

Fact sheet on financial charges for care

Payments and charges: individuals requiring care

It is now usual for people in receipt of adult social care to have to contribute towards the cost of their care.

However, there are certain types of care and support which the Local Authority (“LA”) must not charge for providing. These include:

- intermediate care, including re-enablement, which must be provided free of charge for up to 6 weeks;
- 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;
- after-care services/support provided under section 117 of the Mental Health Act 1983;
- any service or part of service which the NHS is under a duty to provide. This includes Continuing Healthcare and the NHS contribution to Registered Nursing Care;
- more broadly, any services which a local authority is under a duty to provide through other legislation may not be charged for under the Act;
- assessment of needs and care planning may also not be charged for, since these processes do not constitute ‘meeting needs’.

Assuming that the care being provided does not have to be provided by the LA free of charge, the LA can decide whether or not to charge you for providing the care. In England, the Care Act 2014 (“the Act”) sets out what the LA needs to take into account when assessing your financial resources to see how much you are able to pay towards the cost of meeting your care needs.

The Care and Support Statutory Guidance (the Guidance) <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> also contains information on how a LA should charge for care in accordance with the Care and Support (Charging and Assessment of Resources) Regulations 2014.

The LA should have a financial assessment policy which it should follow when deciding how much you should pay for your care.

The amount you are expected to pay for care will depend on your circumstances and factors such as whether:

- you are cared for in a care home or in your own home (this affects the rules about assessable income);
- the value of your own home is disregarded (because it is occupied by a spouse or dependant relative) or taken into account; and
- you have decided to top-up the basic LA care provision (for example, by choosing a larger room in a care home or by choosing a more expensive care home).

Even if you are part of a couple, you will be assessed individually (if it is only you receiving the care and support). Any assets which you hold jointly with your partner will be divided equally for the purposes of the financial assessment, unless there is evidence to show that you own it in unequal shares.

Residential care

If you are living in a care home you will be expected to contribute most of your income towards the cost of your care and support. Some income will be disregarded, including:

- Direct payments
- Mobility component of DLA or Personal Independence Payment

However, you should be left with a personal expenses allowance, which is an amount set out in law, in order to buy personal items such as clothing. It is currently £24.90 per week¹

Non-residential care

If you are receiving non-residential care the following should be disregarded from your income when the LA is deciding how much you should be charged:

- mobility component of Personal Independence Payment or Disability Living Allowance; and
- disability related expenses:

Annex C of the Guidance states the following in relation to what can be classed as a disability related expense, although the list is not exhaustive:

¹ As at Feb 2017 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508653/LAC_DH__2016_2_-_FINAL_-_LAC_2016_A.pdf

- (a)** payment for any community alarm system
- (b)** costs of any privately arranged care services required, including respite care
- (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 (you may be asked for permission to approach your 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, cleaning, or domestic help, if necessitated by your disability and not met by social services
 - (ix)** 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
 - (x)** personal assistance costs, including any household or other necessary costs arising for the person
 - (xi)** internet access for example for blind and partially sighted people
 - (xii)** 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
 - (xiii)** 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”

If you receive services during the day only then the LA can only take the low rate Attendance Allowance or middle rate care component of Daily Living Allowance into account. If you receive services at night, the LA may choose to take the whole Attendance Allowance or DLA award into account.

There is no distinction between day and night needs for personal independence payment so the standard and enhanced rate of daily living component can be taken into account as income regardless of whether you receive services in the day or the night.

In addition, a person must be left with a minimum income guarantee, (after disability related expenditure and the disregarded benefit has been taken into account) – there is a statutory minimum which will depend on your circumstances², but the LA may decide to set a higher minimum income guarantee, details of which should be set out in its financial charging policy (which you are entitled to see).

Capital and savings

Under the capital limits set out in the Act if your “assessable capital” exceeds £23,250, you must pay for all your care costs until your assessable capital falls below that amount (assessable capital includes property and savings).

Things that count as capital include:

- Buildings
- Land
- Trusts
- Capital held in bank or building society accounts
- Premium bonds
- National savings certificates
- Stocks and shares
- It also includes capital held abroad
- Your main home will not count as capital if you are not receiving care in a care home; or

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508653/LAC_DH__2016_2_-_FINAL_-_LAC_2016_A.pdf

- You are receiving care in a care home temporarily and you intend to return to your home or are making reasonable steps to dispose of it and acquire a more suitable home; or
- You know longer live there but a relative is occupying the home; or
- The LA uses its discretion to apply a property disregard.

More detail about capital is contained in Annex B of the Guidance.

The lower capital limit is currently £14,250. If you have capital between the lower and upper capital limit you will be assessed as having a tariff income of £1 per week for every £250 of capital.

Where you clearly have capital in excess of the upper limit the LA will not make any further assessment of your financial resources and you will be expected to pay all your care costs. However, if you are near the upper limit you can request that the LA provides a plan for when capital falls below the upper limit. The Guidance states that such planning ahead is the responsibility of the LA.

Challenging a financial assessment decision

If you believe that the LA has not properly carried out your financial assessment or has made a mistake in its calculations you can challenge the assessment. In particular if you are receiving non-residential care you should ensure that all disability related expenditure has been included in the calculation.

The LA should provide details of how to challenge an assessment in its financial charges policy. If this is not available, you should request a copy as soon as possible after receiving the charging decision. Often there is a time limit for challenging the charging decision so you should try to obtain a copy of the policy as soon as possible to ensure that you do not miss the deadline.

Recovery of debts by LA

The Act introduces a framework for the recovery of any debts that may have accrued as a result of a LA meeting a person's eligible care and support needs.

The Guidance states that LAs will want to bear in mind the following principles when approaching the recovery of debts:

- possible debts must be discussed with you or your representative
- the local authority must act reasonably

- arrangements for debt repayments should be agreed between the relevant parties
- repayments must be affordable and should not lead to hardship for you or your family
- court action should only be considered after all other reasonable avenues have been exhausted

LAs should also bear in mind that they are bound by the public law principle of acting reasonably at all times and must act in accordance with human rights legislation, as well as the wellbeing principle set out in the Act.

The Guidance states that the LA should consider whether it is appropriate to recover the debt – although it has the power to do so, and in many cases will wish to do, it does not have to or indeed it may wish to only recover part of the debt. Such circumstances may include:

- where the amount of the debt is small and the costs of recovery would be disproportionate
- you or your representative could not reasonably have been aware that the asset in question needed to be included in the financial assessment.

If you are in receipt of benefits then the LA could deduct the overpayment from ongoing benefit payments.

Alternatively, the LA may issue an invoice for the full amount of what it has calculated to be the overpayment – if a debt has occurred because your capital was above the upper capital limit it may make the most financial sense to repay the full amount as soon as possible, if it would bring your assets below the upper capital limit.

The LA could also choose to issue county court proceedings against you.

Deprivation of assets

If assets (such as property) are moved into a third party's name so that you do not have to pay care costs the LA may either charge you as if you still had the asset or seek to recover the lost income from the person to whom the asset has been transferred.

If the LA is recovering a debt then deprivation of assets will be one of the factors taken into consideration in deciding whether to recover the debt and how that debt will be recovered.

We hope that you have found this factsheet useful. Whilst you are here, we have a small favour to ask. More people are using our service than ever before. We can't keep up with demand. We don't want to turn people away, and we want to keep on developing more information resources like this factsheet, but we don't have enough money to expand. So you can see why we need to ask for your help. We know that our information and advice can make a real difference to the quality of life of the people we support. If people using our service could help to support us, our future would be much more secure.

Click here to make a small donation: www.donate.mencap.org.uk