



|   |    |
|---|----|
| 1. Contents   |    |
| 2. Introduction .....   | 3  |
| 3. Policy Statement.....  | 3  |
| 4. The Legal and regulatory Context Basis for Charging.....                 | 4  |
| 5. Chargeable and Non Chargeable Services .....                             | 5  |
| 6. Means Tested Financial Assessment.....                                   | 5  |
| 7. Duty to notify changes of circumstances.....                             | 7  |
| 8. Disability Related Expenses (DREs).....                                  | 7  |
| 9. Light Touch Financial Assessments .....                                  | 8  |
| 10. Online Financial Assessment and online review process .....             | 8  |
| 11. Date of Application for a financial assessment .....                    | 10 |
| 12. Amendment and withdrawal of application .....                           | 10 |
| 13. Back - dating of applications .....                                     | 10 |
| 14. Self-Funders - (full cost charging).....                                | 10 |
| 15. Support Services in the Community .....                                 | 11 |
| 16. Telecare.....   | 11 |
| 17. Shared Lives .....  | 12 |
| 18. Residential/Nursing Care.....   | 12 |
| 19. Choice of accommodation.....  | 13 |
| 20. Administration fees.....  | 13 |
| 21. Appointeeship and Court Of Protection.....                              | 13 |
| 22. Property and Deferred Payment Agreements (DPA) .....                    | 14 |
| 23. Treatment of third party “Top Ups” in Residential Care.....             | 14 |
| 24. Deprivation of Assets and or Income (including trusts) .....            | 15 |
| 25. Charging for short term or temporary residence (e.g. respite care)..... | 16 |
| 26. Charging for Support to Carers .....                                    | 16 |
| 27. Charges for services not received and refunds .....                     | 16 |
| 28. Collection Debt Recovery.....   | 17 |
| 29. Increases to rates.....   | 17 |
| 30. Direct Payments.....  | 17 |
| 31. Review and Appeals Process .....  | 17 |
| 32. Stage 1 – Review .....  | 18 |
| 33. Stage 2 – Appeal .....  | 18 |
| 34. About the review and appeal process .....                               | 18 |

Appendix 1 – Assessing Disability Related Expenditure (DRE)

Appendix 2 – Deferred Payment Agreement

## Cumbria County Council Social Care Charging Policy

### 2. Introduction

Adult Social Care (unlike some health care) is not free. You are liable to pay all of your care costs yourself, unless you qualify for financial assistance. To work out whether you qualify for any financial assistance and to give you an idea of how much you will have to pay, you need to complete an application for financial assistance. Failure to complete a valid application will mean that you have to pay the full cost of your care.

This policy explains how the Council will charge for care and support in order to sustain the delivery of care services to some of the most vulnerable members of society. If you are eligible for some support from the Council to meet your social care needs, you will be given a Personal Budget to arrange your support. You can take your Personal Budget as a Direct Payment i.e. money payable into an account or have your support arranged on your behalf by the Council or take your Personal Budget as a mix of both (money and arranged support).

This policy covers care and support in community settings and in a residential setting which includes nursing. Community based support includes services such as homecare, Shared Lives, day services and activities, short breaks, respite care and assistive technology.

### 3. Policy Statement

This policy responds to the requirements of the Care Act 2014 and all regulations issued under the Care Act 2014, which provide a single legal framework for charging for care and support. This charging policy applies to all adult social care services and support provided by the Council. The policy applies from 1 May 2020 and supersedes all previous adult social care charging policies and practice before this date and for the purpose of this policy; an adult is a person aged 18 and above who is eligible for a Personal Budget from the Council. In determining a charging policy that complies with the Care Act 2014 the Council must also have due regard to the Care and Support Statutory Guidance and Annexes issued under the Care Act 2014.

The policy provides details about:

- I. The legal and regulatory context for charging.
- II. The key aim of the policy is to ensure that where an adult is charged for care and support (including making a contribution to a personal budget), that they are not charged more than is reasonably practicable for them to afford and pay.
- III. To be as clear, transparent and comprehensive as possible so people know what they need to pay towards the costs of their care and support and understand (with support if necessary) any charges or contributions they are asked to make;
- IV. How different types of services and support are charged and how these may be paid for or recovered.
- V. To promote cost effective collection methods i.e. Direct Debit
- VI. Prepayment cards for direct payment of services
- VII. The financial assessment process, including the review and appeals process;
- VIII. To apply charging rules so those with similar needs or services are treated the same way and minimise anomalies between different care settings and payment options.

- IX. For the administration of the charging policy to be cost effective and sustainable for the Council so that it can continue to provide services for those needing care and support in the future.
- X. To promote wellbeing, social inclusion, and support the vision on personalisation, independence, choice and control.
- XI. To encourage and enable those who wish to stay in or take up paid employment to do so;
- XII. To support carers to look after their own health and wellbeing effectively and safely, and recognising their valuable contribution to society;
- XIII. To be person-focussed, reflecting the variety of care journeys and the variety of options available to meet people's needs.

#### 4. The Legal and regulatory Context Basis for Charging

Sections 14 and 17 of the Care Act 2014 (as amended) ("the Act") provide a single legal framework for charging for adult social care and support. Section 14 of the Act provides a local authority with the power to charge for meeting needs under sections 18 to 20 of the Act. Section 17 of the Act creates a duty for a local authority to carry out a financial assessment which would arise where the local authority thinks that if it were to meet an adult's needs for care and support, or a carer's needs for support, it would charge the adult or carer under section 14(1) of the Act.

The Care and Support Charging and Assessment of Resources Regulations 2014 describe the limitations on local authority powers to make a charge for meeting needs under section 14 of the Act; and provide details about the requirements for carrying out financial assessments for the purposes of section 17 of the Act. Section 2(1) of the Act requires a local authority to provide or arrange for the provision of services, facilities or resources (or take other steps) which it considers will contribute towards preventing, delaying or reducing the needs for care and support of adults or for support in relation to carers.

The Care and Support Preventing Needs for Care and Support Regulations 2014 describe the rules permitting and prohibiting a local authority for making a charge for the provision of services, facilities and resources under section 2 of the Act. The 'Care and Support Statutory Guidance' (CSSG), issued by the Department of Health in October 2014 and updated in March 2016 sets out how a local authority should go about performing its care and support responsibilities. This includes details about interpreting and applying the rules relating to charging and financial assessments as defined in both the Act and regulations.

This policy has been written in accordance with the CSSG and related primary and secondary legislation. The policy will need to be revised from time to time to take into account either (i) any provisions of the Care Act 2014 that are brought into force (e.g. Cap on Costs) or new statutory instruments (e.g. the proposed increase in the capital threshold or any amending or repealing legislation).

## 5. Chargeable and Non Chargeable Services

A schedule of Cumbria County Council adult social care fees and charges is published annually, which is approved by Cabinet.

The Council operates four charging categories:-

- I. Exempt services or care and support provided free of charge
- II. Mean tested charging and full cost service following a financial assessment
- III. Flat rate charges, i.e. telecare
- IV. Full cost charge for customers who do not wish to disclose their finances

Exempt Services - The Council is not allowed to charge for some types of care and support. The list below sets out what these currently are:

Community equipment (aids and minor adaptations): this is where a person is supplied with equipment or a minor adaptation to their property, in order to support daily living so a person can stay in their home. i. An adaptation is minor if the cost of making the adaptation is £1,000 or less;

Reablement service can be provided to support service users to become as independent as possible in their homes; this can be from 1 day up to a maximum period of six weeks. This could be after a stay in hospital, an illness or to prevent a hospital admission. For support services following the Reablement period, charges will be applied based on a financial assessment.

Services provided to people suffering from Creutzfeldt Jakob Disease

Any service or part of service which the NHS is under duty to provide. This includes Intermediate Care, Continuing Healthcare and the NHS contribution to Registered Nursing Care;

Services which local authorities have a duty to provide through other legislation, including any specific services provided as After Care Services under Section 117 of the Mental Health Act 1983. There will be occasions when chargeable services are also provided to service users who are subject to Section 117 of the Mental Health Act 1983. This is usually when a service is in place that is not specifically related to their Section 117 status. If this is the case the service user will be advised of this in writing and a financial assessment will need to be undertaken in relation to such services.

## 6. Means Tested Financial Assessment

A financial assessment will be carried out for all care and support provided; or arranged by Cumbria County Council. The purpose of the financial assessment is to assess if a person can afford to pay towards the cost of their care or support service(s); it is means tested.

The financial assessment (means test) will look at a person's financial situation to work out how much they will need to contribute to the cost of their support. It will take into account all: - income, benefits, property, savings, pensions, stocks, shares, bonds and any other income.

The financial assessment will calculate how much, if anything, a person can afford to pay towards the cost of their care (or contribute towards their personal budget) on a weekly basis. This amount is referred to as the "maximum weekly assessed charge". Charges for support will be payable from the date services or packages start; not the date the financial assessment is completed. The Council

will not charge more than the cost incurred in providing or arranging any care and support which is subject to means tested charging. In the event of the person's death before a financial assessment has been completed and the person has been in receipt of services, the Council will seek full recovery of costs from the deceased's estate. The technical rules for the financial assessment differ between care and support provided in a residential care setting ('care home') and care and support provided in all other settings ('non-residential'). Assessment will be carried out in accordance with the Care and Support Statutory Guidance Chapter 8.

All documentary evidence requested by the Council to complete the financial assessment must be provided within 1 month of the request. The Council will only ask for documentary evidence that is necessary to complete the financial assessment accurately and comprehensively. Where evidence is requested but not provided the Council will pass on the full cost of the service(s), an assessment may also be based on notional income.

The Council will publish a list of the different types of care and support services subject to means tested charging on the annual schedule of adult social care fees and charges. Communications are sent to clients informing them of the new approved fees and charges and how it affects their assessed weekly contribution. This communication gives details on how charges have changed as a result of inflationary increases, changes to services and/or how changes in benefit rules and amounts issued by the Department of Work and Pensions (DWP) affect their assessed weekly contribution.

Financial assessments will be completed for people as individuals and not as couples. Where capital is held and income is received on a joint basis, then it will be assumed that each party is entitled to 50% of that capital/income. The same is assumed for assets such as second properties. The Council will review on a case by case basis where an individual states they can demonstrate their share is more or less of the asset and amend the assessment appropriately. The financial assessment will make sure a person (or both people, in the case of a couple) has money left after charges are applied for themselves in line with statutory amounts, these are known as 'Personal Expenditure Allowance' (PEA) for care in a care home and 'Minimum Income Guarantee' (MIG) for care at home. These amounts are set and reviewed annually by the Department of Health.

The financial assessment process will normally include a welfare benefits check to ensure the person is claiming all the benefits they are entitled to claim; or customers may be signposted to the (DWP). The amount a person pays towards their care will be reviewed on an annual basis. This will be in line with the increase in state pensions/benefits at the beginning of April each year, or as soon as practicable. An assessment may also be based on notional income. Reviews for older cases will be dealt with as new cases under the Care Act, this will mean that charges may change in some cases as income will be individual rather than couple based. A review, or financial assessment may be requested by the client at any time. This may be where their circumstances have changed, or for people who are self-funding, if their total savings/capital has fallen to, or below the upper capital threshold, or where they have not previously had an assessment.

#### 7. Duty to notify changes of circumstances

An applicant (or any person acting on his/her behalf) must comply with the following if there is a relevant change of circumstances at any time- (a) between the making of an application and a decision being made on it, or (b) after the decision is made (where the decision is that the applicant is entitled to any reduction in their financial contribution) including at any time while the applicant is in receipt of such a reduction.

The applicant (or any person acting on their behalf) must notify the Council of any change of circumstances, which the applicant (or that person) might reasonably be expected to know, might affect the financial assessment, or the amount of the care cost contribution i.e. a “relevant change of circumstances” by giving notice to the authority:-

- a. in writing; or
- b. by telephone; where the authority has published a telephone number for that purpose or for the purposes, unless the authority determines that in any particular case or class of cases notification may not be given by telephone; or
- c. by any other means which the authority agrees to accept in any particular case,

Notice in all cases must be given within a period of 21 days beginning with the day on which the change occurs, or as soon as reasonably practicable after the change occurs, whichever is later.

#### 8. Disability Related Expenses (DREs)

The care act statutory guidance says that the council must leave a person with enough money to pay for necessary disability-related expenditure to meet any needs which are not being met by the Council.

Included in the non-residential financial assessment is a consideration of any Disability Related Expenses (DREs) a person may have and what the amount of money this would equate to per week. This amount is then deducted as an allowable expenditure from the disposable income.

The nature of the DREs and whether they are considered to be essential costs as a result of a disability will need to be agreed by the care assessor and documented during the social care assessment. The finance officer will look into the details of your expenses taking into account any bills (e.g. heating bills) or receipts (e.g. for specific items related to a disability). Once the details have been evidenced and agreed the appropriate amount of money will be included in the financial assessment. The value of any allowable expenditures is included in the confirmation letter following completion of the financial assessment.

For further information on the types of expenses that can be considered and how an amount will be calculated, please see the Appendix 1, Disability Related Expenditure guidance.

#### 9. Light Touch Financial Assessments

In some circumstances, the Council may decide that a full financial assessment is not necessary or appropriate. This type of financial assessment is defined as a “light touch financial assessment.” The light touch financial assessment will apply:

- I. If a person does not wish, or refuses, to disclose their financial information.
- II. If a person says they have significant financial resources and or savings above the limit of £23,250, and does not wish to go through a full financial assessment for personal reasons.
- III. Where the charges for the service are small and a person is able to pay and would clearly have the relevant minimum income left. Carrying out a financial assessment would be disproportionate.
- IV. Where a person is in receipt of benefits, which show they would not be able to pay towards their care and support costs.

9.1 In circumstances where the person has refused a financial assessment but is eligible for care services the Council will assume the person can meet the full cost of the support needed and will pass on the full charge accordingly. The Council will inform the person to help them to understand that they will have to pay the full cost of any support service and what that cost will be; the Council will remind them of their right to request a full financial assessment.

9.2 In circumstances where the person states they have sufficient financial resources to meet the cost of their support, the Council will advise the person to take independent financial advice regarding their options for meeting the cost of their care and support. The Council may offer support to enable the person to identify what support they need and how to arrange support services.

9.3 The Council will inform a person when a light-touch assessment has taken place and will make it clear that the person has the right to request a full financial assessment.

## 10. Online Financial Assessment

The Council has an electronic form (online financial assessment) accessible from the Council's website to enable anyone (client/representative) to process their financial assessment. This platform will be the same as that used by the teams to make the calculation and will enable customers to enter their relevant financial information to find out the maximum they will be expected to pay for social care.

Where the client/representative requires assistance to complete the online form, (due to vulnerability, lack of access to go online and connect to the internet confidence, trust or other reason; support is available through the Council's Single Point of Access (SPA), telephone numbers and email below;

### **Allerdale**

West Cumbria House  
Jubilee Road  
Lillyhall  
Workington  
CA14 4HB

**Telephone:** 0300 303 3589

**Email:** [workingtonssd@cumbria.gov.uk](mailto:workingtonssd@cumbria.gov.uk)

### **Barrow in Furness**

4th Floor  
Craven House  
Michaelson Road  
Barrow in Furness  
LA14 1FD

**Telephone:** 0300 303 2704

**Fax:** 01229 404054

**Email:** [barrowssd@cumbria.gov.uk](mailto:barrowssd@cumbria.gov.uk)

### **Carlisle**

3rd Floor  
Cumbria House  
117 Botchergate



**Carlisle**

CA1 1RD

**Telephone:** 0300 303 3249

**Fax:** 01228 226655

**Email:**[carlislessd@cumbria.gov.uk](mailto:carlislessd@cumbria.gov.uk)

**Copeland**

Blencathra House

Tangier Street

Whitehaven

CA28 7UW

**Telephone:** 0300 303 3589

**Fax:** 01946 506433

**Email:**[whitehavenssd@cumbria.gov.uk](mailto:whitehavenssd@cumbria.gov.uk)

**Eden**

Adult Social Care

PO Box 224

Penrith

CA11 1BP

**Telephone:** 0300 303 3249

**Fax:** 01768 812262

**Email:**[penrithssd@cumbria.gov.uk](mailto:penrithssd@cumbria.gov.uk)

**South Lakes**

County Offices

Kendal

LA9 4RQ

**Telephone:** 0300 303 2704

**Fax:** 01539 713354

**Email:**[kendalssd@cumbria.gov.uk](mailto:kendalssd@cumbria.gov.uk)

The Council will assist service users and their representatives/families to make informed decisions about arranging social care services at an early point and provide a transparent process regarding paying for services.

11. Date of Application for a financial assessment

11.1 The Date of application will be the date upon which the application form is completed in full and submitted. Only applications submitted in a manner agreed by the authority will be accepted.

12. Amendment and withdrawal of application

12.1 A person who has made an application for a financial assessment may amend it at any time before a decision has been made on it, by a notice in writing delivered, or sent to the designated office or address, or by telephone at the designated number.

13. Back - dating of applications

13.1 The time for the making of an application under the Councils Adult Social Care Charging policy is as outlined under "Date of Application for a financial assessment" above.

13.2 Backdating of a financial assessment application, can be considered up to a period of three months immediately prior to the date of application, where a person can demonstrate that they had good cause for not having made an application on an earlier date. (To be based on the customer's financial assessment).

14. Self-Funders - (full cost charging) A "Self-Funder" financial assessment means that the person is required to pay the full amount of all qualifying charges for any means tested care and support they receive. The Council will treat a person as being a "Self-funder - full cost" financial assessment where they:

- I. Have savings and other financial resources above the national upper limit, currently £23,250, it is likely they will need to pay for the full cost of support. The Council calls this "self-funding".
- II. Choose not to disclose their financial information to enable a full financial assessment;
- III. Fail to co-operate and/or do not provide a completed financial assessment form, within 1 month (30 days) of agreeing a support plan or the commencement of chargeable services (whichever is sooner);
- V. Where possible the Council will use other information sources available to complete the financial assessment, however, where this is not possible and the customer (or their representative) fails to provide all of the information requested within 1 calendar month; the Council will be deemed to have undertaken a financial assessment in accordance with regulation 10 of the "The Care and Support (Charging and Assessment of Resources) Regulations 2014 (as amended), and the client/representative will be charged the full cost of the care and support service(s)
- VI. Receive a declaration (including electronic declaration) that they are happy to pay the full cost of services received;
- VII. Receive a full financial assessment that deems they are assessed to contribute the full cost for their care and support.

Where a person is self-funding their support they are still entitled to ask that the Council help them arrange their services. There are a number of people who have either been assessed as being able to afford the full weekly cost of social care or have not disclosed their financial information to the Council and as such are required to pay the full charge. These people have the choice to have the Council arrange a suitable social care package for them. There is a regular administration charge in operation to help fund the cost of arranging these optional services, this is included in the schedule of fees and charges. Self-funders who own their own home may want to consider arranging a Deferred Payment Agreement in order to put towards the cost of their care. For more information on Deferred Payment Agreements, see section 21 below.

People are not permitted to contract directly with Cumbria Care and therefore are required to have their services arranged by the Council, following a Care Act assessment of their needs to determine a

person's eligibility prior to the placement. As such all customers placed in a Cumbria Care placement including full fee payers are contracted through the Council.

#### 15. Support Services in the Community

The Council will charge for support delivered in community settings including a person's home or a community facility such as a day centre. The person's home includes tenancies within Extra Care, Supported Living and Shared Lives accommodation. All non-residential community based support services and transport fall within the scope of this policy and include:

- I. Personal Care Support delivered to the person in their home
- II. Sitting Services
- III. Day Services and activities, both building based and in the community
- IV. Transport including, but not exclusive to day services, activities and respite or residential settings
- V. Respite breaks that are not in a residential care home setting
- VI. Daily living support such as shopping, laundry, cleaning delivered to the person living at home
- VII. Joint funded services – service users will be required to contribute towards the cost of the services provided by the Council but not those provided by the NHS as part of a joint package of support.
- VIII. Other

Meals in day centres are not included within charging for care services in the community.

A charge will be made by the day centre for meals on a 'Pay as you use' basis as meals are not included in the unit cost of a day centre session unless otherwise stated. This ensures people only pay for the activity and support provided at the centre. Should the person receive more than one service per week, charges will be calculated up to the maximum assessed charge. Charges for services will be listed on the same invoice for customer ease and efficiency.

#### 16. Well-being Telecare Assistive Technology

Cumbria County Council offers a Telecare service to support people to live independently in their own home. Telecare is based around a pendant worn around the neck or wrist. This provides access to a 24-hour monitoring service offering an instant response at the touch of a button from anywhere in your home or garden. The service is provided on behalf of Cumbria by Welbeing who provide Telecare services across the UK.

Telecare can be linked to a series of alarms or sensors in key parts of your home offering an immediate early warning if something is wrong e.g. smoke detector.

For service users who receive the service following an assessment and as part of their support plan a full financial assessment is undertaken unless the person chooses not to have a financial assessment.

Telecare is invoiced for on the Council's four weekly invoicing run.

You can get Telecare as a **preventative service** to help people remain as independent as possible long term and to try to prevent them needing more support in the future. The cost for this is ?????? .

#### 17. Shared Lives

This is a scheme (similar to Fostering) whereby adults with support needs are able to live with a family who provide board, lodgings and support. The Shared Lives recipient is responsible for making

payments in respect of board and lodgings directly to the accommodation provider. They may be able to get some help with the lodgings element through the Housing Benefit system but will need to make payments in respect of food and utilities from their income. The Shared Lives recipient will be financially assessed for the cost of the placement (care and support element). If the person uses support services such as day care or home care then their maximum assessed charge for non-residential services will include these as in all instances the person will only pay the maximum they are financially assessed as able to contribute, even if they receive more than one service.

#### 18. Residential/Nursing Care

Where the Council carries out a financial assessment for care and support provided in a care home, information and advice will be provided to enable the person to identify options of how best to pay a charge. This may include offering the person a deferred payment agreement. (See Section 21 below). As with support delivered within the community the Council will charge for support provided in a residential/nursing home. The financial assessment will take account of the person's property, income and savings. In these circumstances as the residential home will become their main place of residence providing board and lodgings in addition to care and support. In exceptional circumstances, where a person may receive community support services in addition to their placement at a residential home such as attending a day service with another provider the person will be financially assessed for charges towards the cost of the placement but will only pay the overall maximum they are able to afford.

The Council can only pay towards the cost of residential/nursing care once a person has been assessed as having needs that mean moving into residential /nursing care is the best option for them. If the person needs nursing care as part of their support within a residential home, the nursing element of care will be paid for by the NHS and is excluded from the Council's charges.

If a person arranges to move into a residential home without having an assessment by the Council, and later asks for financial help with charges, the Council will determine whether the person meets the national eligibility for social care support. If the person does meet the criteria it will carry out assessments, both financial and personal need, to establish if financial support can be provided. If financially eligible for financial support in residential care, the Council will contribute towards the cost of care from the date the financial assessment is completed and not from the date the person moved themselves into the residential home.

For people who have funded their own care and support within a residential home and their financial resources have reached the financial threshold for support, the Council will consider payments from the date a referral is made to the Council subject to a completed financial assessment being received within the relevant timescales for applications and evidence. The Council will not backdate contributions to a person's care costs to the date they entered the residential home or the date their capital dropped below the capital threshold.

If a person cannot afford their chosen residential home and do not qualify for help from the Council, or for a deferred payment agreement then the person will need to seek alternative arrangements such as moving to a residential home that is affordable. If customers are paying for their own care, the Council strongly advises seeking independent financial advice to ensure that customers will be able to afford the care they choose for the foreseeable future. (see section 21 and 32 below)

#### 19. Choice of accommodation

Where the care planning process has determined that a person's needs are best met in a care home, Cumbria County Council will provide for the person's preferred choice of accommodation, subject to certain conditions. This also extends to shared lives, supported living and extra care housing settings. Determining the appropriate type of accommodation should be made with the adult as part of the care and support planning process, therefore this choice only applies between providers of the same type.

Cumbria County Council will ensure that the person has a genuine choice of accommodation and will ensure that at least one accommodation option is available and affordable within the person's personal budget. Where a person chooses a more expensive setting, a third party top up will apply.

#### 20. Administration fees

The Council will charge administration fees for work which it undertakes on behalf of people who are either funding their own care and have asked the Council to make arrangements on their behalf.

#### 21. Invoicing and Payments

Where the customer requires an Appointeeship or Court Of Protection Attorney/Deputyship and it is not in place at the time the customer enters the residential care home the Council will look to pay the care home direct on a temporary basis to allow the Appointeeship or Attorney/Deputyship to be granted. The payments will be accrued for the appointee or deputy to repay back to the Council in full within 28 days of them being granted. The Council will Invoice the customer (deputy/attorney/appointee) every 4 weeks for the accrued debt, the Council preferred payment method is direct debit. The Council reserves the right to take legal action where the Court Of Protection deputyship or appointeeship has not been granted in a reasonable period of time and it appears unreasonable delay is the cause. (i.e. the legal authority to administer the customer affairs; where an attorney/deputyship has not been granted due to non-compliance by the person/representative not applying for the order), in these circumstances the Council will refer to the relevant body to appoint an alternative person to manage the customer's property and financial affairs. The Council will need to see documentary evidence of these Appointeeship and Court of Protection applications within the timescale outlined below in order to set up and maintain arrangements for payment of care fees.

- I. For Court of protection evidence must be provided within 3 months (three months) after the financial assessment.
- II. For appointeeships evidence must be provided within 6 weeks (six weeks) after the financial assessment
- III. Or within 1 month (30 days) following any written request by the Council

Failure to comply with any of the requests above may result in the Council withdrawing the funding and seeking to recover the full amount outstanding through its debt recovery policy.

Where the Council is satisfied that an Appointeeship or Court Of Protection application is in progress, the Council will on a temporary basis, start paying the care fees to the care provider and will accrue these charges (for the representative/appointed person to pay at a later point) whilst the application is being progressed. Once the legal authority has been granted, the appointed person(s) will be responsible for repaying (in full) the accrued care fees, within the first 28 days following the date of appointment, i.e. all of the accrued debt must be paid back to the Council from the Customer's bank, building society or other nominated account within 28 days.

The Council reserves the right to take legal proceedings to recover any accrued debt that remains unpaid and representatives are not complying with the requirements as set out in the charging policy.

## 22. Property and Deferred Payment Agreements (DPA)

A deferred payment agreement is in essence an interest bearing secured loan that self-funding eligible persons can apply for from the council for the purposes of paying residential care costs. An example of a DPA can be found in Appendix 2.

The loan is secured on the self-funder's house and the Council releases the loan by instalments on a periodic basis each instalment being the same sum as the residential care fees that are due and payable by the person (less any personal contribution that the council shall require to be made by the person).

The Council will charge the person for the costs of setting and running the deferred payment agreement. The adult can either pay for the administration costs separately when the costs are incurred on an "as and when basis" or the adult can ask for the costs to be added to the loan and the Council's costs along with the loan will be then recouped upon completion of the sale of the home.

Interest will though be charged on the costs during the term of the deferred payment agreement if the costs are added to the loan.

Property owned by a person is included in the financial assessment. It will not be taken into account (disregarded) when a spouse or partner continues to live there after a person moves permanently into residential care. Where the property is to be included in the financial assessment, the Council will disregard its value for the first twelve weeks of a person's stay. This period is called the twelve week property disregard period and gives people time to seek independent financial advice and consider the options available to them to fund their support costs. Providing a person and their property meet eligibility criteria, the person may be entitled to enter into a Deferred Payment Agreement with the Council.

As required under the Care Act 2014 the Council can offer a Deferred Payment Agreement (DPA), which is in essence an interest bearing secured loan to enable people to pay their residential care charges without the need to sell their home. The intention of a DPA is to enable a person to get the support they need without them having to sell their home within their lifetime. A DPA is a loan provided by the Council and is not a free service. The Council will charge set up costs, interest on the loan, an annual monitoring and administration fee and termination costs on all DPAs. The loan monies, any interest (not paid by the person as it accrues) and any administration costs (that are not discharged on an as and when basis) that are at any time secured under the deferred payment agreement is known as the "Deferred Amount".

## 23. Third Party 'Top ups'.

In some cases, a person may choose a home that is more expensive than the residential or nursing fees the Council has set for residential or nursing care arranged on behalf of the person who is eligible for support from the Council. Where they have chosen a setting that costs more than this, an arrangement will need to be made as to how the difference will be met. This is known as an additional cost or 'top-up' payment. If the person is part or fully funded by the Council, the 'top up' must be paid for by a third party i.e. not the person or the Council. There are circumstances where the resident may pay the top-up, these are:

- where they benefit from a 12 week property disregard
- where they have a DPA.

Where no choice of alternative accommodation exist for the customer at the time of the needs assessment the Council may be required (short term) to pay the top up costs. Where a choice does exist the 3rd party will be responsible for “top up” payments and must sign a top up agreement. (I.e. in the placement agreement). The Council reserves the right to transfer the client to suitable alternative accommodation at a reduced rate/cost, the 3rd party would then have a choice whether they agree to pay for the client to stay , (i.e. 3rd party to pay “top up” rate); or move to the alternative accommodation.

The Council must ensure that the third party is willing and able to meet the cost for the person’s care and support. This includes ensuring the person has sufficient information and advice to understand the terms and conditions of the ‘top up’ agreement. Should the fees in the top up agreement change, the person will need to pay the increased amount direct to the home. The Council should advocate and encourage the third party payee to get independent financial advice. (See point 32 below for some external contacts) In the event the ‘top up’ arrangements fail the Council must either pay the top up, re-negotiate the fees with the home or make alternative arrangements for the person’s care and support needs including moving the person to an alternative home that can meet the person’s needs and is within the fees the Council has set.

All parties including the Provider will need to agree on the “top-up” prior to the person moving into the care home and sign the Agreement. Failure to do so can lead to top-ups being imposed later by the home and the Council not having a signed Placement Agreement by all parties leaves the Service User in a vulnerable position.

#### 24. Deprivation of Assets and or Income (including trusts)

Deprivation of income and/or assets means a person reduces or tries to hide or deprive themselves of how much capital they have in order to avoid paying towards the cost of their care. Examples of this are signing property, investments, or assets over to relatives or giving large monetary gifts.

Placing a property in Trust - Trusts are legal devices designed to hold assets on behalf of named beneficiaries. The law states that you must not place a property in trust in order to secure more financial assistance for adult social care. If the Council establish this is the case then the client/repetitive will not qualify for financial assistance and will have to pay all of the care home fees. If the client or representative have been advised to place their savings or property in trust to protect their investments from being used to pay care home fees, they have been given the wrong advice. The law states that ownership of assets like a home or savings must not transferred into a trust to avoid or reduce care costs.

The Council will decide whether to conduct an investigation to ascertain if deprivation of income or assets has occurred where there are indicators as noted above are present. Where the Council determines that someone has deliberately deprived themselves of an asset or income in order to reduce or avoid a charge for care and support, the Council will charge services as though they still owned the asset or income. The Council may also take legal action for fraud. The Council will take legal action against the customer/client, representative or the third party where appropriate to recover monies owed for charges. This is in line with national guidance. Financial assistance is strictly means-tested so, if the Council believe you have placed your house (or any of your assets) in trust in the avoidance of paying care fees, we will decide that you have deprived yourself of your own assets to take advantage of state financial assistance and you will not qualify.

#### 25. Charging for short term or temporary residence (e.g. respite care)

Short term care, such as respite care will be charged at the standard residential care rate. During periods of respite, the financial assessment will take into account costs from the service user's home, such as household bills. As with all social care costs, the charges will be based on the amount a person has been assessed as being able to pay. If a person refused or opted out of a financial assessment they will need to pay the full cost of their stay. Charges for respite care will be based on a full financial assessment.

#### 26. Charging for Support to Carers

Where a carer has eligible support needs of their own that are not met through support arrangements for the cared for person, the Council is required to undertake a financial assessment in order to provide a Personal Budget to the Carer. Under the Care Act the Council has the power to charge carers for support provided via a Personal Budget direct to the carer. Informal or family carers are an invaluable source of support for many people. Through their support carers indirectly save the Council significant money as without their care and support the Council would need to provide the support at a cost. The Council therefore does not currently charge carers but may need to consider introducing charges in future years. This policy will be amended to reflect any necessary changes to charging for support to carers.

#### 27. Charges for services not received and refunds

A key principle of the Council's charging policy is that having carried out its duties to ensure charges for support are affordable and fair that payment should be made accordingly. Where planned care services are not used, or, in the case of Home Care, not cancelled in advance, the services will be deemed to be delivered in accordance with the person's support plan, and therefore subject to normal charging rules. The Council also has a duty to ensure that consistent, high quality services are maintained and in order to do this, we operate certain guarantees to providers so they can effectively maintain the service for all. This may mean that people are charged for services they did not receive, even if the absence is planned or unavoidable (such as a medical appointment). Consideration to providing refunds depends on whether a service user pays the full cost of their care, or if the Council subsidises the cost. Customers paying the full cost of their care charges will only be considered for a refund, if either of the points below are met.

- The Service provider has failed to deliver the service. Examples of this are the closure of a Day Centre (e.g. bank holidays, summer leave or emergency) or when a Home Care provider does not attend for planned support calls.
- The service user is unable to receive or attend the service (e.g. due to admission to hospital). Any service after a period of 24 hours of continual admission will not be charged.

#### 28. Collection Debt Recovery

To ensure our income stream is protected and to enable us to meet our legal and financial obligations to our customers, we maintain a robust debt recovery process. This means that if necessary, we will use all measures available to recoup the charges as explained in this document.

Our preferred payment method is by Direct Debit (DD) and you may be asked at the initial meeting to complete a DD form, this will be used to clear all the debts you owe the council.



If payment is not forthcoming then this can result in legal action to recover the debt outstanding, using all of the recovery powers available under regulations and common law. The Council will work with all of our customers to help them to understand the charges and to be able to make regular payments in line with their own financial circumstances. However, if payments for care are not forthcoming through the use of these steps, legal proceedings will begin and all legal costs incurred by the Council will also be claimed from the service user /representative.

#### 29. Increases to rates

In line with the Council's Corporate Charging Policy –Fees and Charges, all charges and the scope for charging will be reviewed at least annually within the service area. The review will include those services which could be charged for but which are currently provided free of charge.

Amendments are delegated to appropriate officers and should be approved following the completion of an appropriate business case. Where new fees or charges are to be introduced they are to be approved by Cabinet. As explained above, all changes in fees or charges are subject to individual financial assessments and all service users will only be charged what they have assessed as being able to afford.

#### 30. Direct Payments

When an individual chooses to take their personal budget as a form of direct payment, assessed contributions are deducted from the personal budget amount and a net payment is made by the Council for contribution to the personal budget. There are regular reviews of direct payments to ensure money is spent appropriately. Where direct payments are being made and the service user is not spending the direct payment for the appropriate purpose, the council will take steps to recover or clawback any payments that have been inappropriately used. In these cases a review of the care assessment and the financial assessment will also be undertaken.

#### 31. Review and Appeals Process

If an individual is unhappy about the outcome of their financial assessment, they must start the review and appeals process within one calendar month of the notification letter. Cases outside of this appeal window will be considered as out of time for appeal. All appeals must be received in writing and must contain details of the grounds for the appeal, along with any relevant additional supporting evidence i.e. income or capital or expenditure etc. Following receipt of an appeal request the Council will write out and confirm the position with the request, next steps and if any further information is required. All requests for further information from the customer will be required back within 14 days of the request letter. The appeals process is described below.

#### 32. Stage 1 – Review

At the review stage a different Financial Assessment Officer will review the issue(s) raised by the individual and consider any new financial information provided. The Officer will also check to ensure the Charging Policy has been applied correctly.

The outcome of the review should be confirmed in 14 days or as soon as reasonably practicable

#### 33. Stage 2 – Appeal

If the individual is still unhappy with their reviewed charge or personal contribution, an appeal can be requested within 1 month of the decision letter. At the appeal stage the case will be reviewed by

a Team Leader within the service. The appeal process can take up to 28 days from the time the completed appeals form is received, to the time the individual is informed of the outcome.

#### 34. About the review and appeal process

Confirmation of the outcome at each stage of this process is communicated with the individual. The individual will continue to be charged the original assessed contribution during the review and appeal process. If after the review and appeal the Council asks the person to pay a different weekly charge or personal contribution, the difference will be backdated. Any overpaid charges or contributions will be refunded. If an independent adjudicator makes a recommendation to waiver the assessed charge, this will need to be ratified by Senior Manager.

#### Related Documents and Help and Advice

<https://livingwell.cumbria.gov.uk/web/portal/pages/help/money/paying>

Where can I get financial advice? The Council is not allowed to give financial advice directly, but there are independent organisations and services you can go to for financial advice. Some organisations are national and some more local.

Do I have to pay for financial advice? It depends. Some organisations offer free advice and others may charge

Useful Contacts: -

[https://livingwell.cumbria.gov.uk/web/portal/pages/help/money/paying#content\\_content\\_8\\_content](https://livingwell.cumbria.gov.uk/web/portal/pages/help/money/paying#content_content_8_content)

## Appendix 1 - Assessing Disability Related Expenditure (DRE)

Section 17 of The Care Act 2014 permits local authorities to undertake a financial assessment which will determine the level of a service user's financial resources, and the amount (if any) which the service user is assessed as able to pay towards the cost of meeting their care and support needs.

A financial assessment is undertaken to work out how much the service user can afford to contribute towards the cost of care and support. The amount to be paid will depend on the service user's financial situation and is called a "financially assessed contribution". Service users are never asked to pay any more money than the financial assessment shows they can afford. One of the things considered as part of this assessment is any Disability Related Expenditure.

This document should also be read in conjunction with the Councils Adult Social Care Charging Policy.

### Disability Related Expenditure

When considering Disability Related Expenditure, allowance is made for reasonable spending directly related to a disability to help service users to stay independent and to ensure they are able to maintain a basic healthy, hygienic and safe standard of living. Care and Support Statutory Guidance The following extracts from the guidance show what should be considered in relation to Disability Related Expenditure (See link for Annex C:

<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#AnnexC>)

Annex C 39) Where disability-related benefits are taken into account, the local authority should make an assessment and allow the person to keep enough of their income to pay for necessary disability-related expenditure to meet any needs which are not being met by the local authority.

Annex C 40) in assessing disability-related expenditure, local authorities should include the following. However, it should also be noted that this list is not intended to be exhaustive and any reasonable additional costs directly related to a person's disability should be included:

1. (a) payment for any community alarm system
2. (b) costs of any privately arranged care services required, including respite care
3. (c) costs of any specialist items needed to meet the person's disability needs, for example:
  - (i) Day or night care which is not being arranged by the local authority
  - (ii) specialist washing powders or laundry
  - (iii) 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)
  - (iv) 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
  - (v) additional costs of bedding, for example, because of incontinence
  - (vi) any heating costs, or metered costs of water, above the average levels for the area and housing type
  - (vii) occasioned by age, medical condition or disability

(viii) reasonable costs of basic garden maintenance to promote safe access, cleaning, or domestic help, if necessitated by the individual's disability and not provided by Adult Social Care.

(ix) purchase, maintenance, and repair of disability-related equipment, including equipment 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

(x) personal assistance costs, including any household or other necessary costs arising for the person

(xi) 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. In some cases, it may be reasonable for a council not to take account of claimed transport costs – if, for example, a suitable, cheaper form of transport, for example, council provided transport to day centres is available, but has not been used.

(xii) in other cases, it may be reasonable for a council not to allow for items where a reasonable alternative is available at lesser cost. For example, a council might adopt a policy not to allow for the private purchase cost of continence pads, where these are available from the NHS

Annex C 41) the care plan may be a good starting point for considering what necessary disability-related expenditure is. However, flexibility is needed. What is disability-related expenditure should not be limited to what is necessary for care and support.

For example, above average heating costs should be considered

#### Assessing Disability Related Expenditure

To qualify for Disability Related Expenditure the service user must be in receipt of the care component of Disability Living Allowance, Personal Independence Payment (Care) or Attendance Allowance. The Assessment of Care and Support Plan should also identify and consider disabilities or medical conditions which demonstrate the need for Disability Related Expenditure. The disability benefits awarded by the DWP or other Government department to the individual or household are designed to cover daily living expenditure so the award of a DRE will only be made where costs are met entirely by the adult, exceed 'normal' cost of living expenses and are specifically resulting from the person's disability.

The social worker will identify, assess and record all Disability Related Expenditure as part of the care needs assessment, evidence should be collected at the initial meeting if available.

Evidence of this spend will be required such as receipts and invoices. If the service user is not able to provide this evidence during the financial assessment, they will have 28 days to provide it. On receipt of the evidence being provided within the 28 days, any award or reduction in charge due to the DRE will be backdated to the date of the assessment. If evidence is provided after 28 days, any reduction will be made from the date of receipt of the last supporting evidence. Where evidence requested by the Council is not provided by the service user the application will be treated as withdrawn.

### Calculating Disability Related Expenditure

Disability Related Expenditure is calculated based on evidence of relevant spending, and local information, for example typical heating costs for different types of housing or regional area costs, and local costs of domestic help.

If the Disability Related Expenditure is higher than usual or is of a more unusual nature this will be discussed with the service user during the financial assessment. Expenditure will not be considered as disability related where free alternatives are available through the NHS, for example for incontinence products or chiropody etc. Everyday living expenses will not be considered when awarding DRE. Additional costs for day care activities that are not already covered as part of a support plan and will not be allowed. The following items are considered to be everyday living expenses or a lifestyle choice (this list is not exhaustive):

- Food & Beverages
- Clothing/Shoes
- Accommodation Costs e.g. Rent/Mortgage/Repairs & Maintenance
- Accommodation Related Costs e.g. house/contents insurance
- Fuel type e.g. gas/electricity/oil/coal
- Water
- Furniture & Flooring (including carpets)
- Household Appliances
- Household textiles, cutlery, crockery and cooking utensils
- Personal transportation costs e.g. fuel/tax/insurance/servicing
- Entertainment & Media (TV including digital TV reception/Telephone (including. Mobile phones)/Internet & Broadband), Computing and Gaming Hardware and Software
- Domestic pet expenses
- Short Breaks and Holidays

### Discretionary DRE

In extreme circumstances, DRE exceptions could be made to avoid severe financial hardship or to prevent (or minimise the risk of) harm to the adult or their carer.

Appeal Process - Questioning the Disability Related Expenditure amount.

If a service user does not agree with the DRE amount calculated then an appeal can be made in writing addressed to their local Community Finance Officer, to ask them to review the DRE, explaining why the amount is incorrect and by providing additional income or expenditure related information.

