



Havering
LONDON BOROUGH

London Borough of Havering

Residential Care Charging Policy

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Adult Social Care Department

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Lead Officer	
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Contents

- 1.0 Introduction 4
 - 1.1 Purpose 4
 - 1.2 Policy summary 4
 - 1.3 Applicability 4
 - 1.4 Dissemination and communication 5
 - 1.5 Implementation 5
 - 1.6 Timescales 5

- 2.0 Policy 5
 - 2.1 Financial Assessments 5
 - 2.2 Deferred Payment Scheme 6
 - 2.3 Choice of accommodation 6
 - 2.4 Capital taken into account or disregarded in Full Financial Assessments 7
 - 2.5 Local Decisions (this should be under different headings) 10
 - 2.6 Additional top-up information 11

- 3.0 Monitoring and review 12

- Appendices 13

1.0 Introduction

Unlike health care, adults have always had to pay, or contribute towards the cost of social care. By social care we mean both residential and non-residential services and support, such as domiciliary care, direct payments, respite, extra care, personal assistants, placements and personal budgets, which support adults to remain independent at home and residential care when they are no longer able to remain at home. Councils have then used these contributions to the cost of care to re-invest in social care services they would otherwise not be able to provide.

This policy looks specifically at charging for residential care services in Havering.

1.1 Purpose

From April 2016, Sections 14 and 17 of the Care Act 2014 give local authorities discretionary powers to charge for care and support services provided to service users and carers.

The purpose of this document is to outline a *Care Act* compliant framework for charging for residential care in Havering.

1.2 Policy summary

This policy sets out how the Council will financially assess users of permanent residential care services as well as how users of residential respite care will be charged.

It specifies:

- what types of income and capital will be included in the financial assessment and which will be disregarded, either in full or partially. How to treat property in the financial assessment, when it is appropriate to disregard and when it is necessary to include it.

These principles are universal and will apply to all individuals subject to a financial assessment.

Following the introduction of the Care Act 2014 from 1st April 2015, the Council will be undertaking all residential financial assessments in compliance with Sections 14, 17 and 69-70 of the Care Act 2014, and specifically sections 8,9 & 20 and Annexes B,C,D,E,F & H of the Care and Support (Charging and Assessment of Resources) Regulations 2014.

1.3 Applicability

This policy relates to the assessment and charging for permanent residential and nursing placements and respite care only. Any other community based services will be assessed in line with the Council's Charging for non-residential care services policy.

This policy applies to those using residential services in the Borough of Havering.

1.4 Dissemination and communication

This policy is available on the Havering website at https://www.havering.gov.uk/downloads/download/837/adult_social_care_policies

1.5 Implementation

This policy is implemented via changes to the Financial Assessment & Benefits Team's procedures for Residential Financial Assessment completion.

The ICT elements required to support this policy are being provided in updated versions of the relevant system provided by our ICT supplier.

The Charging for Residential Care policy does not have a mandatory training requirement or any other training needs. The Financial Assessment & Benefits Team staff have been briefed and trained as appropriate and were involved in all ICT system testing relating to this area of work.

1.6 Timescales

This policy will apply from 1st April 2020 for at least the financial year 2020-21, and possibly beyond. It will be updated only to reflect any changes in legislation or Department of Health guidance.

2.0 Policy

2.1 Financial Assessments

- (a) The upper capital threshold is £23,250 – anyone with capital in excess of this sum will be liable to pay the full cost of their care.
- (b) The lower capital threshold is £14,250 – anyone with capital below this sum will have it disregarded in full in the financial assessment.
- (c) Tariff Income – where someone has capital in excess of £14,250 and less than £23,250 we will include tariff income in their assessment. This is £1 for £250, so if someone has capital of £16,000 their financial assessment will include £7.00 per week in tariff income.
- (d) Personal Expense Allowance (PEA) – this is the weekly amount the Care Act stipulates individuals should be left with after their financial assessment. For 2020/21 it is set at £24.90 per week
- (e) Where an individual chooses not to disclose any financial details, or refuses to engage with the financial assessment process, the Council will assess that individual as liable to pay the full cost of their care.
- (f) Where a property will form part of an individual's financial assessment the value of the property will be disregarded for the first 12-weeks of the placement. This is called a 12-week property disregard and during this period the individual's contribution towards the cost of their care will be based on their income and other non-property capital, such as savings or shares.

- (g) A 12-week property disregard will only apply during the first 12-weeks of a placement.

Financial assessments will be reviewed once annually, at the start of the financial year to reflect the national changes in benefit and pension rates. Other than that assessments will only be reviewed when we are alerted to changes in an individual's financial circumstances.

2.2 Deferred Payment Scheme

- (a) Deferred Payments are where individuals with savings below the upper capital threshold but who own property worth in excess of the upper capital threshold can receive funding assistance from the Council as opposed to selling their property. This involves entering into a legally binding agreement which allows the Council to place a legal charge on the property to secure our interest while deferring a portion of the care fees against this charge.
- (b) Under the Care Act 2014, Deferred Payments are mandatory for individuals who meet the criteria. Should an individual choose not to enter into a Deferred Payment agreement then the Council will cease funding after the 12 week property disregard and the individual will be liable to self-fund privately.
- (c) Deferred Payments will only be available to individuals in permanent residential care and property is the only acceptable form of security.
- (d) Entering into a Deferred Payment will incur an administration fee and interest throughout the life of the agreement. More details can be found in the Council's Deferred Payment policy at:
https://www.havering.gov.uk/downloads/download/837/adult_social_care_policies

2.3 Choice of accommodation

The Council will provide for a person's preferred accommodation, including within shared lives, supported living and extra care housing settings. The most appropriate type of accommodation will be decided as part of the care and support planning process, and the choices available will only apply between providers of the same type.

Adults' Services is required to ensure that there is genuine choice and this means that, as a minimum, there is at least one option available, which is affordable within the person's personal budget. This however does not prevent the person's choice of alternative options where a top-up may be required – usually top-up's are to be paid by a third party but there are instances under which a first party top-up is allowed (see 2.5 for further details on top-ups).

The person's preferred accommodation must be available and the provider must be willing to enter a contract with the Council to provide care within the individual's personal budget (unless a top-up fee is agreed with the Council and a top-up agreement is in place) on the Council's terms and conditions.

2.4 Capital taken into account or disregarded in Full Financial Assessments

- The following types of Capital **will be disregarded** in full in financial assessments;
 - (a) Property in specified circumstances (see paragraph 34 of Annex B of Care and Support (Charging and Assessment of Resources) Regulations 2014 – Appendix 4);
 - (b) The surrender value of any:
 - (i) Life insurance policy;
 - (ii) Annuity.
 - (b) Payments of training bonuses of up to £200;
 - (c) Payments in kind from a charity;
 - (d) Any personal possessions such as paintings or antiques, unless they were purchased with the intention of reducing capital in order to avoid care and support charges (see Schedule 2 Paragraph 13 of Annex B of the Care and Support (Charging and Assessment of Resources) Regulations 2014 – Appendix 4);
 - (e) Any capital which is to be treated as income or student loans;
 - (f) Any payment that may be derived from:
 - (i) The Macfarlane Trust;
 - (ii) The Macfarlane (Special Payments) Trust;
 - (iii) The Macfarlane (Special Payment) (No 2) Trust;
 - (iv) The Caxton Foundation;
 - (v) The Fund (payments to non-haemophiliacs infected with HIV);
 - (vi) The Eileen Trust;
 - (vii) The MFET Trust;
 - (viii) The Independent Living Fund (2006);
 - (ix) The Skipton Fund;
 - (x) The London Bombings Relief Charitable Fund.
 - (g) The value of funds held in trust or administered by a court which derive from a payment for personal injury to the person. For example, the vaccine damage and criminal injuries compensation funds;
 - (i) The value of a right to receive;
 - (ii) Income under an annuity;
 - (iii) Outstanding instalments under an agreement to repay a capital sum;
 - (iv) Payment under a trust where the funds derive from a personal injury;

- (v) Income under a life interest or a life-rent;
 - (vi) Income (including earnings) payable in a country outside the UK which cannot be transferred to the UK;
 - (vii) An occupational pension;
 - (viii) Any rent. Please note however that this does not necessarily mean the income is disregarded. Please see Annex C for guidance on the treatment of income.
- (h) Capital derived from an award of damages for personal injury which is administered by a court or which can only be disposed of by a court order or direction;
 - (i) The value of the right to receive any income under an annuity purchased pursuant to any agreement or court order to make payments in consequence of personal injury or from funds derived from a payment in consequence of a personal injury and any surrender value of such an annuity;
 - (j) Periodic payments in consequence of personal injury pursuant to a court order or agreement to the extent that they are not a payment of income and are treated as income (and disregarded in the calculation of income)
 - (k) Any Social Fund payment;
 - (l) Refund of tax on interest on a loan which was obtained to acquire an interest in a home or for repairs or improvements to the home;
 - (m) Any capital resources which the person has no rights to as yet, but which will come into his possession at a later date, for example on reaching a certain age;
 - (n) Payments from the Department of Work and Pensions to compensate for the loss of entitlement to Housing Benefit or Housing Benefit Supplement;
 - (o) The amount of any bank charges or commission paid to convert capital from foreign currency to sterling;
 - (p) Payments to jurors or witnesses for court attendance (but not compensation for loss of earnings or benefit);
 - (q) Community charge rebate/council tax rebate;
 - (r) Money deposited with a Housing Association as a condition of occupying a dwelling;

- (s) Any Child Support Maintenance Payment;
 - (t) The value of any ex-gratia payments made on or after 1st February 2001 by the Secretary of State in consequence of a person's, or person's spouse or civil partner's imprisonment or internment by the Japanese during the Second World War;
 - (u) Any payment made by a local authority under the Adoption and Children Act 2002 (under section 2(b)(b) or 3 of this act);
 - (v) The value of any ex-gratia payments from the Skipton Fund made by the Secretary of State for Health to people infected with Hepatitis C as a result of NHS treatment with blood or blood products;
 - (w) Payments made under a trust established out of funds provided by the Secretary of State for Health in respect of persons suffering from variant Creutzfeldt-Jakob disease to the victim or their partner (at the time of death of the victim);
 - (x) Any payments under Section 2, 3 or 7 of the Age-Related Payments Act 2004 or Age Related Payments Regulations 2005 (SI No 1983);
 - (y) Any payments made under section 63(6)(b) of the Health Services and Public Health Act 1968 to a person to meet childcare costs where he or she is undertaking instruction connected with the health service by virtue of arrangements made under that section;
 - (z) Any payment made in accordance with regulations under Section 14F of the Children Act 1989 to a resident who is a prospective special guardian or special guardian, whether income or capital.
- The following types of Income **will be taken into account** in full in financial assessments;
 - (a) Attendance Allowance, including Constant Attendance Allowance and Exceptionally Severe Disablement Allowance
 - (b) Bereavement Allowance
 - (c) Carers Allowance
 - (d) Disability Living Allowance (Care component)
 - (e) Employment and Support Allowance or the benefits this replaces such as Severe Disablement Allowance and Incapacity Benefit
 - (f) Income Support
 - (g) Industrial Injuries Disablement Benefit or equivalent benefits
 - (h) Jobseeker's Allowance

- (i) Maternity Allowance
- (j) Pension Credit
- (k) Personal Independence Payment (Daily Living component)
- (l) State Pension
- (m) Universal Credit
- (n) Working Tax Credit.

2.5 Local Decisions

The following section specifies local decisions made when the Care Act guidance allows discretion:

- (a) Top-ups will be allowed when the cost of an individual's preferred placement exceeds the weekly personal budget required to meet an individual's care needs, but only after the Council has carried out necessary checks to establish a third party's ability to make, and sustain, this payment, and after the customer has been advised to seek independent advice and guidance.
- (b) If it is established that the third party is not in a financial position to make payment of the required top-up then the Council would assume responsibility for the full fee, net of the assessed client contribution, but only if another suitable placement whose cost does not exceed the weekly personal budget cannot be found.
- (c) The preferred position on top-ups is that they are to be paid direct to the care home by the third party, if all parties agree to this.
- (d) The Council will implement top-up's under alternative arrangements where circumstances warrant it or where a customer, or service provider, has specifically requested such an arrangement. This would normally involve the top-up payments being paid to the Council.
- (e) Where the arrangement is for the top-up to be paid direct to the Council rather than the care home, the Council will insist on direct debit arrangements being entered into for payment of the top-up fees.
- (f) The Council will allow a resident to pay a top-up themselves ("a first party top-up") where there is sufficient equity in the property to enable payment of both the deferred fees and the top-up for a minimum of 24 months, and one of the following circumstances applies;
 - where they have a deferred payment agreement in place with the local authority.
 - where they are subject to a 12-week property disregard.
 - where they are receiving accommodation provided under S117 for mental health aftercare.

There is a separate deferred payments policy.

(g) Where a person is benefiting from the 12-week property disregard and has chosen to pay a top-up fee from their capital resources between the upper and lower capital limits, the level of tariff income that applies during those 12 weeks is the same as it would be if the person were not using the capital to top-up.

(h) Residential Respite care services will be subject to a light-touch assessment rather than a full assessment or a non-residential care assessment. This means that there are set weekly rates for this care that have been calculated based on minimum benefit entitlement for individuals per age, less the specified PEA. These rates are as follows;

- | | |
|------------------------------|----------------|
| i. Over Pension Credit Age | £139.75 a week |
| ii. 25 to Pension Credit Age | £87.90 a week |
| iii. 18 to 24 | £69.40 a week |

Where individuals declare that they have capital in excess of the capital threshold of £23,250 they will be charged the full cost of their respite care service.

(i) The Council will only seek formal valuations of properties, or shares of property, when the valuation we set in our assessment is queried by the service user or their financial representatives. In these instances the Council will use the District Valuer Service to undertake these valuations.

(j) As per section 8 paragraph 28 of the Guidance the Council will assess individuals as possessing notional income, or capital, if we deem that an individual has wilfully disposed of those assets for purposes of fee avoidance.

(k) The Council will not be setting a maximum percentage of disposable income to be used in the financial assessment as allowed in Section 8 Paragraph 47 of the Guidance. The only allowances provided in the financial assessment will be the PEA and, where appropriate, the savings disregard of £5.75 per week.

(l) The council will charge for periods of hospitalisation as long as the Council's contract with the home remains ongoing, in order to secure the residential placement. Where the period of hospitalisation exceeds 28 days then individuals financially assessed as liable to pay the full cost of their care may be subject to a reduction in fees for the remainder of the hospital stay or until the contract is ended if they do not return to the placement.

2.6 Additional top-up information

In addition to the points made in 2.5(a) to 2.5(f) the following points relate to how the Council administers top-up's;

- Top-up arrangements can only be put in place when the top-up fee is agreed between the person paying the top-up and the Council and there is a formal top-up agreement in place, signed by the person paying the top-up and a nominated representative of the Council;
- Top-up agreements must be in place before the person moves to their residential care home unless there are exceptional and urgent circumstances;

- If top-up fees are not paid in accordance with the top-up agreement the individual could need to move to another residential home that would be suitable to meet their needs within their Personal Budget. As with any change of circumstances the Council will need to undertake a new assessment before considering this course of action, this will include the individual's health needs and the person's wellbeing.

3.0 Monitoring and review

This policy will apply until 1st April 2022, at which time Phase Two of the Care Act was scheduled to be introduced. A full review of the policy and, if appropriate, a public consultation will be required during the 2021/22 financial year to ensure full compliance with any new legislation from April 2022 onwards.

Appendices

APPENDIX 1 – Section 8 Care and Support (Charging and Assessment of Resources) Regulations 2014

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

APPENDIX 2 – Section 9 Care and Support (Charging and Assessment of Resources) Regulations 2014

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

APPENDIX 3 – Section 20 Care and Support (Charging and Assessment of Resources) Regulations 2014

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

APPENDIX 4 – Annex B Care and Support (Charging and Assessment of Resources) Regulations 2014

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

APPENDIX 5 – Annex C Care and Support (Charging and Assessment of Resources) Regulations 2014

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

APPENDIX 6 – Annex D Care and Support (Charging and Assessment of Resources) Regulations 2014

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

APPENDIX 7 – Annex E Care and Support (Charging and Assessment of Resources) Regulations 2014

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

APPENDIX 8 – Annex F Care and Support (Charging and Assessment of Resources) Regulations 2014 <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>