

Individual Decision

The attached report(s) will be taken as
Individual Portfolio Member Decision(s) on:

Tuesday, 1st June, 2010

| Ref: | Title | Portfolio Member(s) | Page No. |
|-------------|---|----------------------------------|-----------------|
| ID2131 | Moving Respite Charging from Residential Charging to Using Fairer Charging Principles (ID2131) | Councillor Joe Mooney | 1 - 32 |



Individual Executive Member Decision

| | |
|---|--|
| Title of Report: | Moving Respite Charging from Residential Charging to using Fairer Charging principles |
| Report to be considered by: | Individual Executive Member Decision |
| Date on which Decision is to be taken: | 01 June 2010 |
| Forward Plan Ref: | ID2131 |

Purpose of Report: To amend the wording of the initial decision to move the financial assessments for respite care from the residential charging to use fairer charging principles following clarification from the Department of Health.

Recommended Action: That the Executive Member for Community Care approves this move.

Reason for decision to be taken: To correct the wording of the initial decision to use fairer charging principles to assess an individual contribution to their respite care.

Statutory: **Non-Statutory:**
Other:

Other options considered: none

Key background documentation: Fairer Contributions guidance
Charging for Residential Accommodation Guidance (CRAG)

| Portfolio Member Details | |
|----------------------------------|--|
| Name & Telephone No.: | Councillor Joe Mooney - Tel (0118) 9412649 |
| E-mail Address: | jmooney@westberks.gov.uk |
| Contact Officer Details | |
| Name: | Jo England |
| Job Title: | Client Financial Services Manager |
| Tel. No.: | 01635 519006 |
| E-mail Address: | jengland@westberks.gov.uk |

Implications

| | |
|---------------------------|--|
| Policy: | We have the option to charge for respite care using either Fairer Charging principles or CRAG but with the introduction of Personal Budgets it is more equitable to use fairer charging principles as opposed to a flat rate charge. |
| Financial: | By changing the way we assess for respite some clients will be charged less but the net result will be an increase in revenue to the authority. |
| Personnel: | none |
| Legal/Procurement: | none |
| Environmental: | none |
| Partnering: | none |
| Property: | none |
| Risk Management: | none |
| Community Safety: | none |
| Equalities: | none - EIA completed 19.3.10 |

Consultation Responses

Members:

| | |
|--|---|
| Leader of Council: | no comments received |
| Overview & Scrutiny Management Commission Chairman: | no comments received |
| Select Committee Chairman: | |
| Ward Members: | |
| Opposition Spokesperson: | Comments have been received from the Opposition Spokesman, where appropriate the report has been amended to take on board those comments. |
| Local Stakeholders: | 405 existing Respite clients |
| Officers Consulted: | Jan Evans, Laura Timms, Sue Hancock, Amanda Joyce, Leigh Hogan |
| Trade Union: | Not applicable |

| | | |
|--|--|------------------------------|
| Is this item subject to call-in. | Yes: <input checked="" type="checkbox"/> | No: <input type="checkbox"/> |
| If not subject to call-in please put a cross in the appropriate box: | | |
| The item is due to be referred to Council for final approval | | <input type="checkbox"/> |
| Delays in implementation could have serious financial implications for the Council | | <input type="checkbox"/> |
| Delays in implementation could compromise the Council's position | | <input type="checkbox"/> |
| Considered or reviewed by OSC or associated Task Groups within preceding 6 months | | <input type="checkbox"/> |
| Item is Urgent Key Decision | | <input type="checkbox"/> |

Supporting Information

1. Background

- 1.1 Charging for residential respite care is currently subject to CRAG using a flat rate charge depending on age for the first 28 nights in a financial year. Any nights over 28 nights are then assessed on an individual basis.
- 1.2 This method of charging is historic from when the assessments were undertaken by the Finance Team and was an easier method of assessment for a team that did not have the skills, resources or equipment to undertake an individual assessment for each client.

2. Personal Budgets

- 2.1 With the introduction of Personal Budgets and the Fairer Contribution Guidance from the Department of Health one of the options is that charging for residential respite care is subject to fairer charging principles as opposed to CRAG.
- 2.2 This revised process would mean that the residential respite service will be added to any other services that are currently subject to a Fairer Charging Assessment.
- 2.3 Clients who receive a personal cost will also be charged against the actual monetary cost of the service as opposed to the unit cost set down in the fees and charges as they have the ability to decide where/how their service is purchased within their agreed personal budget amount.

3. Budgets

- 3.1 The change to Fairer Charging principles will result in some clients paying nothing for their residential respite where they currently pay a flat rate charge. Other clients will see an increase in their charge as the assessment will be based on their ability to pay.
- 3.2 The overall net result of moving all clients to Fairer Charging principles will be an increase in revenue for the West Berkshire Council. Assuming all current clients continue to have respite the annual increase in income will be approx £40K. This will come from those clients adversely affected by the change.
- 3.3 Out of the 405 clients who have had direct payments in the financial year 2009 – 10 a total of 82 clients are expected to be adversely affected by this change. The

majority of these clients are full cost clients, who because of the level of their capital (as set by the Department of Health) exceed the upper capital threshold. 22 clients will have an increase in their charge due to their current Fairer Charging assessment being higher than the flat rate charge. These increase range from £5.90 per week to £130 per week.

- 3.4 It is proposed to introduce a detriment scheme for those clients who have had respite in 2009 -10 who are adversely affected. It is proposed that their charge will increase by 33% each year over the next 3 years until they reach their maximum assessed charge.

4. Long term Respite

- 4.1 Any Respite that exceeds 56 consecutive nights (8 weeks) will continue to be assessed using CRAG as this is part of the CRAG legislation and outside of the Fairer Contributions guidance.
- 4.2 For those receiving Direct Payments, the maximum amount of continuous residential care is 4 weeks.

Appendices

Appendix A – Respite Charging Policy

Appendix B – Fairer Contributions Guidance

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Charging Policy for Respite Care Services

Document Control

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|--|-------------------------|-------------------------|------------|
| Document Ref: | CPRCS1.0 | Date Created: | April 2010 |
| Version: | 1.0 | Date Modified: | |
| Revision due | March 2011 | | |
| Author: | Jo England | Sign & Date: | |
| Owning Service | Housing & Performance | | |
| Equality Impact Assessment: (EIA) | Date undertaken: | 19.3.10 | |
| | Issues (if any): | | |

| | | |
|---|--------------|--|
| Chief Executive | Sign & Date: | |
| Corporate Director (Community Services) | Sign & Date: | |
| Corporate Director (Children & Young People) | Sign & Date: | |
| Corporate Director (Environment) | Sign & Date: | |

Change History

| Version | Date | Description | Change ID |
|---------|------------|-------------|-----------|
| 1 | April 2010 | | |
| 2 | | | |
| 3 | | | |

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Purpose

The purpose of this policy is to establish a clear framework for charging for Respite Care for Adult Social Care Services.

Applicability

This Policy applies to:

All non-school based employees working for the Council, including those working from home or at non-Council locations.

Other persons including Elected Members, Consultants, Agency staff and Contractors working for the Council, external organisations working with the Council, whilst engaged on Council business .

It is the responsibility of all Adult Social Care staff to familiarise themselves with and adhere to this Policy.

Adherence to this Policy is a condition of working for the council or using its assets. This Policy has had consultation with Heads of Service and has been ratified by an Individual Decision.

Policy

It is the Policy of the Council to ensure that Adult Social Care Service Users are charged fairly and consistently for Respite Care, in line with Department of Health Guidance.

Implementation

This Policy will be supported and implemented by the development and publication of Respite Charging Guidance information leaflet.

Roles and Responsibilities

The overall responsibility for the Respite Charging Policy within WBC rests with The Corporate Director for Community Services.

The responsibility for day-to-day management of the Respite Charging Policy throughout West Berkshire Council rests with the Client Financial Services Manager, they are also responsible for maintaining this Policy and providing guidance on its implementation.

All managers are directly responsible for implementing this Policy and any sub policies and procedures within their service areas, and for the adherence of their staff and others.

All personnel detailed have an individual responsibility to adhere to this Policy and any relevant Standards and/or Procedures.

Failure to comply with WBC Respite Charging Policy

This document provides staff and others with essential information regarding the Respite Charging Policy and sets out conditions to be followed. It is the responsibility of all to whom this Policy document applies to adhere to these conditions. Failure to do so may result in:

- withdrawal of access to relevant services
- informal disciplinary processes

- formal disciplinary action

Additionally if, after internal investigation, a criminal offence is suspected, the Council may contact the police or other appropriate enforcement authority to investigate whether a criminal offence has been committed.

Review

This policy will be reviewed to respond to any changes and annually.

Background

In 2009 the Department of Health issued guidelines called Fairer Contributions due to the introduction of Personal Budgets. This confirms that Local Authorities have the option to charge for respite care by charging an amount that it is reasonable for the service user to pay or by using CRAG. In assessing what is reasonable to pay, the Local Authority may apply the principles of Fairer Charging. From April 2010 West Berkshire Council started to charge for all respite care services using Fairer Charging principles as opposed to CRAG.

Statutory framework

Councils have had the power to charge for social services since the introduction of the 1948 National Assistance Act. The framework for charging for adult recipients of Non-Residential care was consolidated in 1983 with the Health and Social Security Adjudication's [HASSASSA] Act under which councils can exercise discretionary powers [section 17]. Consideration of the Disability Discrimination Act 1995 (as amended) and the Human Rights Act 1998 requires that an equitable approach to charging is taken and that no group is unfairly discriminated against.

It is for the Local Authority to decide whether it will carry out a financial assessment under CRAG or whether it will charge an amount that it appears reasonable for the resident to pay for stays of 8 weeks or under in residential care. The 2009 Guidance in relation to Personal Budgets confirms that this may be done by using the principles of Fairer Charging.

In order that everyone is treated the same, West Berkshire Council have decided to charge all service users accessing respite services, including those with Personal Budgets or Direct Payments using the principles of Fairer Charging in line with the 2009 Guidance.

For those receiving Direct Payments, the maximum amount of continuous residential care is 4 weeks.

Circumstances where no charge is made

Some services are excluded from the charging process altogether where there is no legal authority to charge. In addition there may be exclusions of groups of people which, when applied, mean that an individual is exempt from the calculated charge. Examples of exclusions include: -

- After-care services under the Mental Health Act (Section 117).

- Advice and assessment.
- Sufferers of CJD.
- All clients whose income is less than basic Income Support or Pension Credit + 25% will not be charged.
- Individuals receiving intermediate care services.
- Any services funded by the local Health Authority under a Section 28A agreement.
- Clients with an assessed charge of less than £1.25 per week.

Services for which a Local Authority can charge

Councils provide a wide range of respite care services. The following respite services are those for which a charge can be made according to need and after assessment: -

- Direct Payments
- Respite care in a residential/nursing home (not exceeding 56 consecutive nights)
- Personal Budgets

Services for which West Berkshire Council will charge

As a general principle, the guidance states charges will reflect the actual cost of the service and will relate to the hours or units of the service received.

Financial assessment

To ensure that everyone is treated fairly each individual will have a financial assessment at the point where they are allocated a non-residential care service provided by West Berkshire Council. The charge assessment will be based on the user's overall income, allowable expenditure and disability needs. The Council will ensure that service users will have access to appropriate benefits advice at the time of the assessment. In West Berkshire the financial assessment and benefit advice will be undertaken by specialist Welfare Benefit Officers.

Guidance notes (WB 1) about charges will be given to individuals at the same time as they enter the care assessment process so that people will not commit themselves to particular care plans without knowing what they might be required to pay. Users will be given a record of how their charge has been calculated and informed that they have a right to be re-assessed should their circumstances change.

No one will be left with less than the basic income support or Pension Credit plus 25% after paying for services. This basic level includes premiums appropriate to the user but not the severe disability premium.

The care services will be allocated in accordance with the criteria set out in the DOH guidance Fair Access to Care Services.

If a service user does not wish to disclose their finances or fails to disclose their finances then they will be charged the full cost of their total services.

If savings/capital are held in joint names, an equal proportion will be assumed unless there is evidence to prove otherwise. The savings/capital held solely by a service users partner will be disregarded.

Any service user who has capital/savings less than the maximum figure as set out in CRAG will have a tariff income, based on benefit rules added to their income when they are financially assessed.

The following income will always be disregarded:

- service users earnings
- earnings replacement payments paid by Critical Illness Policies
- the mobility component of Disability Living Allowance
- the night element of the care component of Disability Living Allowance and Attendance Allowance if no nightcare provided by Social Services
- War Disablement Pension/Armed Forces Compensation Scheme and War Widows Pension as per local scheme, however any Constant Attendance Allowance paid will be included
- All income from a charitable or voluntary source and income derived from personal injury trust funds will be wholly disregarded from 9 April 2007
- first £15 of any regular maintenance payment received
- Savings Credit element of Pension Credit
- Working Tax Credit
- Child Tax Credit
- All of a partner's income is also ignored

All other income will be used in the assessment along with tariff income from savings/capital.

Assessment of disability-related costs

People with disability will be charged on their full income but will be given extra allowances for disability-related expenditure. This will be an integrated assessment normally in the user's home, consisting of: - income assessment, benefit entitlement assessment and disability expenditure assessment. In assessing disability-related expenditure the council will make allowance for the following actual expenditure: -

- Payment for the reasonable cost of a privately purchased community alarm system, net of housing benefit or Supporting People grant after 2003, provided that this has been deemed a necessary expenditure.
- The costs of privately arranged care services, including respite care in the home, will only be allowed if an occupational therapist or care manager believes it to be an integral part of care. The allowable cost will only be subject to the net cost of the Council providing the service.
- Privately arranged Residential Respite care.
- The costs of using of a laundry service other than that provided by the Council may be allowed in line with charges for the in-house service [currently 40 minutes of home care plus the cost per load]. Additional expenditure, for example for incontinence or specialist soap powders, will be allowed subject to confirmation that this is a necessary expenditure.
- The extra costs of a special diet may be allowed where this is in relation to medical need, confirmed by the GP via the client and not supplied by a prescription.

- The cost of special or additional clothing, shoes or bedding may be allowed where this has been shown to be necessary by an occupational therapist, district nurse or physiotherapist.
- Extra heating costs may be allowed in cases where a GP confirms that this would have a material impact on a person's health.
- The reasonable cost of essential basic garden maintenance may be allowed for service users unable to perform this task for themselves.
- Basic cleaning will be an allowable cost for individuals identified as unable to undertake this task and where the local authority does not provide the service. People living in rented accommodation should only have this cost included if it is not covered by Supporting People.
- The purchase, maintenance and repair of necessary disability-related equipment may be allowable though it may be necessary to verify why the equipment has not been provided through appropriate sources.
- Personal assistance costs, e.g. payment for the transport, meals or holiday costs of carers, may in exceptional circumstances, be allowable.
- The Council will take into account any transport costs above the mobility component of Disabled Living Allowance [DLA].
- Hair washing where an individual is unable to do it for themselves
- Any other disability expenditure that is considered reasonable taking into account the individuals abilities and disabilities
- Alternative therapies where they are not available from the local Health Authority

Allowable Disability Related Expenditure will be for services deemed necessary as a result of disability or for health and safety reasons. Costs arising simply from a matter of personal choice, where a reasonable alternative is available at lesser charge, will not normally be allowed.

The care manager or other professional may be required to assess the need for disability-related expenditure.

Evidence of expenditure will be requested and there will be a requirement for evidence to be kept in future. In the first instance this should be an invoice, failing this, duplicate receipts will be required.

Items for which a Social Fund Community Care Grant has been paid will not be allowed in the assessment.

In some cases only 50% of expenditure may be allowed if it is deemed to be a joint expenditure. However if the expenditure is due to the fact that a carer is not able to undertake the task due to the amount of time they are caring then 100% of the expenditure will be allowed.

Other allowable expenses

Allowable expenses other than disability related expenditure will include

- Accommodation cost - rent less Housing Benefit
Mortgage less Income Support
- Service charges - Any charge for housing services not covered by benefit
- Water Rates/Charges

- Council Tax (less Council Tax Benefit)
- Building Insurance – actual amount not including contents insurance
- Building Maintenance (set amount per week)

Where the expenditure is a joint expenditure then 50% of the expenditure will be allowed, unless it can be shown that the service user is responsible for 100% of the expenditure.

Charge calculation

The guidance implies that the individual will have one assessed charge for all services. All services will be added together before a service user is financially assessed.

The guidance allows for expenses listed above, a buffer of 125% of the basic Income Support or pension Credit personal allowances and disability related expenses as listed above.

The total deductions are then deducted from the total income to give an assessable income of which 100% will be used as chargeable income (prior to April 2008 only 90% was used). If the cost of the total care package is less than the chargeable income then the cost of the care package will be the maximum weekly charge.

Appeals Process

The service user has the right to ask for a review of their assessment and the charges, which have been determined as part of the Appeals and Waiver Policy and Procedure.

Review of Charges

Charges will be reviewed on an annual basis as part of the Best Value Review and service planning.

Any service user who has capital/savings in excess of the maximum figure as set out in the Charges for Residential Accommodation Guidance [CRAG in LAC(99)9] will be charged the cost of the service received without a financial assessment. Capital and savings can include cash, funds held in a bank, building society and Post Office accounts, saving bonds, premium bonds, stocks and shares, ISAs, Peps, Value of land or property (other than the home in which they live). This list is not exhaustive. Ex gratia payments made to former Far Eastern prisoners of war and payments made under the Vaccine Damage Payment scheme will be disregarded entirely as per guidance in CRAG. The treatment of all capital/savings will be as per the guidance in CRAG.



Fairer Contributions Guidance

***Calculating an Individual's Contribution to their
Personal Budget***

| DH INFORMATION READER BOX | |
|--|---|
| Policy HR / Workforce Management Planning / Clinical | Estates Commissioning IM & T Finance Social Care / Partnership Working |
| Document Purpose | Best Practice Guidance |
| Gateway Reference | 12240 |
| Title | Fairer Contributions Guidance |
| Author | DH |
| Publication Date | 14 Jul 2009 |
| Target Audience | Directors of Adult SSs, Directors of Finance, users of social services |
| Circulation List | |
| Description | This document provides guidance for councils in England to use when determining what contribution, if any, a person receiving a personal budget should make towards it. It supplements the Fairer Charging Guidance issued in 2003. |
| Cross Ref | Fairer charging policies for home care and other non-residential social services: Guidance for Councils with Social Services Responsibilities (September 2003) |
| Superseded Docs | N/A |
| Action Required | Councils providing personal budgets should implement the guidance by March 2010 |
| Timing | |
| Contact Details | SCPI Wellington House 133-155 Waterloo Road, London SE1 8UG |
| For Recipient's Use | |

Fairer Contributions Guidance

Calculating an Individual's Contribution to their Personal Budget

Prepared by The Department of Health

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<http://www.dh.gov.uk/publications>

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Fairer Contributions Guidance Calculating an Individual's Contribution to their Personal Budget

Introduction

This guidance is issued under section 7 of the Local Authority Social Services Act 1970.

Councils offering personal budgets are expected to implement this guidance at the latest by March 2010.

The introduction of personal budgets is an integral part of the transformation of adult social care systems.

A personal budget is an upfront allocation of social care resources to a person who is eligible for support. Following an assessment of their need for non-residential social services ("needs assessment"), a person who the council consider eligible for support will be allocated an amount of money necessary to meet their needs.

Following the needs assessment and calculation of how much the personal budget might be (the indicative amount), the council will undertake an assessment of the person's financial circumstances in accordance with the guidance on Fairer Charging Policies for Home Care and other non-residential Social Services (the Fairer Charging Guidance) issued in 2003. The council will also work out what the person's maximum contribution would be in accordance with the Fairer Contributions guidance. If the financial assessment shows that the person has enough income or savings to contribute to their personal budget, the council will tell them what the actual contribution might be, which will be the lower of the maximum contribution and the available income based on the financial assessment.

A care plan or support plan will then be prepared, setting out how the person wants their needs to be met using their personal budget. They may ask the council to arrange all the care and support they need to meet their needs or they may ask the council to let them have the whole amount of the personal budget paid to them as a direct payment. Alternatively, they might decide to have a mixture of the two with some services arranged by the council and some of the personal budget paid as a direct payment. Once the support plan has been completed the

council will confirm the amount of any actual contribution that the budget holder may be required to make.

This guidance sets out how a person's contribution, if any, to their personal budget might be calculated.

Councils may wish to continue to require people who have savings above the Charging for Residential Accommodation Guidance (CRAG) higher threshold to pay the full cost of any services they receive. Councils are reminded that people who can fund their own care are still entitled to an assessment of their needs. These people who are eligible for social services and who as a result of the financial assessment will meet the full costs of their care, are still entitled to help in making appropriate care arrangements. People who do not meet the eligibility criteria should expect appropriate signposting to alternative sources of support. Where councils do not offer direct help following assessment, they should be prepared to provide individuals with useful information and advice about other sources of support, including universal and open-access services, where appropriate.

1. Background

1.1 The Fairer Charging guidance was designed for an era of traditional local authority social care provision where people received services arranged by a local authority. However, with increasing numbers of people receiving direct payments and the introduction of personal budgets to support greater choice and control comes the need to consider how an individual's contribution, if any, towards the cost of non-residential services might be worked out in the context of personal budgets. This Fairer Contributions guidance sits alongside the Fairer Charging guidance which, along with its underlying ethos and principles, is still valid, and the Charging for Residential Accommodation Guidance (CRAG) to which the Fairer Charging guidance refers. In the case of any uncertainty as to the matters covered by the Fairer Charging guidance councils should refer back to these original documents.

1.2 To date, a service user's charge for non-residential services has typically been based on the number of units of different types of services they have received. In the case of direct payments, financial contributions towards the cost of services have been calculated on a comparable basis. In the same way, people will have the option to take a personal budget as

commissioned services or as statutory direct payments or a mixture of both. With those personal budgets that are taken as direct payments rather than commissioned services, the individual may purchase different types of non-residential social services such as community care services as defined in section 46(3) of the NHS and Community Care Act 1990, including those listed in section 2 of the Chronically Sick and Disabled Persons Act 1970, from week to week, and these services may not correspond with the typical service classifications used by councils. We anticipate that individuals will increasingly choose varied forms of care or support which are designed to meet their specific agreed outcomes, as defined in their support plan.

1.3 Currently, the cost of service for charging purposes is calculated depending on the composition of an individual's care package and according to the policy of the local council regarding charges for homecare, daycare, meals, transport and other services. This cost of service is then compared with the individual's available income, determined by a financial assessment in accordance with the Fairer Charging guidance, and the individual is charged no more than the lower of these two amounts.

1.4 This document provides guidance on how both the chargeable amount of a personal budget, and the actual contribution made by the personal budget holder, might be calculated. The chargeable amount is the maximum possible contribution a person can be asked to make to their personal budget, subject to their available income and savings. The calculation of the actual amount to be paid begins with a means test which determines the income and savings available to make a contribution. This part of the process is covered in the original Fairer Charging guidance and remains unchanged. Thus this guidance does not introduce any changes to the way councils undertake financial assessments, or how they treat the income or savings of personal budget holders.

1.5 The person's actual contribution is the lower of the maximum possible contribution and the individual's available income.

2. Calculation of chargeable amount

2.1 The way a chargeable amount is calculated will depend on each council's charging policy.

2.2 Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 (HASSASSA) allows Councils to make a reasonable charge for non-residential services they provide. So there are two aspects to discretion:

- whether or not to charge for a service
- where a service is charged for, what is a reasonable charge

Where a direct payment is to be made, regulation 5(2) of the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003 provides for the responsible authority to determine, having regard to the prescribed person's means, the amount (if any) it is reasonably practicable for them to pay towards securing the provision of the relevant service. According to the guidance on direct payments the relevant guidance is the Fairer Charging guidance. In accordance with the Fairer Charging guidance, councils should treat people receiving direct payments as they would have treated them under the council's charging policy, if those people were receiving the equivalent services.

Where councils provide no free or subsidised services

2.3 The method outlined in the following section applies where councils do not provide any free or subsidised social services, or where they have decided to no longer provide such free or subsidised services. It is applicable whether a person uses his or her personal budget on council commissioned services or receives it as a direct payment, or a mixture of both. (See Example 1 in Appendix 2).

2.4 Councils should calculate a percentage up to 100% to be applied to all personal budgets, across all client groups except where specifically excluded from charging in accordance with the Fairer Charging Guidance to determine the proportion of a person's personal budget that will be subject to a service user contribution. Applying this percentage to a person's personal budget will produce the council's maximum possible charge to that person for its service(s) or the person's maximum possible contribution towards their direct payment, depending on how the personal budget is deployed. This figure will then be compared against the person's available means as calculated in accordance with the Fairer Charging Guidance and the person's actual contribution will be no more than the lower of the two figures.

2.5 Where a personal budget is taken as a direct payment, this final figure will be the person's contribution or reimbursement towards the direct payment and where a personal budget is taken as a traditional service the final figure will be the amount the council recovers for the service. Where a council was previously providing free or subsidised services but has decided to no longer do so, particular care will be needed in calculating the percentage to be applied to personal budgets to ensure that individuals are not expected to make unreasonable contributions or contributions which are not reasonably practicable for them to pay. The Fairer Charging Guidance gives further guidance on setting the level of charges. Paragraph 3 of the Introduction states that councils need to ensure that their charging policies are demonstrably fair as between different service users.

2.6 As set out in the Fairer Charging guidance, ability to pay should not be assessed and charges should not be levied for any one service in isolation. The impact of charges for one of these services on the user's income should be taken into account in assessing whether charges should be levied for another service. The same charge assessment should normally be applied in assessing charges for these services. Councils should take account of no more than the full cost of providing the service, excluding costs associated with the purchasing function and the costs of operating the charging system. It is a matter for councils to decide whether to levy a contribution to costs or to seek to recover full costs, where possible.

2.7 Councils will need to consider inter alia whether to use the levels of charge to target subsidy at priority users or services and whether charging full costs for some users will create perverse financial incentives for them to enter residential care. Charges which reflect the costs of services provided to users and are based on hours of service provided are generally preferable to charges based on broad 'usage' bands, which can create perverse incentives and spread subsidy unfairly. Councils will need to consider how to set the level of charges in relation to the costs of the services provided to users.

2.8 Councils should be able to show that the charge or contribution is first and foremost reasonable in accordance with section 17 of HASSASSA or with the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003, as the case may be.

2.9 The resulting contribution should also be no more than is reasonably practicable for the person to pay towards the service.

Where councils provide free and/or subsidised services

2.10 Councils have the discretion not to charge for services at all or to charge for services selectively if they so wish. The Fairer Charging guidance gives guidance about exempting from charges specific customer groups and councils should act in accordance with this.

2.11 The method outlined in the following section applies where councils provide free or subsidised social services and decide to continue to do so. It is applicable whether or not the person receives a direct payment as part of their personal budget. Examples 2 and 3 in Appendix 2 illustrate the method.

2.12 Where councils wish to continue providing free or subsidised services and a portion of the personal budget is going to be deployed on such services from the council or on their equivalent services via direct payments it would be fair to exclude their value from any portion of the personal budget to which a percentage is applied. In certain cases it will be mandatory to exclude services from charging, for example community equipment and minor adaptations (see para 7.1 below).

2.13 At first sight it might appear complicated to exclude the value of free or subsidised services before applying the percentage to the balance of the personal budget. However, if a blanket percentage charge were to be applied to a personal budget by a council that provided free or subsidised services, and the personal budget holder decided that they wanted to receive a direct payment rather than council services, the outcome is likely to be that that person would be required to contribute more than a personal budget holder who decided to use the services provided by the council.

2.14 In determining the chargeable amount, councils should separately calculate:

1) any chargeable amount for that part of the personal budget which is to be spent on services which, or the equivalent of which, are not subsidised when provided by the council, ensuring that non-personal budget holders are not treated less favourably than the budget holder and

2) any chargeable amount for that part of the personal budget which is to be spent on services which, or the equivalent of which, are subsidised services when provided by the council (based on the council's charging policy).

2.15 These two figures added together will give the maximum possible contribution to the personal budget that the person might be asked to make, subject to any lower locally set maximum contribution and the person's available income. The following paragraphs explain how this works.

2.16 Councils should apply the percentage calculated as in paragraph 2.4 across all non-exempted client groups, to any portion of a personal budget that is to be spent on services which when provided by the council are not subsidised. This gives the maximum possible charge that the person might be required to pay towards that portion of the personal budget that is to be spent on non-subsidised services or their equivalent via direct payments.

2.17 The maximum charge for that portion of the personal budget to be spent on services which are subsidised by the council or their equivalent via direct payments is determined in accordance with the council's policy for charging for these services. Councils should be able to show that both charges are reasonable in accordance with section 17 of HASSASSA.

2.18 The total maximum charge will be the total of the two amounts arrived at in paragraphs 2.14 and 2.15. This should be compared with the available income of the individual (calculated in accordance with the Fairer Charging guidance) and any locally set lower maximum charge. The person's actual contribution will be the lower of these amounts. Councils should be able to show that the resulting contribution is no more than is reasonably practicable for the person to contribute to the personal budget.

3. Effect of contributions on individuals' income

3.1 Regard should be paid to the effect of contributions on a user's net income which should not be reduced below the levels set out in the Fairer Charging guidance. As stated above no-one should be expected to contribute any more than the financial assessment shows is reasonably practicable for them to pay. Councils should ensure that their policy on Disability Related Expenditure (DRE) is consistent with the Fairer Charging Guidance and transparent to

service users. Councils might find it helpful to formulate their DRE policies in partnership with local user groups.

3.2 Councils are reminded that section 17(3) of HASSASSA gives a user the right to ask the council for a review of the charge which has been assessed, if the user considers that their means are insufficient for it to be reasonably practicable for them to pay the charge.

3.3 Whatever decision is taken about the level at which future charging is to be set, councils should assess the potential implications on service users and their carers to ensure that, where appropriate, transitional measures can be put in place to mitigate the impact of any extreme changes for service users and carers.

4. Collection of Contribution

4.1 A personal budget or portion of a personal budget may be taken as a direct payment.

Paragraphs 88 to 90 of the Community Care, Services for Carers and Children's Services (Direct Payments) Guidance England 2003 provide guidance on charging for direct payments and refer to the Fairer Charging guidance.

4.2 The legislation on direct payments provides that with certain exceptions direct payments must be made gross unless the council decides that they will be paid net. Councils may find that paying personal budgets net of contribution provides for greater efficiency. Paying a personal budget or a portion of a personal budget net of a person's contribution means that the recipient receives the balance of that personal budget allocation and is expected to contribute the remainder. Where a council decides to pay a personal budget net of the person's contribution it should ensure that the person is clearly informed of the amount of the contribution, and how both the personal budget and the contribution have been calculated, in an accessible format. The guidance on direct payments provides further information on this.

4.3 There are some circumstances where it will not be appropriate or possible to pay a net allocation to an individual. For example, where a service user has a personal budget a portion of which is to be deployed on commissioned services, it is possible that the cash portion of their personal budget will be less than their overall assessed contribution. In these cases a contribution will still need to be collected from the individual. Councils will therefore need to

retain a mechanism for collecting contributions from service users. Where a service user challenges the amount of contribution they have been asked to pay a council may wish to consider making payments gross until the matter has been resolved.

5. Consultation

5.1 Councils should consult as necessary on any proposed changes to their existing charging policy in accordance with the Fairer Charging guidance. Councils might wish to allocate a member of staff to be responsible for consultation to meet local user and carer groups and to seek their views.

5.2 Councils will need to consider the impact upon their finances and those of their service users. Whilst it is possible to make implementation for councils cost-neutral overall, it may not be possible to isolate all service users from the impacts of the changes and consultation will be necessary on fundamental changes. This could also happen where Councils intend to introduce fundamental changes to the structure of charging and/or introduce policies which result in significant and substantial changes for service users. Again, consultation would be essential.

5.3 Councils should pay particular attention to DRE, Income Support/Guarantee Credit and the buffer of 25% (or more) when setting their percentage, and consider the effect this will have on individuals and their carers.

5.4 Councils have discretion as to how often they review the percentage applied to personal budgets. In accordance with paragraph 105 of the Fairer Charging Guidance, the percentage should not operate against the Government's policy agendas for social care, to promote independent living and social inclusion. It is important that consideration of charging policies is not purely budget based, but takes account of service needs. The design of charging policies needs to be sensitive to the variety of users' circumstances and needs. The ways in which charging policies are developed also need to be sensitive and to involve users and carers.

5.5 Councils are also reminded of the need to follow paragraph 107 of the Fairer Charging Guidance when considering how best to manage the service and user contributions, to ensure they are responsive to users' needs. Required performance information includes client

numbers and service levels; clients refusing/cutting down on services as a result of charging, or asking for charges to be reviewed; levels and reasons for arrears; levels of client incomes, in particular the take-up of different benefits; and cost of collection as a percentage of income.

6. Equality duties

6.1 Councils should meet their duties under equality legislation including the need to carry out an Equality Impact Assessment on their policies and to involve disabled people, as required by the Disability Equality Duty introduced by the Disability Discrimination Act 2005, in creating an accessible contributions assessment process.

6.2 They should also ensure compliance with statutory obligations to monitor the effects of their policies on equality, for example by monitoring service user contributions and user/carer experience.

7. Further considerations

7.1 Community equipment and minor adaptations continue to be exempt from charging, in accordance with the Community Care (Delayed Discharges etc) Act (Qualifying Services) (England) Regulations 2003 and LAC (2003)¹⁴. After-care services provided under section 117 of the Mental Health Act 1983 also continue to be non-chargeable. Care must therefore be taken to exclude from charging any portion of a personal budget that is to be spent on these items or services. Similarly, a personal budget holder should not be expected to make a financial contribution towards advice about the availability of services or for assessment, including assessment of community care needs. Ongoing support such as payroll services could be subject to a contribution.

7.2 Councils are reminded that under direct payments legislation direct payments cannot be made for purchasing more than four continuous weeks of residential care per year. Where a personal budget is used to purchase residential respite care (within the limits set out in the direct payments legislation), councils are reminded that, as stated in the National Assistance Act 1948 and in the Charging for Residential Accommodation Guide (CRAG), for the first eight weeks of residential care an assessment of ability to pay is not required. Councils remain free to decide whether or not to undertake CRAG assessments. Where no CRAG assessment is

undertaken, the charge made is the amount it appears reasonable to the council for the resident to pay (which may be determined by the local Fairer Charging policy). It is therefore possible to charge for this type of care in line with the local policy applied to non-residential community care services.

7.3 During the move to personal budgets, measures may need to be taken by the council to ensure that they treat those who receive personal budgets as direct payments as they would have treated them under the council's charging policy, if those people were to continue to be in receipt of traditional care packages and the same principle of fairness applies to those who hold personal budgets and those who do not. Any new policy should not produce a disincentive to service users accessing personal budgets as direct payments or traditional packages by having a more favourable regime for one or other.

Appendix 1 Updated references to legislative provisions – July 2009

Changes to references to Health Act partnerships

The arrangements previously referred to as “section 31 Health Act flexibilities” are now made under the National Health Service Act 2006 (“the NHS Act 2006”).

Section 31 of the Health Act 1999 has been repealed and the arrangements it covered are now made under section 75 of the NHS Act 2006.

Section 28A of the National Health Service Act 1977 (“the 1977 Act”) has also been repealed and the power of PCTs to make payments to local authorities is now covered by section 256 of the NHS Act 2006.

Section 28BB of the 1977 Act has been repealed and the power of local authorities to make payments to NHS bodies is covered by section 76 of the NHS Act 2006. See further Department of Health guidance at http://www.dh.gov.uk/en/Healthcare/IntegratedCare/Healthact1999partnershiparrangements/DH_363

Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 has been amended and now reads as follows:

17 Charges for local authority services in England and Wales

(1) Subject to subsection (3) below, an authority providing a service to which this section applies may recover such charge (if any) for it as they consider reasonable.

(2) This section applies to services provided under the following enactments—

(a) section 29 of the National Assistance Act 1948 (welfare arrangements for blind, deaf, dumb and crippled persons etc);

(b) section 45(1) of the Health Services and Public Health Act 1968 (welfare of old people);

(c) Schedule 20 to the National Health Service Act 2006 or Schedule 15 to the National Health Service (Wales) Act 2006 (care of mothers and young children, prevention of illness and care and after-care and home help and laundry facilities);

(d) section 8 of the Residential Homes Act 1980 (meals and recreation for old people); and

(e) paragraph 1 of Part II of Schedule 9 to this Act other than the provision of services for which payment may be required under section 22 or 26 of the National Assistance Act 1948;

(f) section 2 of the Carers and Disabled Children Act 2000.

(3) If a person—

(a) avails himself of a service to which this section applies, and

(b) satisfies the authority providing the service that his means are insufficient for it to be reasonably practicable for him to pay for the service the amount which he would otherwise be obliged to pay for it, the authority shall not require him to pay more for it than it appears to them that it is reasonably practicable for him to pay.

(4) Any charge under this section may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

(5) This section has effect subject to any regulations under section 15 of the Community Care (Delayed Discharges etc) Act 2003 (power to require certain community care services and services for carers to be free of charge).

Changes to DWP benefits mentioned in Fairer Charging Guidance

The references to War Disability Pension and War Widows Pension in paragraph 24 should be amended to read 'War Disability Pension or Armed Forces Compensation Scheme: Guaranteed Income Payment' and 'War Widows Pension or Armed Forces Compensation Scheme: Survivors Guaranteed Income Payment' accordingly. Armed Forces Compensation Scheme benefits only cover incidents that occurred after 6 April 2005; War Disability Pension and War Widows Pension continue to be received by existing claimants.

The reference to Invalid Care Allowance (ICA) in paragraph 85 should be changed to read 'Carers Allowance (CA)'. Please note that references to this superseded benefit also appears in the footnote to Annex B section C and in Annex B section E of the 2003 Fairer Charging guidance. Invalid Care Allowance has now been completely replaced with Carers Allowance.

From October 27 2008, Employment Support Allowance (ESA) replaced Incapacity Benefit and Income Support paid on the grounds of incapacity for new claimants. Existing claimants before that date continue to receive Incapacity Benefit and Income Support where appropriate. The net levels of income below which service users should not be reduced still apply, however it should be noted that the premiums for ESA differ slightly from those for Income Support. The disability premium does not apply to ESA and instead there is a Support Component and a Work Related Activity Component.

Example 1

80 year old man who lives alone. He owns his own house (no mortgage) and gets full Council Tax Benefit. He has £5,000 in savings.

His personal budget is calculated at £100.00 per week and he has decided to let his council commission all services for him.

His council, Council A, does not provide any free or subsidised services and uses 100% of the allocated personal budget when calculating the chargeable amount; their charging policy only takes 85% of available income into account.

Charging calculation

| | |
|---|-----------------------------------|
| State Retirement Pension | 95.25 |
| Guarantee Credit ¹ | 87.60 |
| Attendance Allowance | 47.10 |
| Total income | 229.95 |
| Deduct Income Support / | |
| Guarantee Credit Threshold ² | 162.50 |
| Deduct Disability Related Expenditure | 20.00 |
| Income available for charging | 47.45 (229.95 less 182.50) |
| 85% of this ³ | 40.33 |

The £40.33 figure is compared with 100% of the amount of his personal Budget (£100.00) and the client contribution will be the lower figure i.e. £40.33.

Example 2

75 year old lady who lives alone. She has housing costs of £25.00 per week. She is also liable for Council Tax of £20.00 per week but gets £5.60 of this in Council Tax Benefit. She has savings of £16,000. She doesn't qualify for Guarantee or Savings Credit.

Her personal budget is calculated at £120.00 per week: £30.00 of this is used by her council (Council B) to commission daycare, which is provided as a free service by Council B so is not part of the chargeable amount; (Alternately this £30 is available to her as a direct payment free of contribution if she wants to purchase the daycare herself) It is Council B's policy to apply 90% to the remainder (£90.00) to determine the chargeable amount (= £81.00).

¹ Including an additional amount for severe disability (£52.85)

² Standard minimum guarantee of pension credit + 25%

³ In line with that particular council's charging policy.

Charging calculation

| | | |
|---|---------------|----------------------|
| State Retirement Pension | 95.25 | |
| Attendance Allowance | 47.10 | |
| Occupational Pension | 160.00 | |
| Tariff income ⁴ | 8.00 | |
| Total income | 310.35 | |
| | | |
| Deduct Income Support / Guarantee Credit Threshold | 162.50 | |
| Deduct Disability Related Expenditure | 15.00 | |
| Deduct mortgage interest | 25.00 | |
| Deduct Council Tax | 14.40 | |
| Income available for charging | 93.45 | (310.35 less 216.90) |

The £93.45 figure is compared with the chargeable amount of her Personal Budget (£81.00) and the client contribution will be the lower figure i.e. £81.00.

Example 3

A 38 year old man was involved in a road traffic accident 18 months ago. He lives on his own in housing association accommodation and has housing costs paid and receives full Council Tax Benefit. He has £3,400 in savings.

His personal budget is calculated at £280 per week. He deploys his PB on two services. Service (A) is full cost if LA provides it and service (B) is subsidised if LA provides it. The value of the subsidised service is £50 but the subsidy means he only pays £40. The calculation is as follows:

Take out the value of the service B £50 from the PB - £280 - £50 = £230

Do a separate calculation of the contribution to the £50 i.e. £50 less £10 subsidy = £40.

Apply 100% (the percentage used by this council) to the remainder as it is to be spent on a service which is charged for at full cost when provided by the council
=£230

So total max contribution is £230 + £40 = £270.

Charging calculation

| | | |
|---|---------------|--|
| Incapacity Benefit (incl. age addition) | 96.35 | |
| Income Support | 48.30 | |
| Middle Rate DLA Care | 47.10 | |
| Total income | 191.75 | |

⁴ Based upon £1 per £250 above the lower capital limit (£14,000)

Running header

| | |
|--|-----------------------------------|
| Deduct Income Support / Guarantee Credit Threshold ⁵ | 114.75 |
| Deduct Disability Related Expenditure | 30.00 |
| Income available for charging | 47.00 (191.75 less 144.75) |

The £47.00 figure is compared with the maximum chargeable amount of his Personal Budget (£270.00) and the client contribution will be the lower figure i.e. £47.00.

⁵ Income Support, including disability premium + 25%