

# Adult Social Care Policy Statements

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### **Principles underlying these ASC policy statements**

1. Anyone reading this document should understand that any policy may be amended or changed in accordance with democratic procedures. Nothing in this document is intended to fetter the discretion of Staffordshire County Council, and any references to "the policy" or "this policy" or similar in any council document relating to adult social care should be treated as a reference to the relevant section of this document.
2. The ASC Policy Statements are associated with:
  - a) The Care Act 2014, which came into effect on 1 April 2015 and which repealed all previous national charging and contribution policies and guidance (such as the Department of Health's Fairer Charging Guidance and Charging for Residential Accommodation Guidance)
  - b) The Care and Support (Charging and Assessment of Resources) Regulations 2014 ("the Charging Regulations"), which states that the County Council may charge for care and support needs which are being met in accordance with Part 1 of the Care Act
  - c) The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014
  - d) The Care and Support (Deferred Payment) Regulations

3. The ASC Policy Statements are organised into:
  - a) Adult Social Care Practice Policy
  - b) Policy for Joint funding arrangements with the NHS
  - c) Adult Social Care Council Contribution Policy
  - d) Adult Social Care Client Contribution Policy, including Financial Assessments
  - e) Deferred Payment Agreements Policy

#### **A. Adult Social Care Practice Policy**

4. The Adult Social Care Practice Policy describes where the Council has made a policy decision where it has discretion to do so within the Care Act Guidance.
5. **Direct Payment Cards** – The Care Act Guidance states at Clause 12.58 *"Many local authorities have been developing the use of pre-paid cards as a mechanism to allow direct payments without the need for a separate bank account, or to ease the financial management of the payment. Whilst the use of such cards can be a useful step from managed services to direct payments, they should not be provided as the only option to take a direct payment. The offer of a 'traditional' direct payment paid into a bank account should always be available if this is what the person requests and this is appropriate to meet needs. Consideration should be given to the benefit gained from this arrangement as opposed to receiving the payment via a pre-paid card."*
6. The Council has chosen to offer direct payment cards as its primary method as this has benefits to people in not being required to collate receipts for the financial management of their direct payment. The Council will only consider an alternative to a direct payment card (e.g. a separate bank account) where there is evidence of a "benefit gained" to the person from an alternative arrangement.
7. For example, the Council has enabled use of an alternative payment method where a person's disability or accessibility requirements has prevented their ease of use of the direct payment card and this therefore demonstrated a benefit to the person.

8. **Self-funders who ask the Local Authority to arrange their care home:** The Care Act Statutory Guidance Annex A states at paragraph 41 that *"Where the person [self-funding their care] requires care in a care home to meet their needs, the local authority may choose to respond to the person's request by meeting their needs."*
9. The Council has chosen only to offer to source a care home for self-funders where the person is able to pay by direct debit and a person's financial assessment demonstrates that capital is likely to reduce within the next three months and therefore are likely to require the Council's support to source a care home in the very near future.

## **B. Policy for joint funding arrangements with the NHS**

10. The purpose of this policy is to provide clarity on the Council's arrangements when jointly funding care with the NHS.
11. Section 22 of the Care Act legally prevents the Council from meeting health needs:  
*"(1) A local authority may not meet needs under sections 18 to 20 by providing or arranging for the provision of a service or facility that is required to be provided under the National Health Service Act 2006 unless —  
doing so would be merely incidental or ancillary to doing something else to meet needs under those sections, and  
the service or facility in question would be of a nature that the local authority could be expected to provide."*
12. The Care Act Guidance states *"6.81 Whilst local authorities have a duty to carry out an assessment where a person has an appearance of needs and a duty to meet eligible needs, local authorities cannot arrange services that are the responsibility of the NHS (for example, care provided by registered nurses and services that the NHS has to provide because the individual is eligible for NHS CHC). However, the local authority may provide or arrange healthcare services where they are incidental or ancillary to doing something else to meet needs for care and support and the service or facility in question is of a nature that a local authority could be expected to provide. "*
13. *"6.82 If, following an assessment for NHS CHC, a person is not found to*

*be eligible for NHS CHC, the NHS may still have a responsibility to contribute to that person's health needs – either by directly commissioning services or by part-funding the package of support. Where a package of support is commissioned or funded by both a local authority and a CCG, this is known as a joint package of care. A joint package of care could include NHS-funded nursing care and other NHS services that are beyond the powers of a local authority to meet. The joint package could also involve the CCG and the local authority both contributing to the cost of the care package, or the CCG commissioning part of the package. Joint packages of care may be provided in a nursing or care home, or in a person's own home, and could be by way of joint personal budget."*

14. The Council has a number of arrangements in place for jointly funding packages of care:
  - a) Section 117 funding agreement where the cost of the care is funded by the Council and the relevant ICB as a percentage split e.g. 50/50
  - b) Joint funding arrangements where the cost of the care is funded by the Council and the relevant ICB on an individual person by person basis,
  - c) Care packages that include Free Nursing Care which is funded by the NHS.
  - d) "Health Task agreement"- Where the Council has agreed to procure health care on behalf of the NHS and has a legal agreement in place to do so.
15. The Council has made a decision that where a joint package of care is agreed with the NHS that the Council will only contract with, and pay for, the care that is funded by the Council unless there is a legal agreement in place through which the NHS delegates its statutory duty for arranging health services, along with appropriate funding. Care providers may be required to enter into separate contractual and invoicing arrangements with the NHS for its financial contribution to the joint package of care.

## **C. ASC Council Contribution Policy**

16. The purpose of this policy is to ensure that any person assessed as needing adult social care services understands the type of costs that the Council will in general contribute towards or allow for, and which it will in general not contribute towards or allow for. It applies to the:
  - a) direct provision of services to a person
  - b) calculation of the Personal Budget and/or Direct Payment to be allowed for a person
  - c) the costs included when calculating Disability Related Expenditure allowances as a part of a person's assessed financial contribution
17. This policy concerns care services or costs where the Council has adopted a specific local policy as to the type that it will in general fund or allow, where it has such discretion. Other elements of care and support services are defined by national legislation and regulation and the council has no discretion as to what and how to apply.
18. The principles underpinning this policy are to ensure that the Council:
  - a) exercises the discretion allowed it under the Care Act 2014 to consider reasonable additional costs directly related to a person's disability
  - b) meets its duty to use public funds wisely by ensure that it provides or funds services to individuals that would not be considered
  - c) overgenerous or unreasonable by "the man in the street"
  - d) ensures that any allowances it makes for disability-related expenditure do not duplicate any service or funding it is providing, or fund types of care and support it has legitimately decided not to fund
  - e) does not inadvertently treat individuals inconsistently.
19. In exercising its discretion for such costs, the Council recognises that it may not place absolute limits on what it will consider as an eligible social care need, but at the same time it has a duty to manage public funds

wisely. The ASC Council Contribution Policy aims to define what is a reasonable level of care to provide in the context of a client's needs without the policy itself being unreasonable and too restrictive. Examples of the application in specific situations (private care costs, travel/transport, disability adaptations and equipment) are therefore included in the policy.

20. Where the Council decides to include such costs in a Personal Budget or Direct Payment, then these would not normally be considered for disability related allowances as well. All decisions will be subject to policy and the process and any appeal managed by the ASC Policy & Guidance Approval Board.
21. The Legal Background: in adopting this policy, the Council recognises that it may face challenge, but this risk must be set against the major costs that can arise if it fails to provide guidelines or fails to ensure that what it does is held to be reasonable. It is considered important that the Council be able to define limits as to what is a reasonable level of care to provide in the context of a client's needs – if the policy itself is not unreasonable and too restrictive.
22. This policy is guided by the Care Act Statutory Guidance (para 8.45) which amongst other criteria, states that Councils' policy on charging must:
  - a) apply the charging rules equally so those with similar needs or services are treated the same and minimise anomalies between different care settings
  - b) be sustainable for local authorities in the long-term
23. The Council has a duty to assess a person's social care needs and to use this assessment to decide what, if any, services it should provide – if the need for a service is identified as an eligible need, the Council must ensure it is provided. For example, if a person with disabilities has been assessed as needing to take part in social activities within the community, the Council must consider travel, i.e. how the person will get to the activity.
24. This duty does not change because a person is receiving a specific benefit or allowance from other sources (e.g. in the above example, a mobility benefit, or a care component to meet housework costs), since

the person may be using their benefit or allowance for another relevant cost (such as leasing a Motability vehicle). At the same time, the Council believes it is valid to take account of the fact that the person (or a member of their family on their behalf) has a Motability vehicle available when determining whether to provide travel.

25. While it is of course true that the mobility component of a state benefit could be used to pay for travel to an activity, it is not for the Council to state that the person must use the benefit for this purpose. The Care Act 2014 creates a distinct regime from the state's disability and welfare benefit system - benefits that provide for care or mobility (such as Attendance Allowance, Disability Living Allowance and Personal Independence Payment) are not paid to cover local authority responsibilities, and the Act does not allow the Council to "require a person to use their benefits" in a particular way or to meet a specific cost.
26. It is also unlawful for the Council to have a general policy of not providing a service that may be need-related. However, it may consider what is a reasonable level of support, and in individual cases can decide it is not an eligible need if it is able to explain in clear, logical, lawful terms why this is so.
27. The Care Act Statutory Guidance (paragraphs 8.42 and 8.43) reiterates the rules on income and capital that ensure that a person receiving support at home is left (after paying their contribution) with enough money to meet their daily living costs such as rent, food and utilities, and that councils have "flexibility within this framework". However, it adds the key point that this discretion "should not lead to 2 people with similar needs, and receiving similar types of care and support, being charged differently"
28. Hence, in line with the principles above, the Council will seek to ensure that it is equitable when making allowance for disability-related costs, in that it:
  - a) Will not fund any cost that reflects an expense that any person would have or would choose to have, rather than being disability-related
  - b) does not "double-fund" costs, for instance by making allowances for a cost as a DRE when it is also providing a similar service or funding



(through the Personal Budget or commissioned care), or the person already has access to resources to meet their need (e.g. a Motability vehicle, a community resource, or alternative funding from the NHS or Carers' grants)

- c) does not allow DRE allowances to be used to bypass its legitimate policy decisions not to fund particular types of care and support costs
- d) does not inadvertently treat individuals inconsistently e.g. by including in a DRE allowance a significant cost which will only benefit those individuals with a significant assessed income (because only they would have an assessed income to set the allowance against, whereas others on minimal income would not have anything to set the allowance against and would be unlikely to be able to afford these costs in the first place)
- e) will only allow a total level of DRE allowances that equate to the total level of disability benefit received by the person. This is in line with Care Act Statutory Guidance (Annex C) which states that "where disability-related benefits are taken into account, the local authority should make an assessment and allow the person to keep enough benefit to pay for necessary disability-related expenditure to meet any needs which are not being met by the local authority".

## **29. Examples of applying the Council ASC Contribution policy:**

- 30. Travel: in accordance with the statements above, the Council cannot vary the level of service or cost it will provide to meet an assessed need for travel simply because the person has mobility benefits.
- 31. Equally however, it is for the Council to determine if the person has an eligible need for travel services and if so, to provide a reasonable level of support. It cannot have a blanket policy that states that it will never pay for (e.g.) first class travel – but equally it has a duty to use its funds reasonably and paying such costs can only be allowed if it is essential to meeting assessed needs.
- 32. In practical terms, this means that unless the person has an assessed eligible need for travel, the Council would not provide such a service or meet such costs, and in general, would not agree a person has such an eligible need unless they receive (or are eligible for) a mobility benefit

33. If the assessment does agree that travel is an eligible need, then the care and support assessment must determine whether to meet it and if so, what is a "reasonable" solution and what were "reasonable" costs. As stated previously, the fact that the person receives a mobility benefit cannot be taken into account in reaching this decision – but the availability of a Motability vehicle can. The actual cost of providing that service to the person will be included in their personal budget and the person will be charged in accordance with their assessed contribution.
34. If the Council offers a travel service to clients that is not a part of their assessed need, then (like meals) the charges for such services will be outside of, and in addition to, their assessed financial contribution.
35. Private care costs: the Care Act Statutory Guidance (Annex C) lists the costs of private care as one that should be considered in the financial assessment as a DRE, whilst the National Association of Financial Assessment Officers (NAFAO) advise that any allowance given by councils should be based on the package agreed by the social worker.
36. These costs can be significant, and the Council states that, based on the principles set out above:
- a) It will not agree costs that contradict the outcomes of the person's needs assessment. For example, if a person is assessed as needing services only in the day, the Council will not then make allowance for private night care – that would not be reasonable since the effect of allowing this cost against income is that the Council would effectively be funding the night care when it was not an assessed eligible need;
  - b) Where costs have been privately contracted that are subsequently determined as being an eligible social care need, the Council will not backdate any funding to cover costs before the date that eligibility was determined, nor will it allow costs that are higher than the amount it would cost the council to provide the service;
37. Decisions on including any such costs in a DRE are a care decision, not a financial one, and will be made by the ASC Policy & Guidance Issues Group.
38. Disability Adaptations and Equipment: partners to the council provide

through the national Disabled Facilities Grant scheme funding for the costs of adaptations and equipment. However, it has also made a policy decision not to fund the maintenance of certain items (such as stairlifts and Closomats). These costs can be significant, and the Council states that, based on the principles set out above, it:

- a) will always refer people to DFG funding for major adaptations and equipment
- b) The Council will not provide funding for the private purchase of adaptations and equipment unless it has caused a significant delay in meeting assessed needs by not responding to the need
- c) will not “refund” or make allowances for the cost of any adaptations or equipment that people chose to buy before they were assessed as having an eligible social care need for that adaptation or equipment.
- d) Will allow appeals against its care decisions on including any such costs in a personal budget or DRE through the ASC Policy & Guidance Approval Board.

39. Personal Assistant costs: where people employ a personal assistant (e.g. through the Direct Payment scheme), it is the person’s responsibility to meet the costs incurred in employing the personal assistant, and to do so in accordance with HMRC regulations on tax and national insurance. The Council states that, based on the principles set out above, it will not generally consider funding – or making allowance for in a DRE – the following:

- a) The travel, meal or other costs of a personal assistant (which in general are likely to be a taxable benefit if paid by the client) over and above their pay
- b) The admission costs for a personal assistant accompanying a person on a trip or excursion – where a person has been provided funding to meet an identified need for “support to access the community”, it is that person’s personal choice to use those funds to go on a trip or excursion, and neither their nor the personal assistant’s costs are fundable over and above the sums already provided for such access

40. Appeals against the Council's care decisions on including any such costs in a personal budget or DRE will be made through the ASC Policy & Guidance Issues Group.
41. Pets: the keeping of a pet is a personal choice, and the Council will not provide funds in a personal budget – or make allowances for costs in a DRE – that relate to a pet. In “protection of property” cases where the Council has to make arrangement to protect a person's moveable property when the person is in care or in hospital, it will fund pet care but in accordance with the Care Act, this is a cost that will be recovered from the client – it is not an assessed social care need or funding

#### **D. Adult Social Care Client Contributions Policy including Financial Assessments**

42. The purpose of this policy is to ensure that a person receiving adult social care services is charged a fair contribution towards the cost of their care based on their ability to pay.
43. This policy describes areas of contributions, charging and financial assessment where the law gives the council the power and discretion to make decisions. Other elements of charging are defined by national legislation and regulation and the council has no discretion as to what and how to apply.
44. Staffordshire County Council has chosen to charge clients for the provision of adult social care services. Unlike Health, social care has always been a means-tested service, meaning that people are expected to contribute towards their care or certain parts of it, if they can afford to do so. The Council uses this money to deliver more services to more people.
45. The principles underpinning this ASC contributions policy are to:
  - a) ensure a fair charging system where all contributions towards the cost of care are based on people's ability to pay
  - b) ensure that the charge is based on the actual cost of the service to the Council and therefore not to subsidise any service
  - c) ensure that people are not charged for health services which are not a Council responsibility and are funded by the NHS,

- d) ensure that appropriate welfare benefit advice and assistance to claim any additional benefits, pensions or allowances is provided
  - e) provide clear information on the way in which a contribution is calculated;
  - f) ensure that care needs are assessed separately from a person's ability to pay
  - g) generate an income to meet the cost of delivering the service and to re-invest in services;
  - h) be fair and equitable to all.
46. **Carers' Services:** the council has discretion as to whether it will charge for services provided directly to carers and has decided that it will not charge. This is in recognition of the contribution they make towards the care of the person being cared for.
47. For the avoidance of doubt, where care is provided for the person, often called "respite" or "replacement care", this care is chargeable to the person.
48. **Home adaptations:** The Council will refer people to District and Borough Councils for Disabled Facilities Grants for making adaptations in their own home.
49. The Care Act 2014 states that a charge cannot be made for minor adaptations where the value is £1,000 or less. The Council has decided to set a more generous level and will not charge for any minor adaptations valued at £5,000 or less. Such charges must be no more than the cost of providing the service.
50. **Care and Support Services:** Other than carers and home adaptations services shown above, the Council will charge for all services it arranges to meet a person's eligible social care needs.
51. **Short-term residents:** these are defined in regulations as a person who is provided with accommodation in a care home under the Care Act for a period not exceeding 8 weeks, and the council has discretion to disregard some of the person's capital and income. The Council has decided to treat such a person as if they were receiving non-residential services, which leads to lower charges, hence reducing the cost of a short stay in

residential care for citizens of Staffordshire.

52. **Completion of the Financial Assessment and classification as a "Failing to complete the Financial Assessment"**: The Council's aim is to ensure that people are aware of the cost of their care and any personal contribution prior to care commencing. We will therefore refer people for a financial assessment when it is probable that they are likely to be eligible for care, rather than waiting for the care and support plan to be finalised.
53. People will be provided 4 weeks to complete their financial assessment from the point of referral for a financial assessment, including providing any required evidence.
54. Where a person has not, or cannot, provide a reasonable justification for not completing the financial assessment within 4 weeks, or a Deferred Payment Agreement within 12 weeks will be classed as "failing to complete the financial assessment". Examples of reasonable justification could be:
- a) The person is in hospital
  - b) The person does not have the mental capacity to complete the financial assessment and does not have a deputy assigned by the Court of Protection or a person with Lasting Power of Attorney acting on their behalf
  - c) The person can demonstrate that they have requested evidence (e.g. bank statements) and this has not yet been received. (In such scenarios an indicative financial assessment will be considered).
55. **Failing to complete Financial Assessment:** People receiving a non-residential care service who have failed to complete a financial assessment will be deemed to be a "self-funder" and charged for the full costs of their care plus appropriate self-funder administration fees. This status will remain until a financial assessment is submitted and a charge agreed (which may of course be the full cost of the service).
56. People receiving a residential care service who have failed to complete a financial assessment or, where applicable, have failed to complete a

deferred payment agreement within 12 weeks, will be deemed to be a self-funder. This status will remain until the financial assessment is completed or, where applicable, a deferred payment agreement is submitted and agreed. Whilst a self-funder, people will be charged for the full costs of their care whilst their case is risk assessed to determine whether Council funded care should be terminated, or legal action taken to secure a charge against their property. Social care staff will evaluate the risks of terminating Council-funded care for self-funding people prior to taking such action.

57. **Indicative charges:** There may be occasions where it is not possible for people to complete a financial assessment and provide all the required information prior to the care commencing. To prevent the risk of people accumulating debt for the cost of their care, the Council will therefore offer an indicative financial assessment to enable the person to choose to contribute the indicative financial contribution towards the cost of their care.
58. The indicative financial assessment can be completed via our online portal and via phone. Where the Council has access to sufficient financial information for the person (e.g. information provided to the Department of Work and Pensions on Searchlight) the Council can also offer to complete an indicative financial assessment.
59. People receiving an indicative financial assessment can choose to pay the indicative charge, prior to the full financial assessment being completed within 4 weeks. Once the final charge is known the invoice will be adjusted to reflect any over and underpayment during the indicative period.
60. **Deputyship Arrangements** – The Council recognises that there are occasions where family members are required to apply to the Court of Protection to act as deputy for the person to enable them to access the person's financial affairs and/or enter into a Deferred Payment Agreement. The Council will therefore seek assurance that deputyship applications are progressing, and can provide advice and guidance on this process.
61. Where families are unable to provide assurance that the deputyship application is progressing the Council will consider applying to the Court of Protection to become appointed deputy to protect the best interests of

the person.

62. **Billing for care based on personal budgets:** the Council has agreed that in the future it may raise charges for people's contribution charges based on their agreed personal budget (which is based on the annual cost of the services in the approved care and support plan) and not the actual cost of services delivered within any individual week, which can vary because of the person is in hospital or on holiday.
63. If this change were implemented, the Council would continue to monitor variations to ensure that people are receiving a level of service broadly in line with their agreed care and support plan and personal budget. At the end of the financial year, if the care received over the year is less than that charged to the person, the Council would refund the difference. Equally if the care received over the year is more than charged the Council would increase the charge to recover the difference. This process would mean that the person's charges would not vary each month for minor changes in the care delivered and would balance out over the year.
64. **Annual uprating:** the Council will apply automatic annual uprating of all DWP benefits, pensions and income disregards used in financial assessments when these rates change (generally April each year). People will be informed of any changes in advance.
65. **Disability Related Expenditure (DRE) Allowances:** these are discretionary allowances for people on disability benefits and receiving non-residential care from the council. It provides for disability-related costs incurred by the person to be offset against the person's assessed income.
66. The council allocates all such clients a pre-set banded DRE allowance. The value of the band varies according to the level of DWP disability benefit the person receives, rather than being based on the person's specific disability-related costs. This helps the person avoid the intrusive questions on medical and other factors required to set a personalised DRE allowance. However, everyone is made aware that they can appeal against this automatic allocation and ask for an individual allowance based on their own specific needs and costs if they provide suitable evidence. Such individual allowances will be considered in the light of the ASC Council Contributions Policy.



67. There are three “banded” allowances which the council will apply against the person’s income when assessing their financial contribution which equate to lower, standard and higher disability benefits. The value of the allowances is reviewed each year and publicised by the council.
68. It should be noted that, as with any element of a person’s financial assessment, the national charging framework includes income disregards which means that a change in the DRE allowance (or any other) given to a person does not necessarily lead to any change in the amount they are asked to contribute to the cost of their care.
69. **Property and other disregards and costs:** it is generally discretionary as to what, and how much, a local authority includes as an allowance or disregard against a person’s assessed income, over and above those provided by the Care Act. The statements below set out the Council’s policy.
70. The Care Act sets out situations where the value of the person’s main or only home must be disregarded when conducting their financial assessment for long term residential care. It also sets out areas where a local authority has discretion to apply a disregard, although it states that “the local authority will need to balance this discretion with ensuring a person’s assets are not maintained at public expense. On this basis, the Council will apply its discretion as follows:
71. Long-term disregard – a property is excluded from a financial assessment when a dependent relative has continuously occupied it since before the person went into a care home. The Council will apply its discretion to include in this definition:
72. any person (not necessarily a relative) who can demonstrate that the house is their sole residence as they gave up their own home to care for the person who is now in a care home
73. a qualifying relative who moves into the property after the person went into a care home but who can demonstrate that the principle reason for their move is that it is necessary to ensure they have somewhere to live in as their main or only home, e.g. they would otherwise be homeless through an unexpected loss of health or income.

74. Twelve-week disregard - the value of a person's main or only home must be disregarded for 12 weeks when someone is entering residential care, to allow them time to consider their options at a time of crisis. The Council will apply its discretion to allow this disregard where there is a sudden and unexpected change in a person's financial circumstances:

- a) Where a long-term disregard of a property ends unexpectedly due to the death of the qualifying relative living in it, the Council will apply the 12-week disregard to allow the person in care and their family time to consider their options for the future regarding the property
- b) Where a person is already a "self-funder" in a care home, there would normally not be any 12-week disregard when they approach the Council for assistance or a Deferred Payment Agreement when their savings or liquid assets fall below the qualifying level. However, in exceptional circumstances (where the value of these assets is unexpectedly reduced by a significant amount leaving them unable to meet the cost of their care) then the Council will apply the 12-week disregard to allow the person time to make arrangements, e.g. to apply for a Deferred Payment Agreement to enable them to continue to meet the cost of their care

75. Allowances and disregards for residential care: the Care Act requires that a person should be left with a Personal Expenses Allowance (PEA), i.e. a minimum amount of income to spend as they wish. However, it is expected that in certain situations, the person may need to be left with more than this national minimum, and the Council will determine an individualised allowance in the following situations:

- a) Where a person has a dependent child, the Council will consider the needs of the child in determining how much income a person should be left with after charges, whether the child is living with the person or not.
- b) Where a person is paying half their occupational/personal pension or retirement annuity to their partner (for unmarried couples – already applies to married couples) who is not living in the same care home, the Council will apply its discretion to disregard this sum

- c) Where a person is temporarily in a care home and is a member of a couple (whether married or unmarried), the Council will disregard any Income Support or Pension Credit awarded to pay for home commitments and will consider the needs of the person at home in setting the personal expenses allowance (as well as considering disregarding other home maintenance costs as per next point).
- d) Where a person's property has been disregarded (in both permanent and temporary residential situations) the Council will consider whether the statutory Personal Expenditure Allowance is sufficient to enable the person to meet any resultant costs, e.g. it will allow for fixed payments (like mortgages, rent and Council Tax), building insurance, utility costs (gas, electricity and water, including basic heating during the winter) and reasonable property maintenance costs.
- e) Where a person in permanent residential care has a deferred payment agreement (DPA) in place with the Council and are required to contribute to the cost of their care, they must be allowed to retain a disposable income allowance (DIA). The Council will ensure that the person retains sufficient in this allowance to maintain and insure the property in line with the DPA requirements.

76. Allowances and disregards for non-residential care: the Care Act requires that a person should be left with a basic minimum amount – the Minimum income guarantee (MIG) - to ensure that they have enough money left to meet basic needs and to cover everyday living costs (e.g. food and drink, travel, utility costs, insurance, debts etc.). The Council must apply this minimum after making allowance for any housing costs (such as rent and council tax - net of any benefits provided to support these costs) and after any disability related expenditure allowance (DRE as referenced at paragraph 65) - which may itself have included provision for some disability-related housing costs. It follows, therefore, that the amount the Council allows for housing costs will not include anything already provided for in a DRE, nor those which the MIG is intended to cover.
77. Higher rate disability benefits – the Care Act is silent on whether councils should take account the highest rate of disability allowance into account, even though some of these higher rates are explicitly paid to reflect the

provision of care in both the day and night. The council will, therefore, take the higher rates into account.

78. **Arrangement Fees for care and support services for self-funders** – these fees relate to people who are liable to pay the full cost of their social care and support (“self-funders”). For residential care, the council has chosen not to offer an arrangement service (and is precluded for charging for it anyway). In non-residential cases, clients can arrange their own care or ask the council to arrange and manage it. The council must agree to this, but can charge fees to cover costs, which the Council have set as follows:

79. Administration Set-Up Fee to cover as appropriate the costs of identifying appropriate providers of care and support, negotiating rates and times for care to be delivered, putting contracts into place with the providers, and setting up payment methods for the person to pay these care costs. This is a lump sum fee for service set-up, so may be charged more than once if the client asks for:

- a) a substantive change of care
- b) a change of service provider

The fee will NOT be charged again if:

- a) the Council changes the provider because of contract changes or provider failure
- b) The level of service provided to the client changes because of a revised assessment of their needs
- c) The person has a short break in service due to holidays or a hospital stay and then resumes service with the same provider afterwards

80. Annual Administration Fee to cover a proportion of the costs of paying the provider for the care and support services, dealing with any queries relating to services, monitoring services to ensure providers are providing the support agreed and invoicing people for the cost of their care including the council’s administration fees. This will be charged from the day service(s) start on a weekly basis and will be added to the

regular bills sent to the client for the service costs.

81. The level of these fees is reviewed each year and publicised by the council.
82. **Phasing-in (Mitigation):** In the event there is a change in Council contribution policy which results in significant changes in the charges people must pay for that service, the Council may choose to apply mitigation for that policy change as a means of phasing it in. Mitigation limits the amount of increase to a maximum of £40 per week plus "adjustments" for a period of up to three years from the date that the person's charges increased. It does not apply to any charges made to "self-funding" clients.
83. If the overall increase is major, a second year of mitigation will be applied limiting the increase by another £40 (i.e. to a cumulative £80 from the original charge). If required, a third year of mitigation will also be applied limiting the increase by another £40 (i.e. to a cumulative £120 from the original charge). After mitigation ceases, the client will be liable for the full increased charge.
84. The 'adjustment' referred to above at paragraph 82 means that the £40 per week limit is an absolute figure, so if during the time a person is receiving mitigation the cost of their care increases, the full cost of that increase will be payable by the client – it will not be mitigated. This includes:
  - a) the effect of care and support service price increases between years
  - b) the effect of any increase in the amount the person is required to contribute under the charging regulations because they have had an increase in their available income and/or capital
  - c) the impact of an increase of the person's eligible care and support needs.
85. **Policy Clarification and Appeals:** in situations where the council needs to interpret policy "grey areas" and/or to respond to appeals and complaints, it is important that the resultant decisions (e.g. to fund a specific type of care, allow a cost in a financial assessment, or write-off a disputed charge) are considered in terms of their broader impact, not

just how they affect the individual person, and are appropriately recorded for more general application.

86. These decisions are made by the ASC Policy & Guidance Issues Group representing the social care, finance and budget holder functions. The decisions for the person will be recorded appropriately on the case management system for audit purposes, and the learning from the appeal or write-off will be fed into future policy, practice guidance and development.
87. This approach ensures fairness and equity in decision-making and makes a direct link between contribution decisions and those relating to the person's assessed care needs.

### **E. Deferred Payment Agreements Policy**

88. The purpose of this policy is to ensure that any person receiving residential adult social care services can take up a deferred payment agreement (DPA) to meet their care costs if they are unable or unwilling to sell their former home.
89. This policy describes areas of DPAs where the law gives the council the power and discretion to make decisions as to the arrangements it will consider. Other elements of DPAs are defined by national legislation and regulation and the Council has no discretion as to what and how to apply.
90. The principles underpinning the Council's DPA policy and this practice guidance are to ensure that clients:
  - a) who are assessed as needing residential (including nursing) care in a care home can avoid selling their property to pay for it
  - b) who can afford to pay a contribution towards care, do so
  - c) are fully informed about deferred payments and eligibility
  - d) are assured that the scheme is self-financing and sustainable.
91. **Independent financial advice:** the financial risks to people and the Council when a Deferred Payment Agreement is proposed are such that it is a condition of the DPA scheme that clients must seek independent financial advice; the Council will not complete a DPA application without

evidence of such advice being received by the client or their representative

92. **Failure to agree a DPA:** Where the person is unable to agree the Deferred Payment Agreement within the 12 weeks of the application, in line with the ASC Council Contributions Policy, people will be deemed to be a self-funder. This status will remain until the deferred payment agreement is submitted and agreed. Whilst a self-funder, people will be charged for the full costs of their care whilst their case is risk assessed to determine whether Council funded care should be terminated, or legal action taken to secure a charge against their property. Social care staff will evaluate the risks of terminating Council-funded care for self-funding people prior to taking such action.
93. **Property Valuation:** the Council will obtain a valuation for the property (from internet sources if low risk, or from the council's own valuers if the DPA is for 50% or more of the property's value) and agree this with the client or representatives. If not agreed, the lower of the proposed values will be used. Should the valuation be obtained by way of the Council's internal valuer, the charges (which are passed onto the client but can be rolled up into the DPA) are those set by the council. The person may get an independent valuation in addition to the council's, and if the two vary significantly, both parties must agree a valuation, if necessary by means of the Council's appeals process.
94. The Council may offer a DPA to people who do not meet the Care Act eligibility criteria for a DPA, each case will be looked at on its own merits, taking account of:
- a) whether paying residential care costs leaves them with very few accessible assets
  - b) if they want to use the wealth tied up in their home to fund more than just their core care costs i.e. affordable top ups
  - c) whether someone has any other accessible means to help them meet the cost of their care and support
  - d) if a client is narrowly not entitled to a DPA on the criteria above, for example because they have slightly more than the current upper capital limit. This might include people who are likely to meet the criteria soon

- e) whether the client is excluded because they have a second property but are unable to realise that asset quickly
- f) Supported accommodation: the Council may at its discretion enter into a DPA with people who are going to rent supported accommodation (supported housing, extra care housing schemes or shared lives schemes), rather than residential care, where the client's options are restricted
- g) They intend to retain their former home and pay the supported accommodation care and rental costs from their deferred payment – a DPA will not be considered to finance the mortgage payments on buying supported living accommodation.
- h) They have good reason why they are unable to sell or let their property at the current time and have no entitlement to Housing Benefit, and their income, savings and investments do not cover the costs of supported accommodation
- i) Their former home is occupied by a person who is dependent on the client but who not actually classed as "dependent" under the Care Act regulations, so that the home cannot be disregarded from the financial assessment
- j) Where the Council is prepared to offer a DPA offer to clients entering rented supported accommodation, the Council is likely to need specialist legal advice on each case - an estimate of the costs of such advice will be provided and the client will be required to agree to these costs as part of the DPA.

95. The Council is permitted to refuse an application for a DPA even if the client meets the eligibility criteria, if there is a risk of default or non-repayment of debt arising from:

- a) it being unable to secure a first charge on the person's property
- b) the client's property being uninsurable or not insured
- c) the property is leasehold, and the freeholder does not agree to the charge



d) the client wants to defer more than they can provide adequate security for

e) the client is seeking a top up

f) the client not agreeing to the terms and conditions of the DPA.

96. As the Council is permitted to refuse an application where it is unable to secure a first charge on a person's property, the Council will advise people that they should only apply for a Deferred Payment Agreement when a property is registered with the land registry as any application will be refused until a first charge on the property is possible.

97. In any of the circumstances in paragraph 95 above, the Council may offer a DPA anyway, e.g.

a) In the top-up situation, the Council will seek to offer a DPA limited by the sustainability principles of the Care Act to ensure the amount is sustainable. The person can then choose whether they wish to agree

b) if a client's property is uninsurable but has a high land value, the Council may choose to accept charges against this land as security instead.

98. The Council must protect itself against future claims from a joint owner, mortgage provider or other occupier that they have greater rights in the property than the Council was led to believe, or that their consent to the legal charge was not on an informed basis and they were subject to undue influence. Hence the Council will take all reasonable steps to ensure it is aware of the identities of all those occupying the property – including by

a) writing a letter to "all occupiers"

b) require all occupiers to obtain independent legal advice at their own cost

c) ensure a letter is sent direct to the Council signed by reputable solicitors as well as the occupiers, confirming

- d) what the occupiers say their interest (if any) in the dwelling is
- e) that the solicitors have explained (and the occupiers have understood) the effect of the legal charge and how it will work
- f) require proof of residual equity together with written consent of any third party/parties where applicable where part of the value of the property has been realised by way of a mortgage or equity release.

99. The following five points set out Council policy as to the additional restrictions it applies:

- a) where the title of the property is registered but one or more registered party is unable to give a legal agreement, e.g. they have died, the DPA can only proceed subject to the necessary amendments to the Land Registry entries
- b) in instances where the title of the property is based on tenants in common, it will be necessary that all parties enter into the DPA and legal charge for it to be an acceptable form of security
- c) if the property is a leasehold property an application can be made for a DPA, however sometimes restrictions are placed on the title (registered at the Land Registry) and the agreement of the head landlord/ultimate freehold owner to the charge on the property must be obtained and paid for by the applicant before the property can be used as security for the DPA.
- d) Where part of the value of the property has been realised by way of a mortgage or equity release, proof of residual equity in the property will be needed together with written consent of any third party/parties where applicable.
- e) if the property is a mobile home, where it is the land that is registered and not the mobile home, the Council will not be able to accept the mobile home as security

100. Aside from a first charge and the short-term DPA, the Council may consider a range of security for a DPA and associated interest; this list is provided to provide clarification but is not exhaustive:

- a) Third Party Guarantor

- b) Second Legal Charge
- c) Life Assurance Policy
- d) Leasehold Properties

101. Alternative security which will not be accepted by the Council for a DPA:

- a) Mobile home
- b) Equity Release Scheme/Lifetime Mortgages
- c) Property Abroad

102. Where the Council agrees that the client may rent out the property it will treat the net rental income, (i.e. allowing for management fees and estimates of income tax) as additional income in the client's financial assessment.

103. The Council will revalue or require a revaluation of any security it is holding every two years to ensure that the deferral may continue