; or additional wear and tear to clothing and footwear caused by disability
- Additional costs of bedding, for example, because of incontinence
- Any heating costs, or metered costs of water, above the average levels for the area and housing type
- Reasonable costs of basic garden maintenance, cleaning, or domestic help, if necessitated by the individual's disability and not met by social services
- Purchase, maintenance, and repair of disability-related equipment, including equipment or transport needed to enter or remain in work; this may include IT costs, where necessitated by the disability; reasonable hire costs of equipment may be included, if due to waiting for supply of equipment from the local council
- Personal assistance costs, including any household or other necessary costs arising for the person by the individual's disability and not met by social services
- Internet access in some circumstances for example for blind and partially sighted people
- Other transport costs necessitated by illness or disability, including costs of transport to day centres, over and above the mobility component of DLA or PIP, if in payment and available for these costs, unless Birmingham City Council offer the provision of transport to a day centre, but this is unreasonably not being used

Any other reasonable items or expenditure which are needed because of the person's illness or disability.

### Care Home Only

The Council will leave the person with a minimum amount of income. This is known as the Personal Expenses Allowance (PEA) and the amount is set out in regulations and updates sent via a local authority circular from the Department of Health. Anything above this may be taken into account in determining charges.

The Council will consider circumstances where it would be appropriate to leave a person with more than the personal expenses allowance after charges. For example:

- Where a person has a dependent child, the Council will consider the needs of the child in determining how much income a person should be left with after charges.
- Where a person is paying half their occupational or personal pension or retirement annuity to a spouse or civil partner who is not living in the same care home, the Council will disregard this money.
- Where a person is temporarily in a care home and is a part of a couple – whether married or unmarried – the Council will disregard any Income Support or Pension Credit awarded to pay for home commitments and will consider the needs of the person at home in setting the personal expenses allowance. It should also consider disregarding other costs related to maintain the couple's home (see below).
- Where a person's property has been disregarded the Council will consider whether the PEA is sufficient to enable the person to meet



- any resultant costs. For example, allowances may be made for fixed payments (like mortgages, rent and Council Tax), building insurance, utility costs (gas, electricity and water, including basic heating during the winter) and reasonable property maintenance costs.
- Where a person has moved to local authority support and has a deferred payment agreement (DPA) in place, the Council will ensure the person retains sufficient resources to maintain and insure the property in line with the disposable income allowance (DIA).

## Deferred Payment

The Council will offer a deferred payment scheme which means 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, a person can 'defer' or delay paying the costs of their care and support until a later date.

The Council will offer deferred payment agreements to people who meet certain criteria governing eligibility for the scheme and will need to ensure that adequate security is in place for the amount being deferred to ensure that the amount deferred will be repaid in the future.

The Council considers adequate security to be a first legal mortgage charge against a property on the Land Register.

The Council's criteria governing eligibility for deferred payment agreements has been determined by the Care and Support Statutory Guidance:

The Council will offer a person a deferred payment agreement if they meet all three of the following criteria at the point of applying for a deferred payment agreement:

- their needs are to be met by the provision of care in a care home. This is determined when someone is assessed as having eligible needs which the local authority decides should be met through a care home placement. This should comply with choice of accommodation regulations and care and support planning guidance and so take reasonable account of a person's preferences
- they have less than (or equal to) £23,250 in assets excluding the value of their home (i.e. in savings and other non-housing assets); and
- their home is not disregarded from the financial assessment.

The Council may refuse a request for a deferred payment agreement, even if a person meets criteria above where:

- the Council is unable to secure a first charge on the person's property
- someone is seeking a top up\* and/or
- a person does not agree to the terms and conditions of the agreement

\*In these situations, the Council will still seek to offer a deferred payment agreement but will be guided by principles in the section below to determine a maximum amount that is sustainable (or reflects their core care costs without any top-ups) and agree a deferral. The person can then choose whether they wish to agree.

The Council will consider the following elements to determine how much a person will defer:

- The amount of equity a person has available in their property
- The amount a person is contributing to their care costs from other sources, including income and any contribution from savings, a financial product or a

- third-party; and
- The total care costs a person will face, including any top-ups the person might be seeking.

The Council will complete an assessment to determine how much a person is able to pay towards the costs of their care and support which will reduce the amount to be deferred. The share of care costs that a person defers will depend on the amount they are assessed to pay from the sources of income and assets as outlined previously in this policy.

However, the Council will permit a person to retain a proportion of their income which is known as the 'disposable income allowance' up to a maximum of £144 per week.

The Council will levy administration and interest charges for a deferred payment agreement in accordance with the Care and Support Statutory Guidance.

The Council will set the administration fee every April and will include the cost of legal and ongoing running costs.

The Council will charge the nationally set maximum interest rate. The rate will change every six months on 1st January and 1st June to track the market gilts rate specified in the most recently published report by the Office of Budget Responsibility.

Full details on the Council's Deferred Payment Scheme are available on our website where details of the current administration fee and interest rate can be found.

### Temporary Residents in care homes

Following an assessment of a person's eligible care and support needs that identifies that the person would benefit from a temporary stay in a care home, the Council will complete a financial assessment of what that person can afford to contribute to the cost of their care and support that is broadly undertaken as outlined above but will make the following additional allowances:

- the person's main or only home will be disregarded
- expenditure to maintain their main or only home will be disregarded
- Attendance Allowance, Disability Living Allowance and Personal Independence Payment will be fully disregarded
- In the event of the above, the Council will be mindful that this will impact on a person's eligibility to Severe or Enhanced Disability Premium
- The Council will consider special rules for Income Support and income related Employment Support Allowance where one member of a couple enters a care home and take this into account when considering what a person can afford to pay
- The Council will give regard to any partner or spouse remaining at home and ensure they are left with a basic level of income support or pension credit to which they may be entitled in their own right.

### All other care and support settings only

The Council will promote independence and social inclusion and ensure that a person has sufficient funds to meet basic needs such as purchasing food, utility costs or insurance. The Council will ensure that appropriate additional disregards are applied for any housing costs such as rent, and council tax net of any benefits provided to support these costs

## Financial assessment for Carers

Local Authorities have the power to charge carers for care and support that they receive but Birmingham City Council does not do so at present although this will be reviewed regularly in line with any other changes to this policy.

## Financial assessment for people in prison

The care and support for a person in prison falls under other care and support settings as above and Local Authorities have the power to charge but Birmingham City Council does not do so at present although this will be reviewed regularly in line with any other changes to this policy.

## Deprivation of Assets

The Council considers deprivation of assets to be where a person has intentionally deprived or decreased their overall assets/income in order to reduce the amount they are charged towards their care. This means that they must have known that they needed care and support and have reduced their assets/income in order to reduce the contribution they are asked to make towards the cost of that care and support.

In the event of disputes, it is up to the person to prove to the Council that they no longer have the asset/income. If they are not able to, the Council will assess them as if they still had the asset/income. However, there may be many reasons for a person depriving themselves of an asset/income and the Council will therefore consider the following before deciding whether deprivation for the purpose of avoiding care and support charges has occurred:

- Whether avoiding the care and support charge was a significant motivation.
- The timing of the disposal of the asset/income. At the point the capital/income was disposed of could the person have a reasonable expectation of the need for care and support; and
- Did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs?

If the Council decides that a person has deliberately deprived themselves of assets/income in order to avoid or reduce a charge for care and support, they will treat that person as still having the asset/income for the purposes of the financial assessment and charge them accordingly.

Where the person has transferred the asset to a third party to avoid the charge, the third party will be liable to pay the Council the difference between what it would have charged and did charge the person receiving care.

## Completing the Financial Assessment

The Financial Assessments Team will complete financial assessments in a timely manner and will support a person to maximise their income with any benefits that they may be entitled to.

## Financial Assessment Disputes

The Council has a 3 Stage Appeals Process

Stage 1 - If a person thinks that the financial assessment is incorrect, they can ask the Council to look at it again.

- The person should write to the CFS Constituency Team Manager, Financial Assessments, PO Box 16436, Birmingham, B2 2ZE within 6 weeks of being notified of the contribution.
- The CFS Constituency Team Manager will arrange for an independent review of the financial assessment taking into account the information used at the time of the original assessment and also any new information provided.
- The outcome of the review will be notified in writing to the person within 3 weeks of the request. The person will also be advised of Stage 2 of this process.

Stage 2 - If a person is not satisfied with the outcome at Stage 1, they can request the financial assessment to be considered by an Appeals Panel

- The person should write to Head of Client Financial Services, PO Box 16436, Birmingham. B2 2ZE within 28 days of being notified of the outcome at Stage 1 to explain that they wish to appeal further, and to set out the factors that they would like the Appeals Panel to consider.

The appeals panel will consist of

- Head of Client Financial Services
- CFS Constituency Team Manager, Financial Assessment Team
- Responsible Group Manager from Assessment & Support Planning,
- Directorate for People or their nominated officer at the appropriate level
- The appeals panel will meet within 28 days of receiving the person's written request in order to consider the factors, review the financial assessment, make a decision and provide a full explanation of this in writing. The person will also be advised of Stage 3 of this process.

Stage 3 - If a person is not satisfied with the outcome at Stage 2, they can make a formal complaint by writing to the Customer Care Team, Directorate for People, PO Box 16465, Birmingham. B2 2DG setting out the reasons for the complaint.

### **Payment of contributions**

On completion of the financial assessment and once care and support has been agreed, the Council will make arrangements to enable a person to pay their care contributions. The initial invoice will be backdated to the service start date. An invoice will be issued every 4 or 5 weeks and the person will be offered the opportunity to pay invoices by direct debit.

If care and support is being met through a direct payment, on completion of the financial assessment, the person's contribution will be deducted from the gross direct payment. This means that the client will have to pay the weekly contribution directly on to the prepaid card or bank account to ensure that they have sufficient funds to pay for their care and support.

### **Recovery of Debts**

This policy recognises that there will be times when a debt arises as a result of the City Council meeting a person's eligible care and support needs. In setting its debt recovery policy, the Council has considered Section 69 of the Care Act which provides equal protection to both the local authority and the person.

The Council's debt recovery policy and systems have been designed with a full understanding of the needs and capacities of the population. Where appropriate, social work assistance will be sought.

With this in mind, the principles that determined the City's approach to its debt recovery.

policy are:

- Possible debts must be discussed with the person or their representative
- The local authority must act reasonably
- Arrangements for debt repayments should be agreed between the relevant parties
- Repayments must be affordable; and
- Court action should only be considered after all other reasonable avenues have been exhausted and providing the debt remains within the limitation period.

In order to prevent and minimise the prospect of debt and arrears, the Council will ensure prompt financial assessment, billing, and collection of money due. It will also offer a choice of appropriate methods of payment and give consideration of affordability and ability to pay when setting instalment plans.

In all cases, the Council will apply early intervention and engagement to ensure collection or assess the appropriateness of recovery alongside when a person is in arrears. The debt recovery process may include:

- Timely invoice and reminders
- Telephone and/or written contact
- Application of debt recoverability factor
- Face to face contact
- Referral to debt collection agency
- Referral to the Council's Legal & Democratic Services

The Council will have full regard to the Mental Capacity Act 2005 and where appropriate, will engage with appointed attorneys or deputies to make financial decisions on behalf of individuals who have relevant mental capacity assessments on file.

Ultimately the Care Act enables a local authority to make a claim to the County Court for a judgment in order to recover the debt. The Council will consider offering a person the option of a deferred payment agreement. A person could be offered a DPA if they are receiving care in a care home, and the person has a form of security adequate to cover the DPA.

Before applying to the court, the Council will consider a full range of options in order to secure the contributions owed to them. The Council will ensure that its charging for care and support and debt recovery policies are understood and embedded within its social care teams. In addition, its debt recovery function will be adequately resourced with clear lines of responsibility for making decisions on taking claims forward as well as ensuring that they effectively liaise with social care practitioners before taking action.

The Council will only pursue a claim and seek subsequent enforcement through the County Court where all other reasonable avenues have been exhausted.

We welcome feedback on any of our documents. This should be sent to the Quality Team via our mailbox at: [AdultsProcedures@Birmingham.gov.uk](mailto:AdultsProcedures@Birmingham.gov.uk) please.

