

**DRAFT v0.9**

**Proposed Adult Social Care Charging Policy**

*The proposed Policy Statements are unchanged from the current arrangements unless otherwise stated.*

**Background and context**

The local authority's previous Fairer Contributions Policy was introduced following public consultation in early 2011 and was last updated in 2013. It is now out of date and, following recent changes in legislation, it is no longer fit for purpose.

Sections 14 and 17 of the Care Act 2014 and the supporting Statutory Guidance provide a single legal framework for charging for care and support. The Act states that local authorities have the discretion to choose whether or not to charge under section 14 of the Care Act following a person's or carer's needs assessment. It may charge the adult except where it is required to arrange care and support free of charge. Where a local authority decides to charge, it must follow the Care and Support (Charging and Assessment of Resources) regulations and have regard to the guidance. A local authority may only charge up to the costs they incur when contracting for care.

Local Authorities have a duty to arrange care and support for those with eligible needs, and a power to meet non-eligible needs.

**The Principles of the Care Act 2014** are that the local authority's 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 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

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- be sustainable for local authorities in the long-term.

### **Refreshing the Adult Social Care Charging Policy**

In developing a new Adult Social Care Charging Policy, the local authority will subscribe to the Care Act Principles and will adopt a series of similar principles to guide the approach to charging for care and support services. This will ensure a fair and consistent application of charges.

### **Proposed DCC Policy Principles**

**Principle 1** – The local authority will adopt a single Adult Social Care Charging Policy covering charges and fees for all adult social care services in both residential and non-residential settings.

**Principle 2** – In accordance with the Care Act, certain types of service will be provided free of charge. These services are:

- information and advice
- needs assessment of all types
- financial assessment
- support planning
- intermediate care
- community equipment and minor adaptations costing less than £1000
- aftercare services/support provided under section 117 of the Mental Health Act 1983 (see also Policy Statement number 53)
- services for anyone suffering from any form of Creutzfeldt-Jakob disease.

**Principle 3** - the local authority will charge up to the full cost of the service it provides and will not charge more than the cost it incurs. Fees and charges will be reviewed at least annually.

**Principle 4** – customers will only be asked to pay what they can afford towards their care costs.

**Principle 5** – the local authority will work out what individual customers can afford to pay towards their care costs by carrying out individual Financial Assessments, subject to the thresholds and limits set out by Government.

**Principle 6** – Customers will be liable for charges from the start of the service.

**Principle 7** – Customers will only pay for the services they receive or for services that the local authority has been unable to cancel either because the service is to be resumed, such as in a care home or because the customer failed to provide the required notice. Where the service provided has been commissioned on an outcome-focused basis, the customer will be charged their agreed contribution for each period

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irrespective of the actual services received during that period. *(This is new. The principle takes account of the move towards outcome-focussed service provision).*

**Principle 8** - The local authority will ensure that sufficient information and advice is available so that the customer or their representative are able to understand any contributions they are asked to make.

**Principle 9** – The local authority will not suspend means-tested services being provided as part of an agreed Support Plan when a customer refuses to pay their assessed charge and/or administration fee.

**Principle 10** – The local authority reserves the right to pursue debt through the courts.

### **Scope of the Policy**

Contributions will be made in respect of the following support:

- Personal Budgets will be subject to a Financial Assessment regardless of how they are used or whether the budget is taken as a Direct Payment, Individual Service Fund or the local authority commissions the care on behalf of the customer.
- Home Care (this includes help with personal care – including, practical tasks, shopping, bathing, night care and night sitting).
- Personal care provided in extra care settings.
- Day Care, whether in a day centre or other day activities
- Transport to and from a Day Care centre or other activity
- All meals
- Supported living arrangements , including the Shared Lives service
- Jointly funded services – contributions will be sought for the element of funding provided by the local authority only, this is regardless of whether the further funding is provided by the NHS, voluntary or charitable sector or some other body
- Life Lines and other Telecare equipment and services
- Community equipment and minor adaptations costing more than £1000
- Residential Respite Care
- Residential Care
- Nursing Care

### **Exclusions:**

- Adaptations to property - the Financial Assessment for adaptations is determined by the Local Government and Housing Act 1989, Department of the Environment Circular 12/90 (Housing Renovations Grants)

### **Specific Policy Statements**

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### **Mental Capacity**

1. The local authority will take into consideration the **mental capacity of the customer**, as well as any illness or condition they may have, when communicating with them, when carrying out a Financial Assessment and when collecting any debts.

### **Financial Assessments**

The local authority has no power to assess couples or civil partners according to their joint resources. **Each person must therefore be treated individually.** 50% of any joint assets will be taken into account unless there is evidence of a different split in ownership.

2. The local authority will apply the nationally set limits and thresholds for **Financial Assessment.**
3. The local authority will apply the nationally set limits and thresholds for **personal expenses allowance (PEA) and minimum income guarantee (MIG).**
4. The local authority will apply **a tariff income to the capital assets held by a customer** as detailed under the national guidelines. *(This is new and is required by the Care Act guidance, so was not part of the consultation. Under the 2013 Fairer Charging Policy, the local authority did not charge tariff income for community-based services.)*
5. Where it is taking the value of a property into account for the purposes of a residential/ nursing care Financial Assessment, the local authority will **disregard all rental income.**
6. Where it is taking the value of an **occupational pension, personal pension or retirement annuity** into account for the purposes of a Financial Assessment, the local authority will **disregard 50% of the occupational pension** where 50% of that pension or annuity is paid to their partner who continues to live at home. *(This has changed. Currently 50% of an occupational pension or annuity is disregarded only for married couples when conducting a financial assessment for residential care)*
7. There will be **no maximum weekly charge for non-residential services.** *(This has changed. Currently there is maximum weekly charge for non-residential services for customers with assets below the upper capital limit. For 2015/16, the value is £125 per week.)*
8. In some circumstances, the local authority may choose to treat a person as if a Financial Assessment had been carried out. For instance if, on the basis of evidence provided by the person the local authority is satisfied that they can

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afford, and will continue to be able to afford, any charges due. This is known as a **“light-touch” Financial Assessment**.

9. The local authority will regularly **reassess a person’s ability to meet the cost** of any charges to take account of any changes to their resources.
10. Customers who **refuse to cooperate with the Financial Assessment Process** will be treated as if they have more than the upper capital limit. They will therefore be treated as a Self-Funder and charged at full cost.
11. Where the local authority decides that a customer has **deliberately deprived themselves of assets in order to avoid paying care costs**, the local authority may either charge the person as if they still possessed the asset or, if the asset has been transferred to someone else, seek to recover the lost income from charges from that person.
12. A contribution is expected for **young people entering adulthood with an eligible care need**. *(This was due to change with the Care Act Part 2 Funding Reforms but these have been delayed until 2020 at the earliest. Under the previous legislation and the previous Fairer Charging Policy, the local authority has levied charges on these people.)*

### Direct Payments

13. The local authority will apply the national guidelines on **Direct Payments**.
14. Direct Payments will be **paid net of any assessed customer contribution**. The customer will be expected to top up the Direct Payment account with their assessed contribution.
15. Where a customer who takes their Personal Budget as a Direct Payment **refuses to top up the account with their assessed contribution**, the local authority may suspend the Direct Payment and arrange managed services instead. Alternatively, the local authority may choose to top up the Direct Payment account and invoice the customer separately for their contribution.
16. Direct Payments will continue to be **paid during periods of hospitalisation** of up to four weeks in order to allow the customer to pay retainers as required, for example to a Personal Assistant. This period may be extended depending on individual circumstances and with the approval of the customer’s care manager.
17. The local authority will **reclaim unspent Direct Payment money** that is regularly carried forward from one month to the next subject to the prior agreement of the customer’s care manager to such a reclaim being made.

### Charging for Services - general

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18. Where the local authority decides to charge for services and undertakes a Financial Assessment, the local authority will support the customer to identify the available **options for how best to pay any charge**.
19. **Charges will apply from the start of the service.** In order to help prevent a debt arising, a nominal charge may be applied initially which will be adjusted and back-dated once the Financial Assessment has been completed. *(This has changed. Under the previous legislation, the customer could only be charged from the date of the Financial Assessment)*

#### **Charging for Services – services not subject to a Financial Assessment**

20. **All meals**, whether provided at a day centre or delivered to a customer's home, will be charged at full cost and will not be subject to a Financial Assessment. *(This has changed. Under the 2013 Fairer Charging Policy, this was a nominal charge that was not subject to a Financial Assessment)*
21. **All lifelines and other telecare equipment and services** will be chargeable in full. Where it is incurred as part of an agreed Support Plan to meet eligible social care needs, the charge will be subject to the outcome of a Financial Assessment. *(The consultation questionnaire suggested that the service would always be charged in full, but this has been changed following the undertaking of an Equality Impact Assessment).*

#### **Charging for Services – Community Care, including respite care**

22. Where the local authority commissions **timetabled support** on behalf of a customer, the cost for each service visit will be charged to the customer, subject to the outcome of their Financial Assessment.
23. The customer will be charged for services that the local authority has been unable to cancel where the **customer has failed to provide the required notice** unless this was due to a valid reason such as emergency hospital admission or emergency respite admission. *(This is new. Under the current Fairer Charging Policy, the local authority bears the cost of all late cancellations.)*
24. Where the local authority commissions **outcome-based support** on behalf of a customer, there will be no timetabled care to charge customers against. As is the case with Direct Payments, customers will pay their assessed contribution, regardless of the actual episodes of care provided. *(This is new. The local authority is introducing commissioned outcome-based support during 2015/16)*
25. Where a customer needs more than one carer to deliver their care (known as “**double-up**” calls), the local authority will pass on the full cost of the service.

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*(This is new. In the past, the local authority has borne the cost of the second carer, even for self-funders.)*

- 26.** When a customer is receiving **respite care** or **short term residential care** (that is, when someone is in a care home for a period not exceeding four consecutive weeks in any 12-month period), other than post-hospital-discharge recovery periods, the local authority has the power to charge as if they were receiving domiciliary care. The local authority will instead make a nominal charge equal to the Income Support /Pension Credit rate, depending on the customer's age, less the statutory personal expenses allowance.
- 27.** When a customer is being cared for away from home in a hospital or in accommodation such as a care home, and they cannot arrange to protect their property themselves, the local authority must act where it believes that if it does not take action there is a risk of **moveable property** being lost or damaged. The local authority will recover any reasonable costs incurred in protecting the moveable property. *(This formalises an existing process that hasn't been applied consistently. In the past, where the local authority has taken action, the costs have not always been recovered).*

### Charging for Services –Residential Care

- 28.** When a customer needs to move into **long-term residential care**, the Council will disregard the value of any property they own in their financial assessment for 12 weeks starting from the date of the panel decision or the date of admission to residential care, whichever is later. *(This clarifies some current confusion about the date when we should treat customers as living in a care home permanently)*
- 29. Top-up payments** must be made where a customer chooses more expensive residential or nursing care than the local authority is offering. A customer is not allowed to pay their own top-up except where a deferred payment has been agreed. The local authority has discretion over whether to allow a top-up payment to be deferred after the first 12 weeks of long-term residential care.
- 30.** Where a top-up payment is to be made, the local authority will need to satisfy itself that **the top-up is sustainable**. The local authority may accept any top-up deemed to be reasonable given considerations of affordability, sustainability and available equity but will retain discretion over whether or not to agree to a given top-up.
- 31.** When agreeing to a deferred top-up, the local authority will put a **written agreement** in place with the customer explaining what might happen to any top-up requested if the person reaches the equity limit and moves on to local authority support in paying for their care. In these circumstances, the local

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authority may not be willing to fund the top-up, and the customer may need to find other ways to pay for it or be prepared for a change in their care package.

32. Any top-up payment agreed will be regularly reviewed to ensure that it remains affordable. If there is a breakdown in the arrangement to pay an agreed top-up, **the local authority may move the customer to an alternative care home** at the local authority's standard rates after reviewing the customer's care needs.

### **Deferred Payment Agreements (DPAs)**

33. The local authority will apply the national guidelines on **eligibility for Deferred Payment Agreements** designed to help customers pay towards the cost of their residential care.
34. The local authority has discretion to enter into a Deferred Payment Agreement based on security other than that specified in the regulations. The local authority will consider **alternative forms of security** offered by a customer in cases where a first charge on a property cannot be secured. Each case will be considered on its merits. The local authority may review the list of potentially acceptable forms of security at its own discretion. Examples that may be considered include:
- a third-party guarantor, subject to the guarantor having or offering an appropriate form of security;
  - a solicitor's undertaking letter;
  - a valuable object such as a painting or other piece of art;
  - an agreement to repay the amount deferred from the proceeds of a life assurance policy or from fixed term savings plans.
35. The local authority will apply an **administration charge for setting up a Deferred Payment Agreement**. This will initially be set at the rate used in the national Care Act impact assessment. The local authority will review the rate from time to time to ensure that it reflects the true cost incurred. *(This is new for 2015/16. Previously, no administration charge was applied.)*
36. The local authority will *not* apply an **annual maintenance charge for providing a Deferred Payment Agreement**. The local authority may review the decision not to apply an annual maintenance charge at its own discretion.
37. The local authority will apply a **compound interest charge throughout the lifetime of Deferred Payment Loans** at the maximum set out in the Care Act. *(This is new for 2015/16. Previously, interest was only applied from the point that the loan became payable) (The prescribed interest rate is still less than the cost to the local authority of borrowing the money)*
38. The local authority will set an **'equity limit' to the value of each Deferred Payment Agreement** based on the customer's equity in the asset against which the DPA is secured. Initially, this limit will be set at the value of the property minus ten per cent, minus the lower capital limit (£14,250 in 2015/16), minus any other encumbrances in place.

- 39.** When a **Deferred Payment Agreement is approaching 70% of its equity limit**, the local authority will meet with the customer and/or their representative to discuss what will happen when the equity limit is reached.
- 40.** Once a **Deferred Payment Agreement has reached its equity limit**, the local authority may not be willing to continue funding the placement and the resident may need to find other ways to pay or **be prepared for a change in their care package**.

### **Self Funders**

**Definition:** a Self Funder is a customer who has assets in excess of the upper capital limit (£23,250 in 2015/16). People who refuse to cooperate with the financial assessment process will be treated as if they were a Self Funder.

**General approach:** Self Funders are expected to arrange and fund their own care. If they are unable to do so, even with the support of others, then the local authority will arrange the care on their behalf and charge them an administration fee for doing so. Self funders may also ask the local authority to arrange their care for them, in which case an administration fee will be charged.

Self Funders will be charged the full cost of any services provided as they receive them.

If the customer has disclosed their financial details, the local authority will estimate when the customer's assets will fall below the threshold and will contact them near that time to arrange a review of their Financial Assessment.

If a Self Funder's assets fall below the threshold sooner than expected, they should contact the local authority and request a review of their Financial Assessment. In these circumstances, the local authority will consider whether or not the customer has deliberately deprived themselves of assets in order to avoid paying care costs.

If the customer has not disclosed their financial details, and they later wish to ask for financial support, they must contact the local authority when their assets are getting close to the threshold to request a Financial Assessment.

- 41.** The local authority will apply **administration charges** (set-up and annual maintenance) to recover the costs it incurs where it is asked to arrange services on behalf of **someone with assets above the Upper Capital Limit**. *(This is already in place for non-residential care in 2015/16, having been agreed by Cabinet in Feb 2015)*
- 42.** The **set-up administration charge** will be payable when the services in an agreed Support Plan are first set up for a new customer.
- 43.** The **annual maintenance administration charge** will cover all changes to the support plan required in the next 12 months. The fee will be payable in advance. The first charge will be applied when the services are first set up. Subsequent annual charges will become payable on the anniversary of the initial start date. If during the year, administrative support is no longer required (if, for instance, the self-funder decides to arrange their own services), the

local authority will refund a proportion of the annual maintenance administration charge for any whole calendar months remaining.

- 44.** When a Self Funder is in **short term residential care in a local authority home for up to eight weeks**, they will be charged the full cost fee less an allowance to reflect the fact that the customer has to continue to maintain their own home.
- 45.** Self Funders are responsible for **informing the local authority when their assets fall below the upper capital limit** and for promptly providing evidence of the depreciation of their assets. The local authority will contribute to the cost of care and support from the date the approach was made subject to a satisfactory review of the updated financial information provided. The local authority may, at its discretion, contribute to the cost of care and support from the date that the customer's savings dropped below the upper capital limit, but this will not normally be the case. *(This is intended to remove the current confusion around the date from which the Council will fund placements when a customer approaches the Department for funding where they have been self-funding and their savings have dropped below the upper capital limit).*
- 46.** In the unlikely event of a **Provider Failure** (i.e. when a service the customer is receiving can no longer be provided and the reason for that is that the provider's business has failed), the local authority will give self-funders information and advice about finding alternative services. The local authority will make a charge for arranging care and support for someone with assets above the Upper Capital Limit, in the same way as it would for on-going services.

### **Direct Services**

The local authority is a direct provider of residential care and day care services. Often these services are provided to customers with eligible care and support needs and in these circumstances, charging will be as described above. The local authority may also sell spare capacity to customers without eligible care and support needs, and to customers wishing to supplement their care and support over and above their eligible services. A separate Trading Policy will cover the details of how this operates. In these cases, the following will apply.

- 47.** The local authority will charge the actual cost of providing the **services purchased privately**, but delivered through the local authority's Direct Service teams
- 48.** The local authority will establish an **Individual Service Agreement** with each customer setting out the details of the contracted services and outlining the obligations of both the local authority and the customer.

### **Debt**

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49. The local authority's Fair Repayment Promise is that "If you owe money to the Council such as rent or Council Tax, your repayment will be at an affordable rate." Where any **arrears of social care charges** are due and depending on the circumstances, people may be given a reasonable length of time in which to pay the money and may not be expected to pay it all off in one go. *(Prior to the Care Act, the local authority had 3 years to recover debts accrued. For new debts, the period is now extended to 6 years).*

### Carers

50. The Care Act 2014 allows Local Authorities to charge carers for the services provided, but **no charges will be applied for services provided directly to carers to support them**. The local authority may review the decision not to charge carers at its own discretion.
51. All forms of respite or replacement care that involve personal care to the customer must, under the Care Act, be treated as **services to the customer rather than to the carer**. This means that respite that includes the provision of personal care will be seen as part of the customer's personal budget and the customer will therefore be charged for it following a Financial Assessment.

### Deputyship and Appointeeship service

52. The local authority will apply an **administration charge** to recover the costs it incurs where it agrees to **act as a Deputy or an Appointee** for a person without capacity living in the community. Where it is incurred as part of an agreed Support Plan to meet eligible social care needs, the charge will be subject to the outcome of a Financial Assessment. *(This is new. It was not included in the general public consultation, but existing customers were surveyed in April 2015).*

### Section 117 Aftercare

53. Further to DCC Principle 2 (above) and in accordance with the Derbyshire Safeguarding Adults Board joint policy on Aftercare for Detained Patients under Section 117 Mental Health Act 1983, to which the Council is a co-signatory, only **care and support services directly related to the reason for the section 117 aftercare will be provided free of charge**. In all cases, top-ups (where a customer chooses to pay for more expensive residential or nursing care) will be chargeable.

### Managing the transition from the current to the new policy

All new customers receiving their first assessment after the implementation of this Policy will be subject to the new Policy.

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All existing customers will be subject to the new Policy when notified by a letter from the Finance Team or at their next Review, whichever is the sooner.

All existing Deferred Payment Agreements will continue under the conditions defined in the form of agreement signed with the customer.

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**for reference:**

### **Cabinet papers following 2011 consultation:**

<https://cmis.derby.gov.uk/cm5/MeetingsCalendar/tabid/73/ctl/ViewMeetingPublic/mid/410/Meeting/6726/Committee/1484/Default.aspx>

### **Current Fairer Contributions Policy:**

<http://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/policiesandguidance/Fairer%20Contributions%20Policy%202.0.pdf>

### **2015/16 Fees and Charges Cabinet paper:**

<https://cmis.derby.gov.uk/CMIS5/Document.ashx?czJKcaeAi5tUFL1DTL2UE4zNRBcoShqo=ZQjBJXI40Ft8TEET57MUHDsDeNEI3QNAvwLPXp0oIH9nocjnmKPArg%3d%3d&rUzwRPf%2bZ3zd4E7lkn8Lyw%3d%3d=pwRE6AGJFLDNih225F5QMaQWCtPHwdhUfCZ%2fLUQzgA2uL5jNRG4jdQ%3d%3d&mCTIbCubSFfXsDGW9IXnlg%3d%3d=hFfIUdN3100%3d&kCx1AnS9%2fpWZQ40DXFvdEw%3d%3d=hFfIUdN3100%3d&uJovDxwdjMPoYv%2bAJvYtyA%3d%3d=ctNJFf55vVA%3d&FgPIIEJYlotS%2bYGoBi5oIA%3d%3d=NHdURQburHA%3d&d9Qjj0ag1Pd993jsyOJqFvmyB7X0CSQK=ctNJFf55vVA%3d&WGewmoAfeNR9xqBux0r1Q8Za60lavYmz=ctNJFf55vVA%3d&WGewmoAfeNQ16B2MHuCpMRKZMwaG1PaO=ctNJFf55vVA%3d>

### **Care Act 2014 Legislation:**

<http://www.legislation.gov.uk/ukpga/2014/23/part/1/crossheading/charging-and-assessing-financial-resources/enacted>

### **Care Act Statutory guidance (chapters 8 and 9 apply):**

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/366104/43380\\_23902777\\_Care\\_Act\\_Book.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366104/43380_23902777_Care_Act_Book.pdf)

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