

APRIL 2015

**CARE AND SUPPORT  
CHARGING POLICY**

## **London Borough of Barking and Dagenham Care and Support Fairer Charging Policy**

### **1.0 Introduction**

- 1.1 The Care and Support Charging Policy is designed that the people of Barking and Dagenham pay a fair contribution towards the costs of their care and support provided under the Care Act 2014.
- 1.2 The Care and Support Charging Policy follows statutory legislation and guidance building in safeguards to reflect the needs of local residents.
- 1.3 The legislation and guidance requires all local authorities who will be applying charges for care and support provided in the community to develop and maintain a charging policy.

### **2.0 Legislative Context**

- 2.1 From April 2015, Section 14 and 17 of the Care Act 2014 gives local authorities the discretionary powers to charge for care and support services to service users and carers.
- 2.2 Where the local authority applies the discretion to charge it must follow the Care and Support (Charging and Assessment Resources) Regulations 2014 and have regard of the Care and Support Statutory Guidance (October 2014) in determining its charging policy

### **3.0 Principles**

The principles of the Care Act 2014 are embedded within Barking and Dagenham's charging policy:

- contributions will be determined by reference to both level of service and the service users' means and will be levied after a means tested financial assessment;
- individual financial assessments will ensure that services users and carers are only charged what they can reasonably afford to pay;
- contributions from service users and carers will be transparent and fair;
- contributions will not exceed the costs of providing the service;
- after charges have been applied, service users will retain at least their basic income support or pension credit plus 25% as protected income;

- an additional protection of £10 is available for those aged 85 and over.

#### **4.0 Services Exempt from Charging**

The following exemptions will apply to a Service User who meets the criteria below:

- service users who are diagnosed as suffering with any form of Creutzfeldt Jacob Disease (CJD).
- After care services provided to service users subject to Section 117 of the Mental Health Act 1983.
- up to the first six weeks of the care and support or Intermediate Care services.
- community Equipment and minor adaptations.
- service users in receipt of NHS continuing healthcare, living in their own home where the NHS is responsible for meeting all nursing and personal care needs
- the needs and eligibility assessment and financial assessment for care and support will continue to be provided free of charge.
- any other services which the local authority has a duty to provide through other legislation.

#### **5.0 Non- Chargeable Services**

There are a number of services that London Borough of Barking and Dagenham will continue to provide free of charge, this includes:

- 5.1 Information and advice including Benefit Maximisation and Guidance and Advocacy support provided via the Council.
- 5.2 Care and support services directly provided to the Carer to support them to undertake their carer's responsibilities. Barking and Dagenham continues to use its discretion to provide this service free however this is not to be confused with respite not delivered for the carer, for which the service user (not carer) will be charged (see section 7.2)

#### **6.0 Standard Charge Fees- Flat rate fees and not subject to Financial Assessment**

A flat rate contribution will apply for the services below:

- meals in a day centre

- the cost of putting in place the care and support for a service user in certain circumstances
- administration costs for setting up a Deferred Payments agreement where applicable
- other care and support to which Barking and Dagenham services may apply flat rate charges e.g. cost of a day trip provided by the day service.

6.1 Section 14 (1b) of the Care Act 2014 allows where it has been determined the individual meets the need and eligibility but has savings above the upper capital threshold, the individual can request that the local authority helps to arrange their care and support. The local authority may apply a charge for arranging this care and support.

6.2 Where the local authority arranges the care and support in the circumstances specified above a flat rate charge will apply. The Council will have the discretion to apply the charge each time the local authority is asked to support the individual in arranging their care and support. The flat rate fee of £300 will usually apply from April 2015 but the Council will have to the right to exercise discretion in exceptional circumstances. This fee is subject to annual review.

## **7.0 Services included in the Care and Support Charging Policy**

### **7.1 Non- Residential Care and Support Services**

- Personal budgets and managed personal budgets including those paid through a Direct Payment.
- Homecare care
- Personal support
- Day Opportunities
- Council provided transport
- Services previously funded under Supporting People as part of a service to meet their needs under Fairer Access to Care Services.
- Respite services directly provided to the service user
- Non residential social care and support services provided to individuals in approved premises for offenders or prison.

### **7.2 Respite Services**

Short term respite will be included as part of the service users Personal Budget and will be subject to charges under the Care and Support Charging Policy.

## **8.0 Representation**

### **8.1 Service User consent**

Where the service user has capacity they can give consent for someone else to represent them in managing their financial affairs, the Council will need to see written proof that the consent has been given. It is the responsibility of the Service User or their representative to notify the Council if the representative, or their details change in any way.

### **8.2 Service user lacks capacity**

Where it is identified that the service user does not have capacity and there is no legal representative, the financial assessment should not be completed with the Service User. A referral should be made to the Client Affairs Team for the relevant approach to be made to the Court of Protection to appoint a Deputy.

## **9.0 Financial Assessment Process**

### **9.1 Financial Assessment**

The Service User's financial circumstances will be considered at the time of the assessment of need. Each service user will be required to have a means tested financial assessment based on their income and expenditure in order to assess their ability to contribute towards the costs of their care and support services.

The Council will positively seek to complete a financial assessment for all service users unless they -

- a. are exempt as described under Section 4 of this policy; no contribution will be applied.
- b. are in receipt of a flat rate service only as per Section 6; a flat rate contribution applies.
- c. choose not to be financially assessed. Service users who choose not to be financially assessed will be required to pay the full costs of their care and support service; see Section 9.2.4
- d. Where a light touch assessment is appropriate and there is no need for the Council to obtain additional financial information from the service user or their representative.

A financial assessment will be undertaken at the earliest opportunity. A financial assessment form will be given to the service user by the social worker who will also

advise that there may be a contribution to the costs of the care and support. As part of the financial assessment, service users will be offered a full benefits check, advice and practical support to apply for benefits they might be entitled to claim.

## **9.2 Light Touch Assessment**

A light touch assessment can take place where:

9.2.1 The individual has capital over the capital upper limit, currently £23,250; they can disclose that their capital is over the limit without disclosing further information. In these circumstances the contribution will be the full cost of the care and support. However no full benefits check, advice and support will be offered.

9.2.2 The Council can evidence that the service user is in receipt of benefits that demonstrate that they would not be liable to contribute towards their care and support costs.

9.2.3 A non-disclosure assessment will be applied where a service user:

- refuses to complete a financial assessment; or
- fails to keep without reasonable notice pre-arranged meetings organised for the purpose of obtaining the necessary information for a financial assessment or review; or
- fails to provide proof of income, expenditure or assets within 28 days of the first request from the Council

In all of the above the service user will be charged the full costs of the care and support.

9.2.4 However in cases where the individual lacks capacity or is unable to provide the financial information, a provisional contribution will apply until a full financial assessment can be completed and a retrospective contribution applied-

## **10.0 Basis of the Contribution**

Following national regulation and guidance the financial assessment is based upon the cost of the service, principles of the charging policy and the Service User's ability to pay under the financial assessment process.

## 10.1 Overview

The financial assessment is based on the services user's income, against which deductions will be made for allowable expenditure.

All service users, after paying for their social care services and housing costs will be left with a weekly amount not less than basic income support or Pension Credit Guarantee plus a 25% buffer and a proportion of their disability related benefits.

## 10.2 Calculation of Income

The following sources of income will be fully disregarded in the charging assessment;

- Mobility component of Disability Living Allowance and Personal Independence Payment
- Regular voluntary or charitable income
- Child Tax Credit
- War widows' supplementary pension
- A partner's disability related benefits
- Christmas bonus, winter fuel and cold weather payments
- Social Fund Payments
- Maintenance payments specifically relating to a child
- Child benefit.
- Earnings of the service users

This is not an exhaustive list

The following sources of income will be partially disregarded in the charge assessment;

- War disablement pension, war widows pension (£10 per week disregarded)

This is not an exhaustive list

10.3.1 Where the Council takes into account 100% of the disability related benefit within the financial assessment; disability related expenditure disregard should be applied. A flat rate disability disregard will be applied to their financial assessment as set out below:

- a. Disability Allowance and Personal Independence Payment lower rate care component- £5.00 disregard
- b. Attendance Allowance lower rate and Disability Allowance middle rate care component-£15.00 disregard
- c. Disability Allowance and Attendance Allowance higher rate care component- £25.000 disregard

#### 10.4 Notional Income

In some circumstances a service user may be treated as having an income they may not actually have. These circumstances can include:

- Income the service user could claim but chooses not to;
- Income that has been applied for but not yet received;
- A person who has reached retirement age but has refused to draw down on the maximum annuity income available from their pension plan.

#### 10.5 Welfare Benefits

As part of the financial assessment process, advice will be provided to service users regarding benefit entitlement. Assistance will be available to complete benefit applications should a potential entitlement be identified.

#### 10.6 Capital

The value of capital and assets is as defined in the Care and Support (Charging and Assessment of Resources) Regulations (2014). Service users with capital above the upper capital limit of £23,250 (other than the value of their main home), are liable to pay maximum charge for services they receive. The capital limits will be reviewed annually in accordance with the regulation and guidance.

##### 10.6.1 Capital includes, but is not limited to:

- Any savings account, Building society, bank deposit, Post office Savings bank, National savings etc. Investments, stocks, shares, unit trust, TESSAs, PEPs, ISAs, premium bonds etc
- The value of investment in property, building and land other than that occupied by the Service User
- Any capital held on the person who uses service's behalf by another party, Court of Protection, spouse/partner

- Any element of compensation payment awarded specifically for the costs of providing on-going aftercare.

#### 10.6.2 Tariff Income

Capital under £14,250 is disregarded and income between £14,250 and £23,250 are assessed to determine tariff income. Tariff income is calculated on the basis that of every £250 above £14,250, the Council assumes £1 in income. This means a service user may contribute up to £36 per week.

#### 10.7 Deprivation of assets

Only capital or that apportionment of the capital of the service user will be used within the financial assessment unless there is evidence to indicate that the service user has intentionally deprived themselves of a capital asset in order to reduce their contribution towards their services

Where the Council can demonstrate that the service user has deprived themselves of the asset so as to reduce their contribution, the Council may treat the service user as still having the asset. This may affect the amount the service user will be required to contribute to their services.

#### 10.8 Equity Release Schemes

The most common form of Equity Release Scheme is a Home Reversion Scheme (HRS), where a home owner will transfer the ownership of all or part of their home to a commercial or “not for profit organisation. Depending on the terms of the HRS, the funds released may be translated into an annuity, or a combination of these. Other forms of equity release will be considered on an individual basis and income from the equity release may be considered in the financial assessment.

#### 10.9 Household Expenditure

The following Household Expenditure may be allowed depending on the service user’s circumstances;

- Rent net of housing benefits
- Mortgage net of income support or pension credit assistance
- Board and lodging (as defined and managed in CRAG)

- Council Tax net of Council tax benefit
- Building Insurance (and in exceptional circumstances contents)
- Essential service charges and ground rent net of assistance funding

#### 10.10 Couples

When assessing one member of a couple it is in the Council's policy that all couples are offered a joint assessment to identify the most beneficial outcome, whilst noting that a spouse or partner is not obliged to disclose their resources, should they choose not to.

When assessing one member of a couple as a single person:

- 100% of solely owned and 50% of all jointly owned capital and savings will be taken into account (excluding the value of the main home).
- All assessable income appropriate to the service user will be considered (
- An allowance will be made for 50% of the couple's total joint basic household expenditure;
- The basic level of Income Support or Pension Credit Guarantee will be 50% of the couple's allowance plus 25% buffer; and
- An allowance will be made for service user's proportion of disability related expenditure where they receive a Disability Related Benefit

When assessed as a couple:

- The income and savings capital for the couple will be considered. If the spouse or partner is not willing to disclose this information, the service user will be assessed as a single person;
- An allowance will be made for 100% of the couple's basic household expenditure;
- The 'basic' level of Income Support or Pension Credit Guarantee will be that of a couple;
- The couple's assessed disposable income is then halved prior to considering any individual AA or DLA awarded;
- An allowance will be made for the service user's proportion of disability related expenditure.
- Where one or both of the couple are 85 and over an additional £10 disregard will be applied for each person 85 and over.

## 10.11 Shared Costs

If more than one person lives in the service user's home the additional costs relating to a disability or condition will be shared between the occupants whose needs contribute to the additional costs. The cost of providing domestic assistance or gardening, if allowed, may be attributed to all the adult occupants of the service user's home.

## 11.0 Contribution Period

### 11.1 The contribution period will commence

- At the point at their assessment where the service user or representative/advocate are notified that the individual may need to make a contribution to the cost of their care and support:
- All changes or cessation of service will apply from the Monday following the change or cessation occurs.

### 11.2 Applying the contribution:

The contribution will be the lesser of the service user's available income or the standard cost for the received services supplied subject to the Council's minimum charge of £5.

### 11.3 Direct Payments

Direct payments will usually be made net of any assessed service user contribution.

## 12.0 Review of Financial Circumstances

All Service Users have the right to ask the Council for a review of a contribution for have been assessed if they consider that they cannot pay it.

A re-assessment may be necessary for any one of the following reasons:

- a. An annual review
- b. The Service User requests a re-assessment
- c. A change in the Service User's financial circumstances
- d. There was an error or omission (on the part of the Service User or the Council) in the financial assessment
- e. A complaint is upheld

If a Service User's financial circumstances change, they must advise the Financial Assessment Charging Team as soon as possible, as this may affect their assessed contribution. Changes, which should be notified, include:

- Receipt of a new benefit or changes to benefits.
- Changes to income or allowable expenditure
- If the Service User's capital or savings crosses one of the capital thresholds
- Changes to living arrangements (e.g. the Service User or their partner moves to a care home, the Service User moves to another residence or the number of people in the Service User's household changes)

After a Service User has told the Financial Assessment Charging Team about changes in their financial circumstances or a review is made, a new financial assessment will be completed using the new information that is provided. If the revised assessment results in an increase in the weekly contribution, the Service User will be notified of the revised contribution and it will usually be backdated to when the Service User's circumstances changed. If the revised financial assessment results in a decrease in the weekly contribution, this will usually be backdated to the date that the Service User's circumstances changed.

### 13.0 **Annual Review**

All contributions will be reviewed each financial year to take into account increases to state benefits and service costs. Estimated assessments will be completed based on inflationary uplifts and the Service User will be asked to confirm whether the estimate is incorrect. If no confirmation is received, the estimated charge will be applied

For other components of the financial assessment, such as occupational pension, disability related expenditure, rent and Council tax, a percentage increase linked to the Retail Price Index (RPI) will be applied.

Changes resulting from the annual increase or the application of a revised minimum guaranteed income (protected income) will apply from the date assigned to these changes. An explanation and full details of the revised assessment will be sent to the service user, who will be asked to check the figures and contact the Financial Assessment team if they believe it is not an accurate representation of their circumstances.

The Financial Assessment Team can send a financial assessment review form which the service user can use to advise the Council of any changes to their circumstances. The service user also has the option to request a visit from a member of the Financial Assessment Team to assist in completing the form or undertake a financial review in more detail.

#### **14.0 Waivers**

A waiver is a request to set aside the assessed contribution. A waiver will only be issued where the Council decides this is the best way of delivering its statutory obligations.

If the social worker believes a waiver is appropriate they should refer the matter to a Group Manager in Adult and Community Services through their line manager. When the application is received, the Group Manager will consider the information and make a decision within 20 working days.

If a waiver is applied, the waiver will be subject to annual review or reviewed as the services users financial circumstances changes.

If the decision is in favour of the original decision and no waiver is applied, the service user will be liable for any outstanding charges.

#### **15.0 Appeals and Complaints**

Local Authority Social Services and NHS Complaints Regulations 2009, made under powers in Sections 113 to 115 of the Health and Social Care (Community Health and Standards Act) 2003.

If a Service User is dissatisfied with the way in which they have been treated during the financial assessment process, or the service that they have received, they have the right to make a complaint to the Complaints Officer. The Council has a statutory complaints procedure to ensure that Service User's views and concerns are considered, dealt with and appropriately investigated.

If the decision is turned down and the service user is still not happy with the decision, the Local Government Ombudsman can be contacted.

## **16.0 Debt Recovery**

If the service user does not pay the charges in full or in part and the debt remains unpaid, the Council has the right to seek collection of the debt under Section 69 (2) of the Care Act 2014. If the Council has concluded that the necessary steps are not being taken to pay the debt and the Council has taken steps resolve the situation, the Council will commence legal proceedings.

Section 70 of the Care Act also provides the local authority with the power to recover charges from a third party in circumstances where a person has deprived themselves of assets in order to reduce the care cost contribution payable.

## **17.0 Use of Financial Information and Privacy**

Information will be collected to enable the set up of the DPA. In accordance with the Data Protection Act 1998, this information will only be shared with other relevant agencies in accordance with the data protection principles/exemptions or with the written consent of the service users or their legal representative/advocate.

## **18.0 Policy Review**

This policy will be reviewed in March 2016 and at least annually thereafter. This policy may also be subject to review at other times in response to case law, statutory amendment and Guidance from the Department of Health or other statutory organisations.

## **19.0 Further information**

Further information can be obtained from: