

Factsheet 46 ● April 2015

## Paying for care and support at home

### About this factsheet

This factsheet explains what financial assistance may be available to help you meet the costs of social care support needed to enable you to stay in your own home. It is aimed at a service user but also covers carers, where necessary.

The information in this factsheet is correct for the period April 2015 – March 2016, but rules and figures sometimes change during the year.

The information given in this factsheet is applicable in England. Different rules may apply in Wales, Northern Ireland and Scotland. Readers in these nations should contact their respective national offices for information specific to where they live – see section 15 for details.

This factsheet can be read in conjunction with Age UK's other factsheets, for example: Age UK's Factsheet 6, *Finding help at home* and Age UK's Factsheet 41, *Social care assessment, eligibility and care planning*.

For details of how to order other factsheets and information materials mentioned in the text go to section 15.

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# 1 Recent developments

The **Care Act 2014** came into force on 1<sup>st</sup> April 2015 along with a range of new supporting regulations and a single set of statutory guidance, which, taken together, describe how the Act should be applied in practice. The aim of the change is to simplify and modernise the system, which had become very complex and also to create a new approach to charging.

The most significant new regulations in relation to this factsheet are the *Care and Support (Charging and Assessment of Resources) Regulations 2014*, which will be called **the charging regulations** in this text. The other main source for this factsheet is the new *Care and Support Statutory Guidance 2014*, which will be referred to as **the statutory guidance** in the text. Here, chapter 8 'Charging and financial assessment' and Annexes A-F are most relevant. These documents support sections 14-17 in the *Care Act 2014*, which cover charging for services and various other sections such as 69-70 on debt recovery and deprivation of assets.

This means that the existing system of adult social care of laws, regulations and guidance, developed over a period of 65 years, has generally been superseded and is now no longer applicable; except in a few cases, for example the complaints regulations and Disabled Facilities Grants. An example of this general revocation is the statutory guidance entitled *Fairer charging policies for home care and other non-residential social services*. This is the guidance on which this factsheet was previously mainly based. It will now be based on the documents mentioned above, which are also listed with web-links in the Appendix in section 12.

The *Care Act 2014* will actually come into force in **two stages**, in April 2015 and April 2016.

Some of the key changes being introduced in 2015 are:

- The promotion of **individual wellbeing** as an overarching principle within all the activities of a local authority including: assessment, eligibility, prevention, means testing and care and support planning.

- New **national eligibility criterion** for both the adult requesting services and their carer(s) leading to rights to services and based around the wellbeing principle. The previous four local eligibility levels have now become one, set at approximately the previous 'substantial' level. Further information about this can be found in Age UK's Factsheet 41, *Social care assessment, eligibility and care planning*.
- **Carers** now have an absolute right to have their assessed, eligible, **support needs** met for the first time; they have a slightly different eligibility criterion to the service user, but are subject to the same means test rules.
- A **person-centred, outcomes-focussed**, approach to assessing and meeting needs. Local authorities must consider how to meet each person's specific needs rather than simply considering what existing service they will fit into. They must also consider what someone wants/needs to achieve or do and the effect on them of any difficulties they are having.
- The whole system is now administered via **personal budgets** and based on the principles of the personalisation policy that has been developed over the past few years.
- A '**right to request**' service provision for a fee where someone with eligible needs is found to be a self-funder (must pay the whole cost of a service) in the means test. This right does not exist for care home provision.
- New local authority '**market shaping**' duties to ensure adequate, diverse, good quality, local service provision.
- The duty to **prevent, reduce and delay** the need for services and also related duties to integrate care with the NHS where this benefits a service user.
- 'Universal' local **information and advice** duties - to be further discussed in the text.

There are many other changes from April 2015, which are described in Age UK's range of factsheets on adult social care.

The **April 2016 changes** mainly relate to the implementation of new rules on paying for care based on the **Dilnot** care funding recommendations made in 2013, and the subsequent government response. These include:

- A lifetime **care cost cap** (£72,000 in 2016) above which the State will meet the cost of paying a person's eligible social care needs. The national cap will be reviewed every five years.
- The introduction of **care accounts**, which will require a local authority to track a person's personal expenditure towards meeting their eligible social care needs, towards the new care cost cap – based on the amount set out in their personal budget. Each account will be adjusted annually in line with the national rise in average earnings. Some local authorities may start to assess for care accounts ahead of the April 2016 start date to avoid capacity issues.
- An increased **upper capital** limit from £23,250 to £27,000 for non-residential care and support. This includes sheltered accommodation and supported living schemes, which are treated differently to care homes in the means test rules.
- An increased **tariff income/lower capital limit** from £14,250 to £17,000. You should be allowed to keep capital below this level.
- **Independent personal budgets** for those people with assessed, eligible, needs but who have capital in excess of the upper threshold and who are meeting the cost of their care and support themselves. This is a choice that will be available to enable payments to be noted in the person's care account.

Further details of the 2016 proposed funding-related changes are contained in a government consultation, which ended on 30 March 2015.

### The transitional system

In this factsheet we will describe the transitional system that is now in existence, between April 2015 and March 2016. We will amend it next year in light of the planned new charging rule implementation that is mentioned above. Government advice on how local authorities should manage the transition over the next couple of years is set down in chapter 23 of the new statutory guidance. Here, it states that the new national eligibility criteria is intended to allow for the same level of access to care and support to be maintained in adult social care in the vast majority of circumstances and cases.

## Some definitions and terminology

In this factsheet, references to the **'local authority'** or 'council' will refer to the adult social services department of the local council. We will use 'local authority' to describe this department. Generally, the term 'local authority' can also cover: a county council in England, a district council for an area in England for which there is no county council, a London borough council, or the Common Council of the City of London.

**'Adult'** means a person aged 18 or over.

## 2 How to access local authority services

If you are having difficulty coping with your daily activities at home, you can get in touch with your local authority or your family doctor (GP) to see if they can give you some advice or support. You can refer yourself for a local authority needs assessment or another person, such as your carer or GP, can do this on your behalf.

If you are being discharged from hospital, appropriate community-based care and support should be arranged in good time to ensure a safe discharge.

### 2.1 A wide range of services are available

There are a wide range of support services that can be provided to help you stay in your own home and also to assist your carer if you have one. Services could include: domiciliary (home) carer and personal assistants; meals delivered at home; day-centre attendance and respite care; live-in care services; rehabilitation services; sheltered accommodation and supported living; shared lives services; other housing options; community support; counselling; direct payment support organisations; information, brokerage and advice services<sup>1</sup>. Other forms of assistance could include the provision of specialist disability equipment, adaptations to your home, community alarms and other types of assistive technology. The statutory guidance, at paragraph 4.45, states that:

<sup>1</sup> Paragraph 4.43 in the *Care Act 2014* statutory guidance

Local authorities should facilitate the personalisation of care and support services, encouraging services (including small, local, specialised and personal assistant services that are highly tailored), to enable people to make meaningful choices and to take control of their support arrangements, regardless of service setting or how their personal budget is managed.

Some services must be provided free of charge (see section 3.2 below) once your eligibility has been confirmed but most can be charged for via a means test, which is explained in this factsheet; occasionally, there is blanket charge for basic, low cost, services.

There is more information about the types of non-residential social care services available in our Information Guides entitled *Care at home*, *Advice for carers* and *Adapting your home*. Also see Age UK's Factsheet 6, *Finding help at home* and Age UK's Factsheet 42, *Disability equipment and home adaptations*.

## 2.2 Assessment for care and support

The first step towards getting help from social services is to ask the local authority to carry out a **needs assessment**. This is the process by which the social services department finds out what sort of help and support you may need.

It is a right in itself and there is a **low threshold** for the assessment duty to be triggered. The local authority must carry out an assessment of your needs if you appear to be someone who might need the type of assistance it can provide. It must consider your suitability for an assessment and then assess your needs without being influenced by your financial circumstances.

Usually, a representative of the local authority will **visit** to discuss your needs with you and to decide what actions should be taken. The identified needs should be agreed with you and documented on your **care and support plan**, along with other elements required by the *Care Act 2014*. This must be written by your assessor with your input. Regulation 2 of the *Care and Support (Assessment) Regulations 2014* allows you to choose to have a **supported self-assessment**, carried out jointly with the local authority. The local authority must ensure that you have the ability and capacity to engage with the process appropriately before agreeing to the request; and must provide you with all relevant information and any necessary support.

Your carer, if you have one, may also be entitled to an assessment of their support needs, leading to a **support plan**. You should be provided with a copy of the plan.

You have a right to an **independent advocate** if you can't understand or cope with the process. See section 5 for further information.

Section 9 of the *Care Act 2014* states that a local authority assessment must take account of **your views, wishes and feelings**; and be outcome focussed, based on what you want to do or achieve in your life. Needs should be looked at in terms of their impact on your wellbeing as defined in the *Care Act 2014*.

**Various assessment methods** are being trialled by local authorities, for example supported self-assessment and telephone assessments. You should be as **involved** as possible in your own assessment and provided with all necessary information, advice and support. The assessment should also be proportionate to your particular needs and in an **appropriate** format best suited to your requirements. Further information about assessment can be found Factsheet 41, *Social care assessment, eligibility and care planning*.

## 2.3 The new eligibility criterion for service users and for carers

There is now a national, single level, eligibility criterion to decide who qualifies for care and support provided or arranged by the local authority. Within this, there are two separate criteria, one for the adult service user and another for their carers(s). This has replaced the previous four level service user eligibility criteria and also the general discretion (choice or power) as to whether to meet a carer's identified support needs. There is no longer a need for care by a carer to be 'regular and substantial', simply 'necessary'.

Your local authority must follow the new *Care and Support (Eligibility Criteria) Regulations 2014* (**eligibility regulations**) and have regard to the related new statutory guidance when deciding on eligibility. 'Have regard to' means that it must generally be followed, except for in exceptional and justifiable circumstances. These both support the *Care Act 2014* sections on **eligibility** and **duties and powers** to meet assessed service user and carer needs set down in sections 13 and 18-20.

For each of the two criteria types (adult service user or carer), a list of '**outcomes**' a person may need to achieve is provided in the eligibility regulations. Within the adult service user list, the person must be unable to achieve **two or more** and within the carer's list they must be unable to achieve **one or more** of the 'outcomes'.

Further explanation within the eligibility regulations shows that the term '**unable to**' could mean having excessive difficulty or being at high risk. The assessor must then decide whether this situation results in a '**significant impact**' on the person's wellbeing. The new adult social care concept of wellbeing is broadly defined in Section 1 of the *Care Act 2014*, and informs the individual eligibility decision when someone is assessed by the local authority. The local authority should publish accessible information about the criteria, for example on its website (see section 4 for further information). The eligibility procedure is described in more detail in Age UK's Factsheet 41, *Social care assessment, eligibility and care planning*.

## Portability and continuity of care

New portability rights are now in force under sections 36-37 of the *Care Act 2014*, meaning that you can choose to move to another area and retain an existing care package until a review assessment is carried out by the receiving local authority, if it has not already taken place. The receiving authority must **'have regard'** to the existing care package and clearly explain why they make any subsequent alterations, in writing. This means it must carry it on the same form until the review takes place. Portability also relates to updated rules on ordinary residence set down in sections 39-41 of the *Care Act 2014* and new rules on cross-border placements in section 39 of and Schedule 1 to the *Care Act 2014*.

See Age UK's Factsheet 41, *Social care assessment, eligibility and care planning*, for further information.

## 2.4 The 'right to request' having your needs met

Chapter 8 of the statutory guidance provides a 'right to request' having your eligible care needs met where you are found to have assets over the capital limit following your related means test. This means that you will have to **fund your care in full** (a self-funder). In fact, it appears that your right to actually have your eligible needs met in this context only crystallise (materialise) following the making of this request. The local authority **must agree to your request** in a non-care home related context. However, they can charge an arrangement fee.

The statutory guidance advises that the request could be for a **variety of reasons** such as a person finding the system difficult to navigate, or wishing to take advantage of the local authority's expert knowledge of local care and support services in terms of what's available and the cost.

If a person doesn't have support and **lacks the mental capacity** to arrange their own eligible care needs, then the local authority has a **duty to assist** in all types of situation under the section 18(4)(a) of the *Care Act 2014*. Section 80(2) of the Act requires the term 'capacity' (used in section 18) to be interpreted in accordance with the *Mental Capacity Act 2005*, where (at section 2) an inability to make a decision must be as a result of 'an impairment of, or a disturbance in the functioning of, the mind or brain'.

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**Note:** That there is **no ‘right to request’ procedure for care home provision**. However, a self-funder with mental capacity could ask for assistance if the reality is that they couldn't arrange their own care home placement without local authority help and there is no one to assist them. As this would require a discretionary response from the local authority, it would not be able to make an arrangement charge if it agrees. A discretionary decision must take all the case facts into account and reasons must be given for the response. It is very hard to see how a local authority could not comply with this request given their general duties, statutory responsibilities. A person may also have a right independent advocacy in this kind of situation (see section 5, below).

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In the ‘right to request’ context, discussed above, the local authority has a **power to charge** if it chooses. It can charge the full cost for the care and support that it provides plus an arrangement fee. Paragraph 8.58 of the statutory guidance states that:

*arrangement fees charged by local authorities must cover **only the costs** that the local authorities actually incur in arranging care. Arrangement fees should take account of the cost of negotiating and/or managing the contract with a provider and cover any administration costs incurred.*

The statutory guidance advises creating written agreements to avoid disputes about future funding liabilities.

### 3 Local authority charging rules and procedures

This section outlines the local authority charging procedures for non-residential care.

A local authority must carry out your financial assessment (also known as a means test), under sections 14-17 of the *Care Act 2014*, in accordance with the provisions in Parts 2 to 5 of the charging regulations. It must also have regard to chapter 8 and Annexes A to F of the statutory guidance. The *Care Act 2014* sets out a financial assessment duty where it either has a duty or discretion to meet the needs of a service user or a carer. The residential and non-residential charging systems have now been **amalgamated**, but retain some **different elements**.

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**Note:** A local authority charging assessment (means test) takes place at a **specific moment in time**, promptly following your needs assessment and confirmation that you have eligible needs, within the required outcomes that need to be agreed with you in your care planning process; and confirmation of your personal budget amount, which may initially be an estimated (indicative) amount until it is confirmed to be sufficient to meet your needs.

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Chapter 8 of the statutory guidance confirms that the new charging arrangements in this context cover any setting in which care and support needs are met outside of a care home. This could be care and support received in a person's **own home or in other accommodation settings** such as in extra-care housing, supported living accommodation or shared lives arrangements. These types of accommodation are further discussed in Age UK's Factsheet 60, *Choice of accommodation – care homes*.

### 3.1 **Government guidance on charging for services**

The charging principles that should be adhered to by a local authority when setting out its new charging policy for the *Care Act 2014* are listed in Chapter 8 of the statutory guidance. These include the requirement to ensure that people are not charged more than it is **reasonably practicable** for them to pay and are not charged more than the **cost of providing** a service. The information and advice duty, which is discussed in section 4 below, is also cited in support of these principles. For example, you must be provided with written information about your assessed charge as a part of the means test procedure.

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**Note:** These rules apply to the **service user and carer(s)** in the same way if they are receiving services arranged or directly provided by a local authority.

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**Your income and capital** can be taken into account in the local authority means test, if it is considered to be eligible.

### **The local authority charging discretion**

Section 14 of the *Care Act 2014* gives local authorities discretion as to whether they wish to charge for a non-residential care services, except in the circumstances outlined in section 3.2 below where they are free of charge. The local authority must follow the *Care Act 2014*, the charging regulations and the related statutory guidance when administering its charging procedure - for example the contents of Annexes B-E in the statutory guidance. Statutory guidance under the new *Care Act 2014* appears to have the same status as it previously had for many years, meaning that its requirements can only be diverged from in exceptional and justifiable circumstances. See the Appendix for further citation of these documents and web links.

Chapter 8 of the statutory guidance and Part 3 of the charging regulations allow a **'light-touch' means test** in certain circumstances meaning that that the whole procedure doesn't have to be followed if both parties agree and there is adequate certainty about the funding situation. Examples of where this could be appropriate are where an individual has significant financial resources but requires support, where a small service is being supplied for a general nominal fee or where someone is in receipt of means tested welfare benefits.

### **Generally, only the service user should be charged**

Chapter 8 of the statutory guidance requires local authorities to charge people individually. At paragraph 8.8 it states that a local authority:

*has no power to assess couples or civil partners according to their joint resources. Each person must therefore be treated individually'.*

As a result, your local authority should not routinely include the assets of the spouse or civil partner who is not receiving care and support, only the service user. This means that other people cannot generally be required to pay your service charges, except in certain specific legal circumstances, for example where a service user has a legal right to a share in the value of an asset, for example a bank account, even though it is not in his or her name.

Chapter 8 also makes it clear that a carer cannot be charged for care and support provided to the service user, only for support they directly receive.

As each local authority has discretion on whether to charge this should be set out in its charging policies.

You may find it helpful to first approach an advice organisation such as a local Age UK (see section 15) or Citizens Advice (see section 13).

### **Written record of charging decisions**

Section 17 of the *Care Act 2014* requires that you should be provided with a written record of the charging decision by the local authority. It should explain how the assessment has been carried out, what the charge will be and how often it will be made, and if there is any fluctuation in charges, the reason. The local authority should ensure that this is provided in a manner that the person can easily understand.

## **3.2 Services that should be provide free of charge**

### **Local authority assessment and care planning**

Charging for assessment, the means test and care and support planning is prohibited within chapter 8 of the new statutory guidance (at paragraph 8.14).

However, those assessed as having to pay the full amount to meet their assessed eligible needs in a non-residential care situation have to request the actual service provision (the 'right to request') and may be required to pay an arrangement fee for this (see section 2.4 above). Without this request, there appears to be no local authority duty to meet eligible needs, except for possibly in exceptional circumstances. This is where a person has the mental capacity to express their needs, views and wishes.

At section 18(4) (a) and (b) in the *Care Act 2014*, there is a duty to meet needs for care and support where ‘the adult lacks capacity to arrange for the provision of care and support...but there is no person authorised to do so under the *Mental Capacity Act 2005* or otherwise in a position to do so on the adult’s behalf.’ This duty appears to relate only to those who lack mental capacity as defined by the *Mental Capacity Act 2005*, so it would not generally include someone with a purely physical disability.

Where the local authority is assisting with funding there is no arrangement fee, just the means test and an absolute duty to meet the assessed eligible needs.

### **Intermediate care and reablement**

You may benefit from intermediate care when you leave hospital or are at risk of being admitted to hospital. The aim is to provide services to help you maintain or regain the ability to live independently. The National Audit of Intermediate Care describes four types of intermediate care:

- Crisis response – providing short term care (up to 48hrs).
- Home-based intermediate care – services provided in a person’s own home by a team with different specialities but mainly health professionals such as nurses or therapists.
- Bed-based intermediate care – services provided away from home, for example in a community hospital.
- Reablement – services provided by a team of mainly care and support professionals in a person’s own home to help them live independently.

Part 2 of the new charging regulations confirm that the local authority must not charge for intermediate care (including reablement) for up to six weeks. However the guidance on preventative support says that neither should they have a strict time limit but reflect the needs of the person. Local authorities may therefore wish to apply their discretion to offer them free of charge for longer than six weeks if there are clear preventative benefits. The guidance gives as an example, when someone has recently become visually impaired.

For further information see Age UK’s Factsheet 76, *Intermediate care and reablement*.

## NHS care and services

You will not have to pay for GP and other community based NHS services you need such as district nursing, physiotherapy or speech therapy.

The NHS is responsible for meeting the full cost of care (in a care home or in your own home) for those whose primary need for is for health care. In other words, your needs for care are beyond those that the local authority has a duty to meet. This is called **NHS continuing healthcare** and is often described as 'fully funded care'.

There is a national framework for the assessment of eligibility for NHS continuing healthcare. As well as the main assessment process there is a fast-track tool. This can be used if an individual has a rapidly deteriorating condition that may be entering a terminal phase and so there is an urgent need for a care and support plan to be arranged.

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**Note:** It is important to check that you have been properly assessed for fully funded NHS Continuing Healthcare, if you may be entitled to it. This should take place before the local authority carries out its means test for care and support as otherwise you may be charged for services you are entitled to receive for free.

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For further details on how to check, see Age UK's Factsheet 20, *NHS continuing healthcare and NHS-funded nursing care*.

## Mental health 'after-care' services

Section 75 of the *Care Act 2014* confirms that if you receive after-care services under section 117 of the *Mental Health Act 1983* following a period of detention and treatment in hospital under certain other sections of that Act, you cannot be charged for these services.

## Community equipment and minor home adaptations

Part 2, section 3, of the new charging regulations confirm that community disability equipment, for example hoists, long-handled grabbers and commodes; and minor home adaptations, for example short ramps and grab rails (costing under £1000), must be provided free of charge by a local authority when meeting eligible needs. More costly home adaptations require various funding processes related to the tenure of the property, for example private and rented accommodation would need a means tested Disabled Facilities Grant. See further information on this Factsheet 42, *Disability equipment and home adaptations*.

## Creutzfeldt-Jakob disease (CJD)

Part 2 of the charging regulations confirms that if someone suffers from Creutzfeldt-Jakob disease (CJD) they should be exempt from charges for local authority care and support.

### 3.3 Personal budgets and the care and support plan

Section 26 of the *Care Act 2014* defines personal budgets in law for the first time. This is the local authority's view of the cost of meeting your needs after the assessment and means test. This means that, as part of the care planning process, you should be provided with a personal budget so that you know how much money you are entitled to for meeting your eligible needs and what you should contribute.

**Your care plan must describe:** what your needs are; which needs the local authority will meet and how; the outcomes you wish to achieve; any relevant information and advice on how you might prevent, reduce or delay your need for social care; the personal budget figure; and details of any direct payments that have been agreed. This applies to both the service user (care and support plan) and carer (support plan).

You can have a personal budget as: a **direct payment** (money given directly to you), if appropriate; a budget **managed by the local authority**; or in the form of an **individual service fund** where the funds are managed by a service provider – or a combination of these. You must be given appropriate support, advice and information to allow you to make an informed choice as to how best to arrange your funding process. You must not be put under any pressure, for example to accept direct payments. All that matters is what is best for you to achieve the best possible outcomes.

From April 2016, there will be the option of an **independent personal budget** where an individual simply wants their contribution to meeting their assessed, eligible, needs metered (recorded) towards the new care cost cap and doesn't want to be means tested. This is in the new care accounts that will be introduced at that time. Some local authorities are assessing for the care accounts required for this process prior to April 2016 to avoid capacity issues at that time. It is advisable to find out what your local authority intends to do to ensure that your contributions to meeting your eligible needs are registered by the start date.

### 3.4 **The local authority means test Minimum Income Guarantee**

Part 2 of the charging regulations requires that your weekly income must not be taken below a certain level as a result of the local authority means test for service provision. Section 8 and Annex C of the statutory guidance provide further information on the treatment of income. These both confirm this requirement, which is set down in section 14 of the *Care Act 2014*.

After paying the required charge your income should not be reduced below a minimum income level of **Income Support plus a 'buffer' of 25%** to cover daily living costs. This is including personal allowances and appropriate premiums, but excluding the severe disability premium which is considered to be income available to help towards the cost of care and support. For people aged 60 or over a pensioner premium should be included in the basic level of Income Support or local authorities should use a basic Pension Guarantee Credit calculation.

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**Note:** The Pension Credit calculation for older people who are entitled to this benefit is not stated as clearly in the new statutory guidance as it was previously, but it appears that nothing has actually changed in terms of the required, age-related, procedure.

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The basic weekly level of Pension Guarantee Credit is £151.20 for a single person, which, with the 25% 'buffer' added, gives a total protected income of £189.00. If you are also a carer a further £34.60 will be included in your Pension Guarantee Credit and therefore your protected income should be £223.60. Where a person is a member of a couple the basic figure plus the 'buffer' is £144.27. You should also be allowed to keep any additional benefit or tax credits paid because you have children, but see section 3.5 for the way the additional amount for severe disability is treated. If you do not have capital, as described in section 3.8, and your charges leave you with an **income below these figures**, you should ask for the level of the charge to be reviewed. If you receive meals as part of your package, these are normally charged at a set rate and are outside the calculation of your charge, and will be on top of what you are assessed to pay.

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**Note:** Income Support will be changed to being an element within Universal Credit in a rolling programme between now and 2017.

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Part 4 of the charging regulations confirms that your income should be calculated on a **weekly basis**.

### 3.5 Charges against disability-related benefits

The *Care Act 2014* charging regulations and Annex C of the statutory guidance allow disability benefits to be taken into account as part of your income when calculating how much it is reasonable to charge you.

Disability benefits include Attendance Allowance, the care component of Disability Living Allowance or the Personal Independence Payment Daily Living component, Constant Attendance Allowance and the Exceptionally Severe Disablement Allowance. The last two benefits are paid as part of Industrial Injuries and War Pensions benefits. The mobility component of Disability Living Allowance or the Personal Independence Payment must be disregarded (ignored).

The additional amount for severe disability used in the calculation of the Pension Guarantee Credit (or other means-tested benefits such as Income Support or Income-related Employment and Support Allowance) can also be considered as a disability benefit.

This means that you are likely to be required to pay a charge/contribution towards the care and support you receive if you get Attendance Allowance (or the care component of Disability Living Allowance or the Personal Independence Payment (Daily Living component) on top of your Pension Guarantee Credit (or other means-tested benefits) and you get the additional amount for severe disability as part of your Pension Guarantee Credit. However, your charge should not take you below the minimum income guarantee level.

If you receive services during the day only (any services to help get you out of bed or into bed count as day-time services), only the lower rate of your Attendance Allowance or the middle rate of Disability Living Allowance care component should be taken into account in your charge. If you receive services during the night then the local authority can include your whole Attendance Allowance or Disability Living Allowance care component in the means test assessment.

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**Note:** There is no distinction between day and night needs for the Daily Living component of the Personal Independence Payment. Both the standard and enhanced rates of this benefit can be paid for care needs during the day and/or night.

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### 3.6 Taking disability-related expenditure into account

If the local authority decides to take into account your disability-related benefits, it must also take into account your disability-related expenditure in the means test. This is confirmed in Annex C of the statutory guidance where it is stated that you should be allowed to keep enough benefit to pay for necessary disability related expenditure to meet any needs that are not being met by the local authority. A similar requirement is made in the charging regulations.

Some local authorities disregard set amounts to take account of disability-related expenditure partly to avoid having to ask questions that might be considered intrusive. The amount that is disregarded varies from authority to authority. However if you consider your disability related costs are greater than this set amount you can ask for a full assessment of your costs.

The statutory guidance provides an indicative list of disability-related expenditure examples. It is not possible for the list to be comprehensive as it will vary from person to person. When being assessed to see how much you can pay, you should consider everything you have to buy because of your disability. This could, for example, include:

- extra washing, or special washing power and conditioner for delicate skin;
- community alarms (pendant or wrist);
- special diet;
- special clothing or footwear (or extra wear and tear);
- additional bedding;
- extra heating costs;
- gardening;
- household maintenance (if you would normally have done it yourself);
- any cleaning (if not part of your care plan);
- internet access;
- any care that social services do not meet;
- buying and maintaining disability-related equipment; or

- any transport costs (both for essential visits to the doctor or hospital, but also to keep up social contacts).

It can be **difficult to prove** you have extra costs if you have not actually incurred those expenses, for example, if you have not put the heating on for fear of large bills, or are not following a special diet because of the cost. Local authorities should work out an amount considered to be normal expenditure on heating, for example, for your area and type of housing to assist them in their response to if you claim disability-related expenditure in this context, or what you would spend if you weren't avoiding it out of fear of high expenditure.

**There may be other costs** that should be accepted. The courts have confirmed that local authorities should not be inflexible but should always consider individual circumstances. For example, an authority should not adopt a blanket policy of refusing to acknowledge any payments made to close relatives, as there may exceptional reasons for a particular arrangement. In one case the local authority was criticised for not properly carrying out an assessment of the person's disability related expenditure by doing a home visit, and for rejecting some items of expenditure such as swimming lessons and paying the carer to accompany him on holiday. Such costs should be considered if they are reasonable expenditure needed for independent living.<sup>2</sup>

Local authorities should ensure that appropriate **benefits advice** is provided to all service users and carers at the time of the charging assessment. See section 4 below on the information and advice duty. Assessment of disability-related costs can be carried out in your own home with a personal interview. Staff should be appropriately trained in a range of benefits and be able to give advice about entitlement, help with completing forms and any follow-up action if you want this. If you would prefer independent benefits advice you should be offered this choice.

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**Action:** If you feel that your disability-related expenditure has not been properly taken into account by the local authority or that your costs are greater than the fixed amount usually disregarded by the authority, you can ask for a full assessment of your disability-related expenditure.

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<sup>2</sup> *R(B)v Cornwall CC [2010] EWCA Civ 55*

### 3.7 Income that cannot be taken into account

Part 4 of the charging regulations require that some types of income should not be taken into account in the means test and some should be partially disregarded. Further details of what must or may be disregarded are set out Schedule 1 of the charging regulations. Annex C of the statutory guidance also sets out how income should be treated in this context.

**Full income disregards include:** the mobility component of Disability Living Allowance or Personal Independence Payment; the earnings of a service user or their partner; and the disregard for War Pensions as laid down in the rules for Income Support and Pension Credit. Local authorities should also take account of any local Housing Benefit schemes that allow more generous or full disregards of War Pensions. The rules instruct local authorities to fully disregard the Savings Credit part of Pension Credit when calculating service users' incomes. Ex-gratia payments for former Far Eastern Prisoners of War and any payments made under the Vaccine Damage Payments scheme should also be ignored.

Since 29 October 2012, councils have had to disregard Guaranteed Income Payments (GIPs) made under the **Armed Forces Compensation Scheme** to disabled ex-service personnel, in assessments of service user's incomes. This change does not apply to GIPs paid to people who are not veterans, known as Survivor Guaranteed Income Payments, which will continue to only carry a £10 per week disregard.

Income should be assessed **net of housing and other essential daily living costs**. These may include: rent, water charges, home insurance, outstanding loan repayments (for example for essential repairs), service charges, mortgage interest payments and mobile home site rent. It should also be net of any Income Tax, National Insurance contributions payable and Council Tax. Housing costs and Council Tax should be assessed net of any Housing Benefit or support under the local Council Tax Reduction Scheme. This is confirmed in Annex C of the statutory guidance at paragraph 47:

*The purpose of the minimum income guarantee is to promote independence and social inclusion and ensure that [the service user or carer has] sufficient funds to meet basic needs such as purchasing food, utility costs or insurance. This must be after any housing costs such as rent and council tax net of any benefits provided to support these costs – and after any disability related expenditure. For example, a council tenant will have water rates as part of a rent service charge whilst a private or housing association tenant will not.*

The charging regulations and statutory guidance also set out **capital that should be treated as income** within the means test.

### 3.8 Capital and maximum charges

Part 5 and Schedule 2 of the charging regulations, and Chapter 8 and Annex B of statutory guidance cover the treatment of capital in the means test.

They specify the upper financial limit in non-residential care, but allow a local authority to be **more generous** if it wishes. This relates to the charging power under sections 14-17 of the *Care Act 2014*.

The **upper capital limit is £23,250** and is set out in Annex B of the statutory guidance and Part 3 of the charging regulations. If you have more than this amount you may be asked to pay the full cost or maximum local authority charge for your care - often described as being a 'self-funder'. Capital of between £14,250 and £23,250 is assessed to show an **assumed (or 'tariff') income**. For every £250 or part of £250 of capital between £14,250 and £23,250 you will be assessed as though you have an extra £1 per week income. For example, if you have capital of £14,400 the local authority treats you as having a tariff income of £1 a week.

Your capital total should not include the value of **your home**, which also results in a prohibition on deferred payments in non-residential care.

If your capital is already **earmarked for a specific item or purpose** at the time of the means test, you can explain this to the local authority and ask for it to be disregarded. This point overlaps with the information on deliberate deprivation of assets in section 3.10.

As previously stated, local authorities **cannot charge more than the full cost** of supplying the service. Additionally, the financial assessment of capital must exclude the value of the property which you occupy as your main or only home. Beyond this, the rules on what capital must be disregarded are the same for all types of care and support. However, **local authorities have flexibility** within this framework. For example, they may choose to disregard additional sources of income, set maximum charges, or charge a person a percentage of their disposable income.

In using this discretion, local authorities should consider how to protect a person's income. The statutory guidance, at paragraph 8.64, states that:

*it is inconsistent with promoting independent living to assume, without further consideration, that all of a person's income above basic levels of Income Support or the Guarantee Credit element of Pension Credit plus 25% is available to be taken in charges.*

Local authorities must, therefore, genuinely consider whether it is appropriate to set a general maximum percentage of disposable income (over and above the guaranteed minimum income) which may be taken into account in charges. They should also consider whether it is appropriate to set a maximum charge, for example a maximum percentage of care home charges in a local area. This could help ensure that people are encouraged to remain in their own homes, promoting individual wellbeing and independence – and save money.

If, as a result of any change of policy, your charge significantly increases, you can **complain** and ask for the increase to be phased in gradually.

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**Note:** It is proposed that in April 2016, the non-residential care capital figures will be set at £17,000 (lower threshold) - £27,000 (upper threshold).

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### 3.9 Capital that must be disregarded

Schedule 2 of the charging regulations and Annex B of the statutory guidance set out a list of capital that must or may be partially or fully disregarded in the means test.

In a non-residential care situation, as stated above, the **property** that you are living in as your main or only home is disregarded. This is confirmed in Chapter 8 of the statutory guidance. Generally, the disregards for residential and non-residential are the same except in relation to your main property as you would be expected to leave it in a residential care situation.

Part 5 of the charging regulations describes **income that should be treated as capital** within the means test.

### 3.10 **Deliberate deprivation of assets**

Annex E in the statutory guidance covers deprivation of assets. This allows a local authority to use its **discretion** (power) to decide whether eligible capital and/or income have been deliberately removed from the reach of the means test to avoid or reduce the charge for service provision. The presumption being that all eligible assets can potentially be included. This is, basically, a test of foreseeability and intention.

It also provides powers to deem deliberately removed capital and income as still **notionally (theoretically) available** and for inclusion within the means test calculation.

The Annex outlines **the type of inferences** that a local authority may draw, based on evidence, when carrying out a means test to ensure that all eligible assets are included, for example in terms of income:

- Was it the person's income?
- What was the purpose of the disposal of the income?
- The timing of the disposal of the income? At the point the income was disposed of could the person have a reasonable expectation of the need for care and support?

**Its main power in this context** is to charge the **full cost** of the service if it concludes that eligible resources have not been fully disclosed or have been deliberately put beyond the reach of the means test. Also, where the person has transferred the asset to a third party to avoid the charge, **the third party is liable** to pay the local authority the difference between what it would have charged and did charge the person receiving care. However, the third party is not liable to pay anything which exceeds the benefit they have received from the transfer. If the person has transferred funds to more than one third party, each of those people is liable to pay the local authority the difference between what it would have charged or did charge the person receiving care in proportion to the amount they received.

**As with any other debt**, the local authority can potentially use the **County Court** process to recover debts, but this should only be used after all other avenues have been exhausted. When pursuing the recovery of charges from a third party, a local authority must have regard to Annex D in the statutory guidance, which is on debt recovery.

Annex E in the same document confirms that **there may be valid reasons why** someone no longer has an asset and a local authority should ensure it fully explores this before reaching its conclusions.

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**Note:** When a local authority makes a decision based on discretion it must clearly set out its **reasons** based on **all of the relevant case facts** at that time.

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### 3.11 **Partner's income or capital**

A local authority should only consider *your* means only when assessing your ability to pay. Chapter 8 of the statutory Guidance states that:

*The local authority has no power to assess couples or civil partners according to their joint resources. Each person must therefore be treated individually.*

Therefore, there must be a justifiable reason for looking at someone else's assets as well, such as if savings are jointly held in bank account by a couple.

### 3.12 Charging for carers' services

Section 20 of the *Care Act 2014* gives carers rights to have their eligible support needs met for the first time from April 2015. Previously there was only discretion to meet identified needs. This will, hopefully, increase the profile of carers in each locality. Carers now also have equivalent means test duties.

Chapter 8 of the statutory guidance confirms that carers can only be charged for the services they **receive in their own right** under the *Care Act 2014*. Local authorities cannot choose to say that a service is a carer's service when it is a service to you, just because the carer has more income than you. A service to you might benefit your carer, but it is still just your service.

The statutory guidance also notes that, in many cases, charging a carer could be a **false economy** as it may deter or discourage them in the long-term. Also, that the local authority should treat carers within its local community as **partners in care** and recognise the significant contribution they make in helping to maintain the independence, health and wellbeing of the person they care for; which also compliments the general **prevention** duty in section 2 of the *Care Act 2014*.

Local authorities should therefore consider the likely impact of any charges on carers, particularly in terms of their willingness and ability to continue their caring responsibilities. Ultimately, a local authority should ensure that any charges do not negatively impact on a carer's ability to look after their own health and wellbeing and to continue to care effectively and safely.

From April 2016, carers will have similar care accounts to service users under the new charging procedures.

### 3.13 Charges for respite care

Chapter 8 of the statutory guidance confirms that where a person is a temporary or short-term resident in a care home, a local authority may choose to charge based on its non-residential care charging policies. For example, where a person is resident in order to receive respite care, for the first eight weeks a local authority may choose to charge based on its approach to charging for those receiving care and support in other settings or in their own home.

The statutory guidance is confusing as it uses the terms ‘temporary or short-term’ at paragraph 8.43, but regulation 8 of the charging regulations only refers to ‘short-term’, which is defined in regulation 2 as not exceeding 8 weeks.

### 3.14 Consultation on charging increases

Chapter 8 of the statutory guidance reminds councils that consultation is one of the main principles that should guide reviews of charging practices. Specifically, authorities are instructed to consult users when considering whether and how to set an overriding maximum charge and when to take into account disability-related expenditure. They should also specifically explain any changes in charging policies resulting in significant increases for service users. They should also be able to show that they have looked at the impact of any change to their charging policies could have on older and disabled people.

You should be given clear information about your charges and how they are assessed.

Once a decision about the care to be provided has been made you should have a prompt assessment of your ability to pay, and be provided with written information about how much the charge is. Charges, or any increase in charges, should not be made for the period before you receive notification of the charge.

### 3.15 Free mental health ‘after-care’ services

If you have previously been detained in hospital for treatment under certain sections of the *Mental Health Act 1983*, your on-going care may be provided as an ‘after-care’ service under Section 117 of this Act. Local authorities cannot charge for after-care provided under Section 117. This has been confirmed by the House of Lords and is now stipulated in the chapter 8 of the statutory guidance. Section 117 places a **joint duty** on health and social services authorities to provide these after-care services.

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**Points of law:** In *R v Richmond LBC and others, ex parte Watson and others* [1992] 2 CCLR 402, it was held that after-care provision under Section 117 does not have to continue indefinitely but it must continue until the health body and the local authority are satisfied that the individual no longer needs such services. The judge felt that it was difficult to see how such a situation could arise where the illness is dementia.

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## 4 The information and advice duty

Each local authority must establish and maintain a service for providing people in its area with information and advice relating to care and support for adults and support for carers. The service must provide information and advice on the following areas:

- the local care and support system and how it operates
- the choice of types of care and support, and the choice of providers available to those who are in the authority's area
- how to access the care and support that is available
- how to access independent financial advice on matters relevant to the meeting of needs for care and support, and
- how to raise concerns about the safety or well-being of an adult who has needs for care and support.

Paragraph 3.43 of the statutory guidance states that your local authority must provide information to help you understand what you may have to pay, when and why and how it relates to your type of circumstances. This must include the charging framework for care and support, how contributions are calculated (from both assets and income), the means tested support available and how care and support choices may affect costs. From April 2016, it will also need to include the capped costs system and care accounts. The information and advice provided or arranged by the local authority must be **accessible and appropriate**. 'Independent financial advice' means financial advice provided by a person who is independent of the local authority in question.

## 5 The independent advocacy duty

Where a local authority is working with a service user who has no one to support them, sections 67-68 of the *Care Act 2014* require the provision of an independent advocate in certain circumstances. This is where the person has: **substantial difficulty** understanding and retaining relevant information; using or weighing that information; and in communicating their views, wishes or feelings by any relevant means.

Chapter 7 in the statutory guidance covers independent advocacy. It states that your local authority **must involve you in decisions** made about your care and support. Involvement requires the local authority to help you to understand how you can be involved, how you can contribute and take part and possibly lead or direct the process. You should be an active partner in the care and support processes of: assessment, care and support (or support) planning and review. No matter how complex your needs are the local authority is required to involve you, to help you express your wishes and feelings, to support you to weigh up options, and to make your own decisions.

See section 10 below for related advocacy rights and protections under the *Mental Capacity Act 2005*.

## 6 Social security benefits

You may be able to claim social security benefits to help meet the cost of any extra care and support that you require at home.

Benefits that you may be entitled to include Attendance Allowance (AA), Disability Living Allowance (DLA) or Personal Independence Payment (PIP), Pension Credit and some others.

Refer to Age UK's factsheets and information guides on welfare benefits for up-to-date information on benefits. For information about how to access these resources see section 15.

See section 3.4 for a comment about the planned introduction of Universal Credit.

## Attendance Allowance

This benefit is for people aged 65 or over who, because of an illness or disability, need help with personal care or supervision from another person. For example, you might qualify if you need help getting dressed, washing or going to the toilet. For further information see Age UK's Factsheet 34, *Attendance Allowance*.

## Disability Living Allowance (DLA)/Personal Independence Payment (PIP)

These benefits are for people who are disabled and make a claim before their 65th birthday. DLA has two parts: a mobility component and a care component. PIP also has two parts: a mobility component and a daily living component. For further information see Age UK's Factsheet 52, *Disability Living Allowance*. PIP is replacing DLA on a phased basis which started on 1 April 2013. See Age UK's Factsheet 87, *Personal Independence Payment*.

## Carer's Allowance

Carer's Allowance (CA) is paid to people who are unable to work full-time because they are spending at least 35 hours a week caring for someone receiving AA or middle or higher rate DLA care component. For further information see Age UK's Factsheet 55, *Carer's Allowance* and our information guide, *Advice for carers*.

## Pension Credit

Pension Credit has two parts – the Guarantee Credit, for people over 60 who have reached the qualifying age, and the Savings Credit, which provides extra cash to people of 65 and over who have income over a set level because they have saved and/or have other pensions apart from the State Retirement Pension. There are some minor changes to the Pension Credit rules planned by the government. For further information see Age UK's Factsheet 48, *Pension Credit*.

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**Note:** The Government is increasing the qualifying age for those social security benefits where provision is aligned with the age at which women become eligible for state pension. It will increase from 60 to 65 between 6 April 2010 and 5 November 2018. State Pension age for both men and women will then increase to 66 by October 2020. These changes affect Pension Credit and a number of other benefits. To check the qualifying age at the time you want to claim you can contact The Pension Service (0800 991 234) or use the state pension age calculator at [www.gov.uk/calculate-state-pension](http://www.gov.uk/calculate-state-pension).

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## Other benefits

Some other benefits are available that may help you meet the extra costs of disability or make your home more suitable for your needs.

These include:

- **Reductions in Council Tax** – if you need extra space for a wheelchair, or the living room is mainly for your use (for instance, you now have your bed in a downstairs room) your Council Tax can be reduced by a band.

There are also Council Tax discounts in certain circumstances when a carer is living with you. See Age UK's Factsheet 21, *Council Tax*, for more details.

- **Help with heating and insulation** – may be available through various schemes including the Warm Front Scheme. See Age UK's Factsheet 1, *Help with heating*, for more details.

## 7 Types of payments made for care costs

Once the local authority has identified your eligible needs in the needs assessment and agreed them with you, it will find out whether you should contribute to the cost of meeting those needs. As described above, your capital and income can be taken into account, as well as various essential outgoings in the means test. If the local authority concludes that it should contribute funds to meet your needs, this **can be arranged in various ways** via the personal budget set out in your service users care and support or carer support plan. The most common way that older people receive social care is where the local authority both arranges the service and manages the funding. The following information summarises the alternatives.

### Direct payments

Section 12 of the statutory guidance covers direct **(cash) payments**, which offer an alternative to the local authority arranging services on your behalf. The local authority is required to give you the option of direct payments if you satisfy certain requirements set out below.

**You can choose to employ** a carer yourself, or use a local home-care agency if you do not wish to take on the responsibility of being an employer. You may find that there is a support group in your area to help people with managing direct payments. Carers are also able to receive direct payments instead of directly arranged services. Your local authority must provide appropriate advice and support to assist you.

Direct payments **cannot usually be used to pay a spouse or close relative** living in the same household unless the local authority thinks this is the most appropriate way of meeting your needs, for example to assist with carrying out administrative tasks. The local authority has to monitor that the money is being spent on the care you need. If you want a direct payment but your local authority refuses, you can use the complaints procedure.

### People who lack capacity to consent to or manage a direct payment

The statutory guidance allows direct payments for people who lack the capacity to consent, and to people with mental health problems who are subject to mental health and certain criminal justice legislation.

A direct payment can be made to a willing and appropriate 'suitable person', such as a family member or friend, who receives and manages the payments on behalf of the person who lacks capacity. The guidance to councils describes the process to be followed for appointing a suitable person, the conditions to be met by the suitable person, advice on disputes, when advocacy may be appropriate and approaches to risk and safeguarding.

In addition local authorities have the same duty to offer direct payments to eligible people who are subject to mental health legislation as they do to anyone else in all but the following cases:

- People who are on conditional discharge from hospital under the *Mental Health Act 1983*, where councils will now have a power (but not a duty) to offer direct payments.
- People in receipt of a service which they are obliged to accept as a condition of relevant legislation (listed in Annex B of the statutory guidance). This includes conditions attached to guardianship, leave of absence from hospital or a community treatment order under the *Mental Health Act 1983* and certain provisions in criminal justice legislation. Councils are not required to offer direct payments for these services – but have a power to do so.
- People subject to drugs and alcohol-related provisions of some criminal justice legislation remain excluded from receiving direct payments. The legislation in question is listed in Schedule 1 of the new regulations and in Annex C of the statutory guidance.

See Age UK's Factsheet 24, *Direct payments in adult social care*, for further information.

## **Independent Living Fund**

The Independent Living Fund (ILF) provides discretionary cash payments to enable severely disabled people to pay for personal care or help with household tasks so that they can remain living at home.

In December 2012, following a consultation, the Department for Work and Pensions (DWP) announced that the fund would close on 31st March 2015 and administration of the system and related budgets would be passed to English local authorities at that time. The other UK nation's budgets were to be delegated to their devolved governments.

Opponents of the planned changes expressed concerns in the consultation that local authorities will cut ILF packages when they reassessed them, partly because there will be no local ring fencing requirement for the budgets. There was a legal challenge to the decision to close the ILF and the Court of Appeal overturned the government's decision on the basis that more evidence was required to demonstrate the impact of the decision in terms of the Public Sector Equality Duty. However, an announcement on 6<sup>th</sup> March 2014 meant that the **closure of the Fund will still go ahead on 30<sup>th</sup> June 2015.**

### **ILF care reviews**

A Joint Review Programme is being launched and all ILF users who have not received a visit since April 2013 will be contacted. Joint reviews will assess how clients' needs will be met by the relevant local authority from July 2015 onwards, though their ILF funding will be unchanged until that date. Such reviews will be carried out by local authority social care staff and ILF assessors.

ILF users will be affected in different ways by the transition. About 84% of users - those who became eligible after 1993 (group 2 users) - already receive local authority funding as a condition of their ILF payments, and have their needs jointly reviewed. This group are likely to be eligible for council funding for their whole care package or at least a significant portion of it (subject to their needs meeting the eligibility threshold).

However, of the 3,000 ILF users who became eligible between 1988 and 1992 (group 1 users), when council funding was not a condition of support, almost half are not recorded as receiving a local authority contribution to their care package.

The DWP has conceded that this group may find the transition to local authority funding particularly challenging as they do not have a direct relationship with their local authority and some may not meet eligibility thresholds, thereby potentially losing their ILF funding support. As a result, for this group the quality of the transfer review will be particularly important. They may also wish to investigate their eligibility for local authority services prior to the date of the planned change in procedure.

Chapter 23 of the new statutory guidance notes that the *Care Act 2014* does not include any provision specifically relating to the Independent Living Fund (ILF) closure and transfer to local authorities. It then provides guidance aimed at helping local authorities to prepare for the transfer of ILF recipients into the new care and support system. Guidance has previously been issued in relation to managing the closure, which this new guidance supplements.

Local authorities will have to meet all former ILF users' eligible needs from 1 July 2015. Local authorities will need to plan for the transfer of adults currently receiving ILF payments to ensure that their care and support continues and is not interrupted during this period.

All the duties and obligations under the *Care Act 2014* will apply throughout this process. In particular, there must be an ongoing consideration of the person's wellbeing, which begins with the assumption that the individual is best placed to judge their own wellbeing. Section 23 confirms that the concept of 'independent living' is a core part of the wellbeing principle, and is detailed in the requirement to consider the person's control over their day-to-day life, the suitability of their living accommodation and their contribution to society.

For more information about the Independent Living Fund call the ILF on 0845 601 8815 or look at the website: [www.ilf.org.uk](http://www.ilf.org.uk). Also see the following link: [www.gov.uk/independent-livingfund](http://www.gov.uk/independent-livingfund).

## 8 Disability equipment and home adaptations

### Help with repairs, improvements and disabled facilities

Your local council is required to have a published policy setting out how it will assist householders with **repairs and improvements** to their homes. The assistance is discretionary and may take the form of loans or grants.

There are also means tested **Disabled Facilities Grants (DFG)**, which provide a variety of major improvements and adaptations to make life easier for a person with a disability. Councils have a duty to provide a DFG in certain circumstances, for example when a major adaptation has been identified to meet a need in an assessment and it meets the national eligibility criteria for service provision. The assessment is usually carried out by an occupational therapist employed by the local authority. They then have to work jointly with the housing department who administer the DFG and ensure recommended works are safe and appropriate.

### 'Minor' adaptations

Adaptations costing less than £1000 must be provided free of charge by the local authority where they are assessed as eligible needs.

### Disability equipment

Home adaptations often take place alongside the provision of specialist disability equipment, which must be provided free-of-charge by a local authority under the *Care Act 2014* charging regulations. It is free because, as part of the assessed, eligible, needs, it is loaned to the person from the local community equipment stores.

See Age UK's Factsheet 42, *Disability equipment and home adaptations*.

### VAT relief for people on disability-related equipment

If you have a disability you do not have to pay VAT when you buy specialist equipment that has been designed solely for your use, or on equipment that has been adapted so you can use it. Also, VAT is not charged on certain disability-related services including some building work to adapt your home and the hire of disability equipment such as wheelchairs.

Goods and services on which you do not have to pay VAT are often referred to as 'zero-rated' or 'eligible for VAT relief'.

The rules about these VAT reliefs are quite complex. Not everything that is supplied to people with disabilities is zero-rated for VAT. For further information see the following link: [www.gov.uk/financial-help-disabled/vat-relief](http://www.gov.uk/financial-help-disabled/vat-relief).

## 9 Charges for 'Supporting People' services

You may receive housing-related support services, such as visiting support to help you remain at home or the provision of a warden in a sheltered housing complex, as well as any community care services provided by the local authority.

Assistance with these costs has come from an integrated fund called Supporting People grant administered by the local authority. However, this central government grant was withdrawn in April 2011 and the money is now received by local authorities as part of a general grant. As a result, local authorities now have increased discretion as to whether to provide funding for housing-related support services. In practice, many do but to varying extents and services may or may not be subject to a means-test based on the new charging regulations and statutory guidance.

## 10 *Mental Capacity Act 2005*

The *Mental Capacity Act 2005* 'best interest' standards must be applied when administering the local authority means test. This is specifically noted in chapter 8 of the statutory guidance, but it also mentioned in many other places.

A lasting power of attorney (LPA) may be set up for property and finance or health and welfare, or both, under this Act to protect someone when they lose capacity to express their views and wishes. The LPA can provide advocacy within their area of legal power. Where an LPA has not been arranged when someone loses mental capacity, it may be necessary to apply for a deputyship with Court of Protection to deal with the means test.

In certain circumstances an **Independent Mental Capacity Advocate** must be provided where an individual has no one to represent them. This has similarities with the *Care Act 2014 Independent Advocate* right (see section 5 above), but it does not require the person to have lost mental capacity to trigger it.

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**Note:** See section 2.4 above for information about the required interpretation of the term ‘capacity’ within the *Care Act 2014*.

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See Age UK’s Factsheet 22, *Arranging for someone to make decisions about your finance and welfare*, for more information on this subject.

## 11 Complaints

If you or your carer are not satisfied with your assessment, or are unhappy with the decision reached, you can make a complaint through the local authority’s complaints procedure. You can also subsequently escalate the complaint to the Local Government Ombudsman (LGO) if you are not satisfied with the complaint outcome. If you are arranging and funding your own services without the assistance of a local authority, you can make a complaint about the service you receive to the (LGO).

Current complaints provision is set out in regulations produced in 2009, which are not directly affected by the *Care Act 2014* changes. The local authority must make its own arrangements for dealing with complaints in accordance with these regulations. Paragraph 8.67 of the *Care Act 2014* statutory guidance states that:

*A person may wish to make a complaint about any aspect of the financial assessment or how a local authority has chosen to charge. A local authority must make clear what its complaints procedure is and provide information and advice on how to lodge a complaint.*

From April 2016 a new **appeals system** is due to be implemented which will enable decisions taken by a local authority under Part 1 of the *Care Act 2014* to be challenged and reviewed. At the time of writing (March 2015), it is being consulted upon.

For more information see Age UK's Factsheet 59, *How to resolve problems and make a complaint to the local authority*.

## 12 Appendix

There are four main sources for the new law and rules on adult social care on which this factsheet is based:

### **1/ The Care Act 2014**

<http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

Part 1 of the Act is the main source for this factsheet as it replaces over 65 years of adult social care legislation; there are 4 Parts.

### **2/ Care and Support Statutory Guidance, issued under the Care Act 2014:**

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

This large document (506 pages) supports the *Care Act 2014* and the regulations listed below. A local authority must have regard to its relevant sections when administering the charging system. This means it must understand them and only diverge from their requirements in exceptional and justifiable circumstances. This principle is a continuation of the longstanding one ('section 7') for statutory guidance under the previous legislation, created in 1970. There is significant overlap with some of the regulations, for example section 8 'Charging and financial assessment' and the Annexes at the end of this document, particularly B and C on the treatment of capital and income, have close similarities to the charging regulations mentioned below.

### **3/ The final negative regulations under part 1 of the Care Act 2014:**

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/376204/2903119\\_Care\\_Act\\_Negative\\_Regulations\\_Master.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/376204/2903119_Care_Act_Negative_Regulations_Master.pdf)

This document contains many new regulations including the *Care and Support (Charging and Assessment of Resources) Regulations 2014*.

#### **4/ The final affirmative regulations under part 1 of the Care Act 2014:**

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/366048/43738\\_2902999\\_Regs\\_Affirmative\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366048/43738_2902999_Regs_Affirmative_Accessible.pdf)

A significant regulation within this document is the *Care and Support (Eligibility Criteria) Regulations 2014*.

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**Note:** The 'negative' and 'affirmative' designations above relate to the status of the regulations at time of writing (March 2015), prior to them becoming law on 1<sup>st</sup> April.

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## **13 Useful organisations**

### **Care Quality Commission (The)**

The independent regulator of adult health and social care services in England, whether provided by the NHS, local authorities, private companies or voluntary organisations. It also protects the rights of people detained under the Mental Health Act.

CQC National Customer Service Centre, Citygate, Gallowgate, Newcastle upon Tyne, NE1 4PA

Tel: 03000 616 161 (free call)

Email: [enquiries@cqc.org.uk](mailto:enquiries@cqc.org.uk)

Website: [www.cqc.org.uk/](http://www.cqc.org.uk/)

### **Carers UK**

National charity providing information and advice about caring alongside practical and emotional support for carers. Also campaigns to make life better for carers and influences policy makers, employers and service providers, to help them improve carers' lives.

20 Great Dover Street, London, SE1 4LX

Tel: 0808 808 7777 (free call)

Email: [info@carersuk.org](mailto:info@carersuk.org)

Website: [www.carersuk.org](http://www.carersuk.org)

## **Carers Trust**

Website: [www.carers.org/scotland](http://www.carers.org/scotland)

**Carers Wales** can be contacted at:

Tel: 029 20 811370

Website: [www.carerswales.org](http://www.carerswales.org)

## **Citizens Advice**

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

In Wales there is a national phone advice service on 0344 477 2020. It is available in some parts of England on 0344 411 1444. In Scotland, there is a national phone advice service on 0808 800 9060.

To find details of your nearest CAB check your phone book, or in:

England or Wales, go to [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

Northern Ireland, go to [www.citizensadvice.co.uk](http://www.citizensadvice.co.uk)

Scotland, go to [www.cas.org.uk](http://www.cas.org.uk)

Visit [www.adviceguide.org.uk](http://www.adviceguide.org.uk) for online information

## **Department of Health**

Government department with overall responsibility for social care including residential care homes.

Tel: 020 7210 4850 (national call rate)

Website: [www.gov.uk/government/organisations/department-of-health](http://www.gov.uk/government/organisations/department-of-health)

## **Equality Advisory and Support Service**

A new service, funded by the Government Equality Office, called the Equality Advisory and Support Service began operation on 1st October 2012. The new service replaces the helpline run by the Equality and Human Rights Commission.

FREEPOST Equality Advisory Support Service FPN4431

Tel: 0808 800 0082

Textphone: 0808 800 0084

Website: [www.equalityadvisoryservice.com/](http://www.equalityadvisoryservice.com/)

## **Independent Age**

Provides an information and advice service for older people, their families and carers, focusing on social care, welfare benefits and befriending services.

6 Avonmore Road, London, W14 8RL

Tel: 020 7605 4200

Adviceline: 0800 319 6789

Email: [charity@independentage.org](mailto:charity@independentage.org)

Website: [www.independentage.org/](http://www.independentage.org/)

## **14 Further reading**

### **Disability rights handbook**

39th edition, 2014–2015. £37.50 available from May 2014 (£22.00 if you are receiving benefits). Available from Disability Rights UK, tel: 020 7250 3222 (national call rate), website: [www.disabilityrightsuk.org](http://www.disabilityrightsuk.org) mail order service available. Contact Disability Rights UK for details of annual membership for voluntary and other organisations.

### **Paying for care handbook**

6th edition. £19.50 (plus p&p from £3.99 depending on value of order). Available from Child Poverty Action Group (CPAG), tel: 020 7837 7979, website: [www.cpag.org.uk](http://www.cpag.org.uk), email for book orders: [bookorders@cpag.org.uk](mailto:bookorders@cpag.org.uk)

## **Fairer charging policies for home care and other non-residential social services (the policy guidance)**

Available from the Department of Health website: [www.gov.uk](http://www.gov.uk). If you do not have access to the internet your local library or local Age UK may be able to assist you.

## **15 Further information from Age UK**

### **Age UK Information Materials**

Age UK publishes a large number of free Information Guides and Factsheets on a range of subjects including money and benefits, health, social care, consumer issues, end of life, legal, employment and equality issues.

Whether you need information for yourself, a relative or a client our information guides will help you find the answers you are looking for and useful organisations who may be able to help. You can order as many copies of guides as you need and organisations can place bulk orders.

Our factsheets provide detailed information if you are an adviser or you have a specific problem.

### **Age UK Advice**

Visit the Age UK website, [www.ageuk.org.uk](http://www.ageuk.org.uk), or call Age UK Advice free on 0800 169 65 65 if you would like:

- further information about our full range of information products
- to order copies of any of our information materials
- to request information in large print and audio
- expert advice if you cannot find the information you need in this factsheet
- contact details for your nearest local Age UK

## Age UK

Age UK is the new force combining Age Concern and Help the Aged. We provide advice and information for people in later life through our publications, online or by calling Age UK Advice.

Age UK Advice: 0800 169 65 65

Website: [www.ageuk.org.uk](http://www.ageuk.org.uk)

In Wales, contact:

Age Cymru: 0800 022 3444

Website: [www.agecymru.org.uk](http://www.agecymru.org.uk)

In Scotland, contact Age Scotland

by calling Silver Line Scotland: 0800 470 8090

(This line is provided jointly by Silver Line Scotland and Age Scotland.)

Website: [www.agescotland.org.uk](http://www.agescotland.org.uk)

In Northern Ireland, contact:

Age NI: 0808 808 7575

Website: [www.ageni.org.uk](http://www.ageni.org.uk)

## Support our work

Age UK is the largest provider of services to older people in the UK after the NHS. We make a difference to the lives of thousands of older people through local resources such as our befriending schemes, day centres and lunch clubs; by distributing free information materials; and taking calls at Age UK Advice on 0800 169 65 65.

If you would like to support our work by making a donation please call Supporter Services on 0800 169 87 87 (8.30 am–5.30 pm) or visit [www.ageuk.org.uk/donate](http://www.ageuk.org.uk/donate)

## Legal statement

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