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# **Adult Social Care Charging Policy**

**Essex County Council  
September 2020**

## Document Control

<b>Title of Policy:</b>	Adult Social Care Charging Policy
<b>Type of Policy:</b>	Adult Operations and Finance policy
<b>Target Audience:</b>	Essex County Council Staff Service users Carers Members of the public Essex County Council Councilors
<b>Date policy approved:</b>	September 2020
<b>Review Date:</b>	This Policy shall be reviewed every three years, or as mandated by any change in the law and/or national guidance or as decided by the Council
<b>This policy replaces:</b>	Overarching Charging and Provision of Services Policy 2015
<b>This policy should be Read alongside</b>	<ul style="list-style-type: none"> <li>• Care Act 2014</li> <li>• All Regulations issued under the Care Act 2014</li> <li>• Statutory Care and Support Guidance (October 2018) as amended from time to time</li> <li>• Disability Related Expenditure Practical Guidance</li> <li>• Essex County Council's Constitution</li> <li>• Adult Operations, policies, procedures and practice guidance (as amended or replaced from time to time)</li> </ul>
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## Contents Page

1. Purpose
2. Legal Framework
3. Essex County Council's approach to charging
4. Non-Chargeable Services
5. Chargeable Services
6. Calculating Charges and Financial Assessment
7. Charging for Residential Services
8. Deferred Payment Arrangements (DPA)
9. Top Ups
10. Charging for Non-Residential Services
11. Where a person lacks capacity
12. Continuing healthcare
13. Aftercare under Section 117 Mental Health 1983
14. Direct Payments
15. Information and Advice
16. Complaints
Appendix A – Deferred Payment
Appendix B – Debt Recovery Process
Appendix C – Direct Payments

## 1. Purpose

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- 1.1. The purpose of this policy is to set out how Essex County Council will charge for the provision of care and support services and the principles that underpin the Council's exercise of its statutory power and discretion.
- 1.2. For the purposes of this policy, "residential services" refers to services in a registered care home and "non-residential services" refers to services in the community, in a person's home or in prison.
- 1.3. Please note that this is a policy document and that all policies may be amended or changed in accordance with democratic procedures.
- 1.4. Nothing in this policy is intended to fetter the discretion of the Council.
- 1.5. Any references to "the charging policy" or "this charging policy" or "this policy" or similar shall be a reference to this policy as the context so requires.
- 1.6. In this policy the expressions "adult" and "service user" are used interchangeably and both refer to those individuals who receive care and support from the Council.
- 1.7. In this policy the expressions "capital limit", "financial limit" and "financial threshold" are used interchangeably and all refer to the capital limit set each year by the Department of Health and Social Care.

## 2. Legal Framework

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- 2.1. This policy has been produced in accordance with the legal requirements set out in:

### **Primary Legislation – Care Act 2014**

- 2.2. Care Act 2014: The Care Act 2014 provides a single legal framework for charging for care and support under sections 14 and section 17.

### **Secondary Legislation - Regulations**

- 2.3. Care and Support (Charging and Assessment of Resources) Regulations 2014 (SI 2014/2672) ("2014 Regulations"): These 2014 Regulations govern the scope of the local authorities' power to charge for meeting eligible needs and for financial assessments under the Care Act 2014.
- 2.4. Care and Support (Deferred Payment) Regulations 2014 (SI 2015/2671) ("DP Regulations"): These DP Regulations set out the criteria that local authorities must apply when deciding whether they are obliged to offer individuals a

deferred payment agreement. The DP Regulations also set out the rules for security and equity limits.

- 2.5. Care and Support (Preventing Needs for Care and Support) Regulations 2014: These Regulations make provision under the Care Act 2014 for when a local authority can make a charge for the provision of services, facilities and resources.
- 2.6. Care and Support (Personal Budget: Exclusion of Costs) Regulations 2014 (SI 2014/2840): These regulations provide that the costs of intermediate care and reablement services must be excluded from an individual's personal budget (in certain circumstances) and where the local authority is not permitted to charge for those services under section 14 of the Care Act 2014.
- 2.7. Care and Support (Direct Payment) Regulations 2014 (SI 2014/2871): These Regulations provide the conditions applicable to the provision of direct payments to service users.

(together referred to as the "Regulations")

## **Statutory Guidance**

- 2.8. Department of Health: Care and Support Statutory Guidance (October 2018) as amended from time to time ("Statutory Guidance"): The Statutory Guidance sets out the principles guiding Local Authorities in applying the Care Act and the Regulations. Section 78 of the Care Act 2014 requires that local authorities act in accordance with the Statutory Guidance unless they have clear reasons for not doing so. It enables a Local Authority to decide whether or not to charge a person when it is arranging to meet a person's care and support needs or a carer's support needs. This Charging Policy should be read alongside the Statutory Guidance, and in particular chapters 8-9 and annexes A-F.

In this policy any reference to the "Law" shall mean reference to the following:

- Care Act 2014 and Statutory Guidance
- The Regulations (as defined above)
- Equality Act 2010
- Data Protection Act 2018 (and subsequent legislation)
- Mental Capacity Act 2005
- Mental Health Act 1983
- Freedom of Information Act 2000

## **3. Essex County Council's approach to charging**

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### **The Council's powers to charge for the provision of adult social care services**

- 3.1. The Council has a duty to meet social care needs of people whose needs for care and support meet the statutory eligibility criteria as set out in the Care Act

2014.

- 3.2. Where the Council arranges care and support to meet a person's eligible needs, the Council has a discretionary power to charge that service user under section 14 of the Care Act.
- 3.3. It is the policy of the Council to charge adults the cost of using social care services for the provision of social care services to the fullest extent possible in line with its statutory powers and in compliance with the Law (except in exceptional circumstances or where it has specifically chosen not to do so, or where it is prohibited by law from doing so - for example for services funded by the NHS)).
- 3.4. This Charging Policy clearly outlines the Council's position in respect of the manner in which the Council will exercise its discretionary powers to charge.
- 3.5. Where the Council charges, it will do so fairly and transparently and in line with the Law. The overarching principle is that people should only be required to pay for social care that they can afford (i.e the Council will not charge more than the Law considers reasonably practicable for people to pay).
- 3.6. It is also the policy of the Council to obtain best value for the public money it spends on providing care and support, and, where allowed to do so by law, to recover the administration costs associated with the provision of services in line with relevant national guidance.
- 3.7. The Council will seek to protect public money from fraud, misuse, or deprivation of assets and will take action to recover any monies lost as a result of such unlawful activities.
- 3.8. Unpaid money owed by service users to the Council will constitute a debt to the Council and will be recovered by the Council through its debt recovery process as outlined in Appendix B.

### Guiding principles

- 3.9. This Charging Policy upholds all of the principles set out in the Statutory Guidance and the following principles and outcomes also underpin the Council's approach to charging:

<b>For the Service User</b>		
<b>Principle</b>	<b><i>Individual Outcome</i></b>	<b><i>What we do to achieve that outcome</i></b>
Fairness	I am paying a fair contribution to the cost of my care.	We ensure individuals are given clear information about charging and how their contributions have been calculated.  We will charge individuals based on their assessed ability to pay following their

		<p>means-tested financial assessment.</p> <p>We apply the charging rules fairly and transparently.</p> <p>Where someone lacks capacity to make a decision, we will offer support as appropriate and liaise with their legal representative, and act in his or her best interests in line with the law and relevant guidance.</p>
Transparency	<p>I understand how my care contribution has been calculated.</p> <p>I understand the onus is on me as a service user to notify the Council of any changes to my circumstances</p>	<p>We give clear and simple information about charging at the right time.</p> <p>We give clear information about financial assessment before and during the process.</p> <p>We give clear explanations about how an individual contribution has been calculated.</p>
<b>For the Council</b>		
	<b><i>ECC Outcome</i></b>	<b><i>What we do to achieve that outcome</i></b>
Fairness	<p>The Council is operating a fair charging system for adult social care that complies with national guidance and legal requirements.</p>	<p>We operate a charging system that is lawful, fair, equitable and transparent.</p> <p>National guidance and best practice are complied with at all times.</p>
Sustainability	<p>The Council's delivery of care and support services will be sustainable to ensure that all of those with eligible needs in Essex receive the care they need in the long run</p>	<p>Where the law permits the Council to levy fees for services, these fees will be set at the level needed to enable the Council to recover the costs incurred in providing the services and no more.</p> <p>We may charge for services such as the kenneling of animals, storage of personal possessions and securing of property where this is legally permitted and appropriate.</p> <p>We charge interest on Deferred Payment agreements in line with the legislation.</p> <p>We fund care packages to a level that is</p>

		<p>appropriate to meet the eligible assessed unmet needs.</p> <p>We make full use of no cost alternatives before funding care.</p> <p>We ensure that care packages are regularly reviewed to ensure appropriateness and best value is maintained.</p> <p>We apply appropriate financial controls and monitoring.</p> <p>We recover debts owed to the Council in line with our statutory powers and with the Council's duty to account for tax payers' money.</p>
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## 4. Non-chargeable services

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### 4.1. The Council will not charge for services where:

- 4.1.1. It is prevented from doing so by law or where statutory guidance says it should not do so, or
- 4.1.2. It has chosen not to do so taking into account its wider strategic outcomes or the individual circumstances of each case. In these cases the decision not to charge will be reviewed from time to time and we reserve the right to charge in the future. Any changes will be subject to the normal processes of consultation and governance (as applicable).

### 4.2. By law, care and support services must be provided without charge in the following circumstances:

- 4.2.1. Provision of community equipment (including minor adaptations to property up to £1,000)
- 4.2.2. Intermediate care and reablement support services for the first 6 weeks of the specified period.
- 4.2.3. Any services which are provided as part of an individual's aftercare under section 117 of the Mental Health Act 1983.
- 4.2.4. The Council will not charge any adult suffering from variant Creutzfeldt-Jacob disease for meeting their needs.



- 4.2.5. Any services which a local authority is under a duty to provide through other legislation may not be charged for under the Care Act 2014.
- 4.2.6. Assessment of needs, financial assessments and the preparation of the care and support plan.
- 4.3. In the same way as chargeable services, all provision should reflect best value and be clearly linked to specified outcomes.

## **Carers**

- 4.4. The Council does not charge for the provision of carers' services where these are identified as eligible needs in the Council's carer's assessment.

## **5. Chargeable Services**

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- 5.1. All services, whether residential or non-residential, will be chargeable unless specifically excluded from charging. The provision of chargeable services will reflect best value and be linked to the specified outcomes set out in the adult's care and support plan.

## **6. Calculating charges and Financial Assessments**

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### **Working out how much a person will pay towards their care**

- 6.1. The Care Act 2014 and the Regulations issued under it determine the maximum amount a local authority can charge, and require councils who decide to charge, such as Essex County Council, to have regard to the Statutory Guidance. The overarching principle is that service users should only be required to pay what "they can afford".

### **Financial assessments**

- 6.2. The Council will not charge more than the Law says the service user can afford to contribute.
- 6.3. The Council will follow the law and the statutory guidance when carrying out financial assessments.

- 6.4 The Council will not include any income or capital in the financial assessment which is expressly exempted from inclusion by the Law.
- 6.5. The Council will consider all relevant and contributing factors to an individual's financial circumstances whilst undertaking an assessment. Factors to consider include but are not limited to:
  - 6.5.1. Chargeable and non-chargeable income
  - 6.5.2. Chargeable and non-chargeable capital
  - 6.5.3. Applicable Allowances
  - 6.5.4. Applicable Disregards
- 6.6. Following the assessment, the Council will provide the service user with a written record of the assessment, explaining how the assessment has been carried out and what the charges will be as well as details of the Council's complaint procedure.
- 6.7 A Service User can request a reassessment at any time, if there has been a change in their financial circumstances.
- 6.8 The Council will normally also carry out an annual financial assessment review to ensure the service user is paying the correct amount for the services they receive.
- 6.9 In the event of a complaint being raised by the service user In respect of their financial assessment, a senior officer will investigate the issue raised and respond to the person who raised the complaint in line with the Council's Complaints Policy. Advocacy services may be available to assist adults who may need the assistance of an advocate.

## **Where a financial assessment is not done**

### **Full Cost Assumption**

- 6.10. The Council will regard itself as having completed a financial assessment and will treat Service Users as possessing financial resources ABOVE the upper capital limit, and as such being liable to pay for the full cost of their care and support, in the following instances:
  - a) if the service user or their representative has refused to complete a financial assessment or has refused to provide information or supporting documents which the Council reasonably needs in order to undertake an assessment; or
  - b) the Council is satisfied from the evidence available to it that the service user's financial resources exceed the upper capital limit (Light Touch assessment). In this case, the Council will inform the adult when a Light

Touch Assessment has taken place and make clear that they have the right to request a full financial assessment should they not consent to or agree with the Light Touch Assessment.

### **Nil Cost Assumption**

6.11 Subject to paragraph 6.12, the Council will regard itself as having completed an assessment, and will treat Service Users as possessing financial resources BELOW the lower capital limit, and therefore not being liable to pay any care charges to the Council where:

- a) the adult lacks mental capacity to consent to the financial assessment being carried out, and he/she has no legal representative to take this decision (Lasting Power of Attorney, Deputy, Appointee), and no best interest decision can be made in this respect; or
- b) the Council is satisfied from the evidence available to it that the service user's financial resources do not exceed the lower capital limit (Light Touch Assessment). In this case, the Council will inform the Service User (or their representative) when a Light Touch Assessment has taken place and make clear that they have the right to request a full financial assessment should they not consent to or agree with the Light Touch Assessment.

6.12 Where the Council is not charging as a result of paragraph 6.11(a), as soon as the Council carries out a full financial assessment, it will backdate the same to the date the provision of care and support service started and any care charges due from the service user to the Council will become payable from that date and in accordance with a payment plan to be agreed with the service user (or their representative).

### **Financial Limits**

6.13 The financial limits are set by Law and determine the minimum resources above which a service user should contribute towards the costs of care and support. The Council will use the same limits as set by central government.

6.14 At the time of publishing, the upper capital limit is £23,250, and the lower capital limit is £14,250. If the limits set by Law change, then this Policy shall be read as making reference to those updated figures.

6.15 Where the Council believes an intentional deprivation of assets has occurred, will seek to charge the person as if that deprivation of assets had not occurred and it will follow the procedure set out in [Annex D](#) and E to the Statutory Guidance.

6.16 Where it is ascertained that the service user's financial resources exceed the upper financial limit, they can request that the Council meets their eligible needs and they will be liable to pay for the full cost of their care. However, if a service user's needs are to be met in a care home then the Council will not arrange for

their eligible needs to be met, unless required by law to do so or unless the Council decides to do so on a case by case basis.

## 7. Charging for residential care services

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7.1 Where a person has capital resources which are to be taken into account which are below the upper capital limit, they will be expected to contribute based on what the law says they can afford from their income and/or savings.

7.2 The Council will help support a person to identify the options of how best to pay any charge.

### **Personal expenses allowance (PEA)**

7.3 Statutory guidance requires the Council to ensure an amount of a care home resident's income is protected as Personal Expenses Allowance ("PEA"). This money is not taken into account in assessing a resident's income and the PEA can then be used by the person for their own personal expenses (such as clothing, and other items which are not part of their care).

7.4 The minimum amount is set nationally each year. The Council will set PEA at the national level, currently £24.90 per week. Anything above this will be taken into account in determining the charges the person can afford to pay.

### **Temporary and short term placements**

7.5 A short term resident is someone provided with accommodation in a care home for a period not exceeding 8 weeks, for example where a person is placed in a care home to provide a period of respite. In these circumstances, the Council, if it thinks fit, will assess and charge short term residents based on the rules for care and support arranged other than in a care home.

7.6 A temporary resident is defined as a service user whose need to stay in a care home is intended to last for a limited period and where there is a plan to return home. The service user's stay should be unlikely to exceed 52 weeks, or in exceptional circumstances, unlikely to substantially exceed 52 weeks.

7.7 A temporary resident will have a financial assessment carried out where appropriate to determine the level of cost they will meet. The main, or only home of a temporary resident and certain housing related costs will be disregarded in the financial assessment as they will be expected to return to this property.

7.8 If a temporary stay becomes permanent the initial temporary financial assessment will apply until the date that the care and support plan is amended and agreed with the service user or their representative.

## 8. Deferred Payment Agreements (DPA)

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- 8.1. The Council can agree to defer the payment of charges due to it from the adult, for the costs of meeting needs in a care home (or supported living accommodation if the Council so agrees on case by case basis) by way of a Deferred Payment Agreement. This gives the adult more flexibility about their care funding options. The costs of provision of care and support will have to be repaid by the individual (or a third party on their behalf) at a later date.
- 8.2. The Council will operate its Deferred Payment Agreement scheme in line with the relevant regulations and national guidance. If a service user does not want to sell their property (or make other arrangements) and also chooses not to take advantage of the DPA scheme, they may need to arrange their own permanent placement, unless the Law requires otherwise.
- 8.3. The Council will charge interest on the debt accrued in the period of the DPA in line with the Care and Support (Deferred Payment) Regulations 2014 as amended or replaced from time to time.
- 8.4. Whilst a DPA is in place the Council will take all reasonable steps to ensure:
  - 8.4.1. The debt owed to the Council and accruing during the DPA is secured by a charge on the service user's property/ies; and
  - 8.4.2. That the service user or their representative takes appropriate steps to ensure that the property/ies is properly maintained, insured, and secured to maintain its market value and not occupied without the prior consent of the Council; and
  - 8.4.3. The debt does not exceed the loan to value ratio set out in national guidance.
  - 8.4.4. The security offered is robust. Where the security offered is believed by the Council to be inadequate to secure the debt, the Council reserves the right to decline to enter into a Deferred Payment Arrangement in line with relevant national guidance.
- 8.5. The Council will recover the cost of setting up the Deferred Payment Arrangements, including legal and ongoing running costs via an administrative charge as set out in the Council's published Charges (see website). The charge will be set at a level so as not exceed the costs incurred by the Council.

- 8.6. The Council will offer a loan-type deferred payment agreement to those who request one and who are entitled, as set out in the Care and Support (Deferred Payments) Regulations 2014, are met. A loan-type agreement is one where the individual pays the care provider for the individual's care and the Council loans them the cost of care in instalments less any contributions the individual makes from other sources

## 9. Top-ups

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- 9.1. Where a service user's care is wholly or partly funded by the Council, that care will demonstrate best value as set out above in section 4. However, the Council recognises that service users have the right to exercise choice over how and where their care is provided and may ask the provider to provide additional care or may ask to be provided with care in a home which is more expensive than the Council would usually pay. This is referred to as 'top-up'.
- 9.2. To discharge its duties to facilitate choice the Council operates a scheme, in line with the Statutory Guidance, that permits those who wish to do so to purchase higher cost accommodation than that normally funded by the Council, through payment of a top up. The top up payment is the difference between the actual costs of the preferred provider and the amount that the Council has set in the service user's personal budget.
- 9.3. There are two type of Top Up, namely a first party Top Up and a Third Party Top Up.

### **First Party Top-Up**

- 9.4. A service user can make a first party Top Up only in the following circumstances:
  - 9.4.1 Service user is subject to a 12-week property disregard (but only during the period of that disregard)
  - 9.4.2 Service user has a deferred payment agreement (DPA) in place with the Council. The DPA agreement must reflect the first party top up arrangement
  - 9.4.3 Service user is receiving accommodation provided under section 117 of the Mental Health Act 1983 for mental health aftercare.

### **Third Party top ups**

- 9.5. Third party top ups are those top ups paid by a third party (someone other than the service user) who is willing and able to meet these additional costs for the likely duration of the care arrangement.

### **All top ups**

- 9.6. All top-ups must be expressly agreed in writing by the Council. The Council will agree to enter into a top-up arrangement where:
- 9.6.1 it can assure itself that the person paying the Top Up sums has sufficiently secure financial resources to make the payments by requesting reasonable evidence; and
  - 9.6.2 the top-up arrangement is sustainable for the likely period of its life.
- 9.7 Where the service user or a third party wishes to enter into a top up arrangement, they will be required to enter into a legally binding contract with the Council to set out the terms of the arrangement
- 9.8 It is recognised that people's finances can change over time and the person making the 'top-up' payment (service user or a third party) could see an unexpected change in their financial circumstances that will impact their ability to continue to pay the 'top-up' fee. Where a person is unable to continue making 'top-up' payments, the Council may seek to recover any outstanding debt and make alternative arrangements to meet a person's needs, subject to a needs assessment.
- 9.9 In all cases where a top-up arrangement breaks down (due to failure to pay the to-up fees) the Council reserves the right to move the service user who is being cared for to a care home that falls within the service user's personal budget, subject to a needs assessment. In all such cases the Council will exercise its discretion based on the circumstances of the case and always considering the service user's wellbeing.

## **10. Charging for non-residential services**

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- 10.1. The Council exercises its discretion to charge for non-residential services.
- 10.2. For service users who require non-residential care and support services, the central government sets the Minimum Income Guarantee (MIG). The Council will charge service users at a level which leaves them with the MIG and allow for any housing costs such as rent and council tax (net of any benefit provided to support those costs and after any disability related expenditure (DRE)).
- 10.3. The financial assessment of the service user's capital will exclude the value of the property which they occupy as their main or only home.
- 10.4. In assessing DRE, the Council will comply with Annex C of the Statutory Guidance and follow the steps set out therein.

## 11. Where a person lacks capacity

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- 11.1. Were an adult lacks capacity to manage their own financial affairs and is therefore unable to take part in a financial assessment or pay any assessed contributions to the cost of their care, the Council will identify a suitable representative to act on their behalf.
- 11.2. A representative will have the legal authority to make financial decisions on behalf of a person who lacks capacity to give consent to a financial assessment if they have:
- 11.2.1. A valid Power of Attorney for Property and Affairs
  - 11.2.2. Deputyship for Property and Affairs
  - 11.2.3. Appointeeship by the Department of Work and Pensions for the purposes of benefits (in the event that control of the adult's benefits is sufficient for the relevant decision)
- 11.3. If there is no such person, then an application to the Court of Protection may be required for the appointment of a Deputy for Property and Affairs. The Council may seek to have itself appointed as Deputy.
- 11.4. Once a representative is identified or appointed, the Council will work with them to undertake the financial assessment. If a representative is not satisfied with the financial assessment then they will be able to use the review process set out above on behalf of the adult.

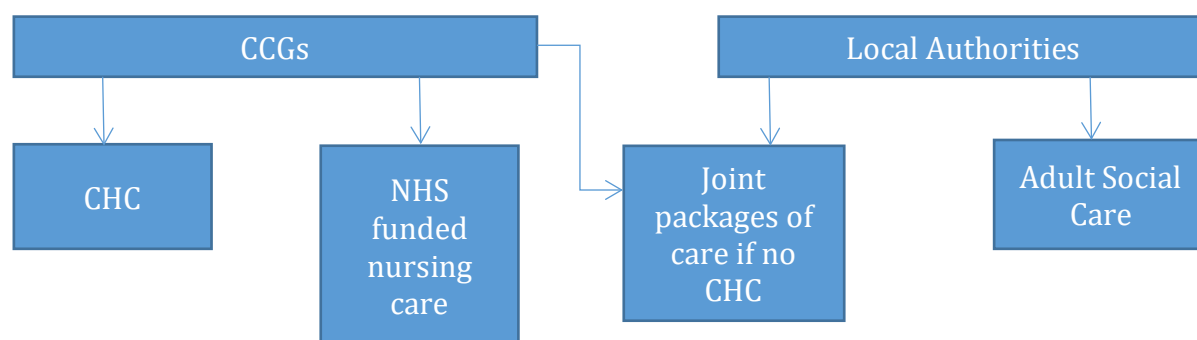
## 12. Continuing Healthcare

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- 12.1. NHS Continuing Healthcare (CHC) is a package of ongoing health and care and support that is arranged and funded solely by the NHS where the individual has been found to have a 'primary health need', as set out in the National Framework for NHS CHC and NHS-funded Nursing Care, as amended from time to time (the Framework).
- 12.2. The Law states that local authorities cannot lawfully commission services that are clearly the responsibility of the NHS (e.g. care provided by registered nurses and services that the NHS has to provide because the individual is eligible for NHS continuing healthcare).
- 12.3. If a person is assessed as eligible for CHC funding by a Clinical Commissioning Group (CCG), the CCG must legally provide that funding and health and social care costs are paid by the CCG. If the person is not eligible for CHC the local authority and the person may have to pay the social care costs instead.



- 12.4. Where it appears to the Council that a person may be eligible for CHC, the Council will refer the individual to the relevant CCG. Eligibility for CHC is a decision to be taken by the relevant CCG, based on an individual's assessed needs. A person only becomes eligible for CHC once a decision on eligibility has been made by the CCG. At that point the person will receive health and care support from the NHS free of charge in line with the NHS Act 2006.



## 13. Aftercare under section 117 Mental Health Act 1983

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- 13.1. Under section 117 of the Mental Health Act 1983 (the 1983 Act), local authorities together with CCGs have a joint duty to arrange the provision of mental health after-care services for people who have been detained in hospital for treatment under certain sections of the 1983 Act free of charge.
- 13.2. After-care services must have both the purposes of 'meeting a need arising from or related to the person's mental disorder' and 'reducing the risk of a deterioration of the person's mental condition and, accordingly, reducing the risk of the person requiring admission to a hospital again for treatment for mental disorder.' After-care needs will be subject to regular joint reviews carried out by the Council and the relevant CCG to ascertain whether the adult is still in need of these services and discharge them if they are not.
- 13.3. Whilst the after-care must be provided free of charge, an adult has the right to choose a setting that is more expensive than that identified by the Council and can pay a top up (see section 9) to cover the difference in cost.
- 13.4. An adult may have certain needs for care and support which are not after-care needs but are eligible needs for the purpose of the Care Act 2014. These needs will be met under the Care Act 2014 subject to a review of the adult's needs and will be chargeable in accordance with this Policy.

## 14. Direct Payments

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- 14.1. Direct Payments are monetary payments made to individuals to meet some or all of their non-residential care and support needs. They provide independence, choice and control by enabling people to commission their own care and support in order to meet their eligible needs.
- 14.2. The Council encourages individuals to maintain their independence and remain

in control of their care by managing a Direct Payment. The process followed by the Council and a sample of the Direct Payment Agreement are included in Appendix D to this Policy.

## 15. Information and advice

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- 15.1. The Council will ensure that people in its area have access to information and advice relating to how care and support for adults is funded in Essex.
- 15.2. In particular, The Council will ensure that people are informed how to access independent financial advice in relation to funding their care and support.
- 15.3. The Council will take steps to identify those who may benefit from financial advice or information as early as possible. The Council will also take steps to raise a broader awareness about how care and support is funded.

## 16. Complaints

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- 16.1. A Service User may wish to make a complaint about any aspect of the financial assessment or how a local authority has chosen to charge. A copy of the Council's Complaints Policy is published on the Council's website.

## 17. Resources

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### **References/useful information**

#### **Department of Health and Social Care**

Copies of all the policy documents (the law) referred to in this leaflet are available at their website [www.dh.gov.uk](http://www.dh.gov.uk). The following are of particular interest.

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

[www.careandsupportregs.dh.gov.uk](http://www.careandsupportregs.dh.gov.uk)

Alternatively, you can ring them on 020 7210 4850 (national call rate).

#### **Age UK (Previously Age Concern and Help the Aged) ,**

[www.ageuk.org.uk](http://www.ageuk.org.uk) Advice line 0800 169 65 65 (free call). Age UK provides useful factsheets on a range of issues including on charging for both non-residential and residential care.

#### **Care Quality Commission**

<https://www.cqc.org.uk/>

The CQC is the independent regulator which monitors, inspects and regulates health and social care services. They publish their findings, including ratings to help people choose care.

#### **Citizens' Advice Bureau (CAB)**

There is a national network of free advice centres.

## APPENDIX A – DEFERRED PAYMENT AGREEMENTS

### **Debt accrues over the SU's lifetime**

- a) The establishment of the universal deferred payment scheme means that people should not be forced to sell their home in their lifetime to pay for their care. By entering into a deferred payment agreement, a local authority agrees to:
  - i. defer the payment of charges due to it from the adult, for the costs of meeting needs in a care home or supported living accommodation; or
  - ii. defer the repayment of a loan to the adult in instalments, to cover the costs of care and support in a care home or supported living accommodation

### **Criteria for the entering into a DPA**

- b) An adult will be offered a DPA if they meet all of the following criteria at the point of applying for a DPA:
  - i. A person is ordinarily resident in the local authority area or present in the area but of no settled residence; or ordinarily resident in another local authority area but the local authority has determined that they will or would meet the individual's care needs under section 19 of the Care Act if asked to do so;
  - ii. A person has needs which are to be met by the provision of care in a care home. This is determined when someone is assessed as having care and support needs which the local authority considers should be met through a care home placement;
  - iii. A person has less than (or equal to) £23,250 in assets excluding the value of their main or only home (for example, in savings, other non-housing assets and housing assets other than their main or only home);
  - iv. A person's home is not disregarded; for example, it is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support (for example, someone whose home is taken into account in the local authority financial assessment and so might need to be sold).
- c) The Council reserves the right to refuse ('permission to refuse') or limit the scope of a deferred payment agreement despite someone meeting the qualifying criteria where:

- i. The Council is unable to secure a first charge on the person's property
- ii. Someone is seeking a top up
- iii. a person does not agree to the terms and conditions of the agreement.

### **How much can be deferred**

- d) In agreeing with the adult how much can be deferred, the Council will take into consideration the following elements:
  - i. The amount of equity a person has available in their chosen form of security (usually their property);
  - ii. The amount a person is contributing to their care costs from other sources, including income and (where they choose to) any contribution from savings, a financial product or a third-party; and
  - iii. The total care costs a person will face.

### **Circumstances in which the Council may stop deferring care costs**

- e) In exercising its discretion as to the circumstances in which the Council may stop deferring the adult's care costs, the Council will comply with Chapter 9 of the Statutory Guidance.

### **Adequate Security**

- f) The Council will accept as 'adequate security' a first legal mortgage charge against the adult's property on the Land Register. The Council may also consider the types of security listed below if a person cannot secure their deferred payment agreement with a charge on a property:
  - i. a third-party guarantor – subject to the guarantor having / offering an appropriate form of security
  - ii. a solicitor's undertaking to pay
  - iii. a charge on a valuable object such as a painting or other piece of art
  - iv. a legally binding agreement to repay the amount deferred from the proceeds of a life assurance policy
- g) The Council reserves the right to refuse deferred payment agreement if it is not satisfied that adequate security is in place, taking each case on its merits.

## APPENDIX B – DEBT RECOVERY PROCESS

- a) If a service user fails to pay their contributions to the Council in line with this policy (the Debtor), the missed payments will represent a debt owed by the Debtor to the Council. The Council will use its powers under the Care Act 2014 to recover the debt and in doing so, it will follow its debt recovery process and the requirements of the law.
- b) The Council will consider the circumstances of each case before deciding a course of action. If the Council decides to commence debt recovery process against a Debtor, this process will start 5 weeks after the Debtor defaulting on its personal contributions to their care owed to the Council.
- c) The Council will send a letter to the Debtor and/or their representative informing them that they are in default of payment and asking them to make suitable arrangements to pay. All documentation including copies of all overdue invoices will be enclosed with the letter.
- d) The Debtor will be given adequate opportunity to either dispute the debt, dispute the financial assessment or make arrangements for payment (including agreeing a payment plan with the Council). The options available to the Debtor will be clearly set out in the correspondence.
- e) The Debtor will be given time to respond and request clarifications and/or request a review of the financial assessment, if the Council agrees that one is necessary.
- f) In the event the Debtor fails to repay the debt to the Council following all of the steps highlighted above, the Council reserves the right to commence Court proceedings against the Debtor.

## APPENDIX C – DIRECT PAYMENTS

- a) Direct payments are cash payments made to service users for the purpose of enabling them to arrange their own care. They provide independence, choice and control by enabling people to commission their own care and support in order to meet their eligible needs.
- b) The legislative context for direct payments is set out in the Care Act 2014, Section 117(2C) of the Mental Health Act 1983, the Care and Support (Direct Payments) Regulations 2014 and by the Statutory Guidance (Chapter 12).
- c) Direct Payments will be paid net of any assessed social care contribution (i.e. the charges you have been assessed as being liable to pay towards the cost of your care). The service user will be expected to top up the Direct Payment account with their assessed contribution. The terms of the Direct Payment arrangement are set out in the Direct Payment Agreement between the Council and the service user.
- d) The Council can discontinue direct payments in a number of circumstances as set out in the Statutory Guidance and the Law. The Council will undertake a review before making the decision to discontinue direct payments and provide written notice to the service user.
- e) In a case where a condition of the Direct Payment is breached, the Council may terminate the Direct Payment Agreement and require repayment of the whole or part of a direct payment, depending on the nature of the breach.
- f) The costs incurred by the Council in recovering or seeking to recover a sum due to it are recoverable by the Council as a debt due to it.
- g) Following the commencement of a Direct Payment, the Council will conduct a review in the first 6 months, and then at least once every 12 months subsequently. The Council reserves the right to review more frequently if it thinks it is necessary or it is notified of a change on circumstances.

### **Adults who have mental capacity**

- h) Where the Council is satisfied that the person has capacity to make a request for direct payments to cover some or all of their care needs, it must consider each of the 4 conditions in section 31 of the Care Act 2014. These conditions need to be met in their entirety; a failure in one would result in the request to receive a direct payment being declined. The conditions are:
  - i. the adult has capacity to make the request, and where there is a

- nominated person, that person agrees to receive the payments;
- ii. the Council is not prohibited by Regulations from meeting the adult's needs by making direct payments to the adult or nominated person;
  - iii. the Council is satisfied that the adult or nominated person is capable of managing direct payments either by himself or herself, or with whatever help the Council thinks the adult or nominated person will be able to access;
  - iv. the Council is satisfied that making direct payments to the adult or nominated person is an appropriate way to meet the needs in question.

### **Adults who lack mental capacity**

- i) In cases where the person in need of care and support has been assessed as lacking capacity to request the direct payment, an authorised person can request the direct payment on the person's behalf. In these cases, the local authority must satisfy itself that the person meets the conditions as set out in section 32 of the Care Act.
- j) As with direct payments for people with capacity, each of these conditions must be met in their entirety. Failure to meet any of the conditions would result in the request being declined. The conditions are:
  - i. where the person is not authorised under the Mental Capacity Act 2005 but there is at least one person who is so authorised, that person who is authorised supports the person's request
  - ii. the Council is not prohibited by Regulations from meeting the adult's needs by making direct payments to the authorised person, and if Regulations give the Council discretion to decide not to meet the adult's needs by making direct payments to the authorised person, it does not exercise that discretion
  - iii. the Council is not prohibited by Regulations from meeting the adult's needs by making direct payments to the authorised person, and if Regulations give the Council discretion to decide not to meet the adult's needs by making direct payments to the authorised person, it does not exercise that discretion;
  - iv. the Council is satisfied that the authorised person will act in the adult's best interests in arranging for the provision of the care and support for which the direct payments under this section would be used;
  - v. the Council is satisfied that the authorised person is capable of managing direct payment by himself or herself, or with whatever help the Council thinks the authorised person will be able to access;
  - vi. the Council is satisfied that making direct payments to the authorised person is an appropriate way to meet the needs in question.



- k) In order to receive a Direct Payment the individual or an appropriate person on their behalf will be required to enter into a Direct Payment Agreement with the Council. The agreement will set out all of the rights and obligations of both parties.