



# **Adult Social Care and Health**

## **Co-Funding for Community Care Services**

**Version 7.1**

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If you would like to make any comments, amendments, additions etc please email [ASCH.adultcare.policy@derbyshire.gov.uk](mailto:ASCH.adultcare.policy@derbyshire.gov.uk)

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## 1. Legal Framework

- 1.1 Local authorities have discretion to choose whether to charge under section 14 of the Care Act 2014 following a person's needs assessment.
- 1.2 Where the council decides to charge, it must follow the Care and Support (Charging and Assessment of Resources) Regulations 2014 and have regard to the Care and Support Statutory Guidance, October 2014 or as further amended.
- 1.3 The council will apply the principles set out in the Mental Capacity Act 2005 concerning people lacking capacity to manage their finances. Where someone lacks capacity to make decisions about their finances, the council will try to identify whether they have appointed an attorney under a lasting power of attorney for finances or whether an order has been made by the Court of Protection appointing a deputy for their finances. The attorney or deputy is a lawfully appointed representative.
- 1.4 Where the person has no lawfully appointed representative, the council will communicate with family members to obtain financial information and encourage family members where appropriate to apply to the Court of Protection to be appointed as deputy of the person's finances. Only where there are no family members or friends, will the council consider applying to be appointed as the person's deputy of their finances.

## 2. Policy Aims and Objectives

- 2.1 The council's contributions policy has been designed to comply with the Care and Support (Charging and Assessment of Resources) Regulations 2014 and have regard to the statutory guidance.
- 2.2 The aim of the contributions policy is to provide a reasonable, fair and consistent contribution framework for all. The policy is also designed to ensure no individual is treated less favourably on the basis of difference and this policy has been subject to an equality impact assessment.
- 2.3 It is the purpose of the income generated from contributions to help maintain and develop services for vulnerable people.

## 3. Principles of the Policy

- 3.1 Any co-funding contributions requested will take account of the relevant legislation and guidance.
- 3.2 All requested contributions will aim to be fair and reasonable. No one will be asked to contribute more than it is reasonably practicable for them to pay in accordance with their means

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- 3.3 This contributions policy aims to be transparent and easy to understand.
- 3.4 As an integral part of the financial contributions process, all clients or their representative will be offered appropriate benefits advice and assistance. This will ensure client's incomes are maximised.
- 3.5 Any contribution requested will be compatible with the current Care and Support (Charging and Assessment of Resources) Regulations, including:
- ensuring a person's net income is not taken below the basic level of income support/employment support allowance/guarantee element of pension credit plus a 'buffer' of 25% (minimum income guarantee)
  - where the person has a dependent child (as defined in 12.1) the appropriate additional allowance will be given in the calculation of the person's minimum income guarantee
  - giving an applicable allowance in respect of savings credit
  - disregarding the value of the main residence of the client
  - assessing capital assets and savings at a minimum level in line with the charging regulations and the statutory guidance
  - not including the earnings of people who work will not have in the calculation of household income
  - disregarding partners' income and savings (unless received as part of a joint entitlement)
  - recognising the additional cost of disability, and making appropriate allowances

People with Creutzfeldt Jakob Disease (CJD) will not be asked to contribute.

The total of any contributions made within the financial year will not exceed the total cost of services provided in that period.

Relevant allowances will be made in relation to unmet housing costs (see 5.8).

- 3.6 Clients or their representative will have recourse through the Disputed Financial Assessment Procedure to ask for a review of their contribution if they feel:
- there has been an error made in the collection of the information for the formal financial assessment
  - that the co-funding contributions policy has not been applied correctly to their particular financial circumstances **or** the Financial Contribution Review Procedure if they believe payment of the contribution would be more than is reasonably practicable for them to pay based on proof of their means
- 3.7 Where a personal care budget is made available or services are provided for carers support following a "carers assessment," the council will use its discretion and will not request a financial contribution from the carer.

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- 3.8 The council will also use its discretion to not request a financial contribution from those people who are terminally ill. Terminal illness for these purposes is defined as where a person has received a prognosis of less than six months life expectancy. Confirmation of this is required from a relevant health professional or by the completion of a DS1500 form designed for the purposes of claiming attendance allowance/disability living allowance (care)/personal independence payment under the special rules' provisions.
- 3.9 Where a person has not been required to make a co-funding contribution due to meeting the terminal illness criteria, this will need to be reviewed after 12 months of the original decision where the person is still in receipt of community care services.
- 3.10 The care co-ordinator will make a formal approach to involve health care professionals to seek their current opinion of the person's condition. At this 12 month review a health professional, for the "terminal illness nil contribution" to continue, will need to formally confirm that the person, in their professional opinion, has a terminal illness with a prognosis of less than six months life expectancy. This includes those people who were awarded attendance allowance/disability living allowance (care)/personal independence payment under the special rules' provisions.
- 3.11 Where this prognosis has changed from the previous decision, the person will be required to be financially assessed in accordance with this policy. Any determined contribution will be due from the date the decision the terminal diagnosis no longer applies.
- 3.12 Decisions regarding the provision of community care services will be taken independently of an individual's financial circumstances.
- 3.13 Co-funding contributions will be determined against the person's confirmed personal budget, with adjustments made where the contribution charged exceeds the cost of care commissioned or personal budget received.
- 3.14 Where possible the council will undertake a light touch financial assessment. This will involve confirming with the Department for Work and Pensions (DWP) and other agencies details of state benefits and allowances paid, and income details submitted to make such claims. The council is entitled to undertake these checks in line with the data sharing agreements between the DWP, local authorities and county councils, following the introduction of the Welfare Reform Act 2012.
- 3.15 Where it is not possible to confirm a co-funding contribution via a light touch assessment, the person or their representative will usually be contacted by telephone to give a formal and accurate full declaration of their financial circumstances to allow the determination of the correct contribution level.
- 3.16 If the person lacks capacity to deal with their financial affairs, the council will need to be informed of the name and contact details of the person or professional who is their appointee or lawfully appointed representative,

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such as an attorney under a lasting power of attorney for finances, or a financial deputy.

- 3.17 Alternatively, if they do not have a lawfully appointed representative, they will be asked to indicate which relative or friend is assisting them with their finances and agree to allow the relevant coordinator to liaise with that relative or friend, so that disclosure of financial information can be made promptly. An individual's lawfully appointed representative or if none, their informal representative, will be expected to furnish full and accurate financial information and to be willing to sign a financial declaration to that effect.
- 3.18 Clients, (or, if they lack capacity for their finances, their representative) who refuse to give sufficient information and appropriate evidence to enable a full financial assessment to be completed, will be assumed to be able to meet the full cost of their care and support and will be asked to contribute accordingly. See [section 16](#) for further information. Details of current contribution levels and capital bandings are at [Appendix 1](#).
- 3.19 Co-funding contributions, for those people who receive services commissioned on their behalf, will be collected on a regular and timely basis, usually by direct debit to the council.
- 3.20 Those people in receipt of a direct payment will usually have their payment made gross to themselves or their nominated/authorised person. Only in exceptional circumstances will co-funding contributions be netted off the direct payment.
- 3.21 The non-payment of contributions will lead to the instigation of the [Debt Management Procedure](#) .
- 3.22 Generating income from contributions is essential to maintain and modernise our services to vulnerable people.

#### 4. Reviews of the Policy

- 4.1 Guidance recommends Adult Social Care should review their co-funding contribution policy annually, in consultation with stakeholders.
- 4.2 As co-funding contributions are based on those allowances that are usually uplifted in April each year, contributions will also be re-assessed at least annually, following the April uplift.
- 4.3 The pension age set by the government is currently increasing to bring the pension age for women to the same as that for men. This is creating some pension ages that must be expressed in terms of years and months. The council have decided to adopt a straightforward approach for aspects of this policy where reference needs to be made to pension age (in particular minimum income level) by defining pension age for everyone with reference to the increasing pension age for women; and by reviewing this pension age

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annually, in increments of a full year, and in arrears of the government set age increasing. For ease the assessment will refer to “born before” and “born on or after” dates.

- 4.4 All co-funding contributions and this policy will, in accordance with guidance, be reviewed annually. The current contributions are detailed in [Appendix 1](#).

## 5. Financial Contribution Procedures

- 5.1 Risk assessments for people refusing to make payment of co-funding contributions involve the following:
- group managers will decide all cases where consideration should be given to providing services even when co-funding requirements are removed, i.e. services will be provided free of charge
  - in addition to policy exceptions described above, the group manager may also agree to free services if there are clear safeguarding concerns should the person have services withdrawn or denied
  - taking into account whether the person has capacity to refuse services or to refuse to pay their co-funding contribution, or lacks capacity to deal with their finances
  - may additionally provide free services for a short period to facilitate a further assessment of risks

These decisions should be reviewed regularly.

- 5.2 People who receive the following services will not be required to make a contribution whilst they are in receipt of those services:
- short term services/interim services (usually for a maximum of six weeks)
  - services fully funded by the NHS under the continuing health care (CHC) provisions
  - after care services provided under Section 117 of the Mental Health Act
  - services or a direct payment received following a carers assessment (see 3.7 for more details)
  - services received for people who are terminally ill (see 3.8 for more details)
  - community equipment (aids and minor adaptations costing £1,000 or less)
  - advice or assessment services
- 5.3 Clients will only be required to make a co-funding contribution from those non means tested benefits paid for their care and/or support needs, i.e. attendance allowance, disability living allowance (care) and personal independence payments. Only under exceptional circumstances will people be required to contribute from their capital. These circumstances may include people with above the capital eligibility threshold, but who do not have the capacity or support network to manage the commissioning and/or on-going payment arrangements.

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5.4 Separate contribution arrangements will continue to apply in relation to:

- accommodation and support programme
- long term care in a registered care home setting
- respite care in a registered care home setting
- equipment maintenance
- wellbeing and support services

5.5 People who receive one or more of the services listed in **5.4** will still be eligible to receive income and benefit maximisation advice as part of the universal offer.

5.6 People receiving the following services will be required to make a financial declaration to determine the level of their contribution:

- direct payments
- home care
- day care
- supported living
- other community-based care packages
- telecare

In cases where the person has a representative, they will be required to make the declaration.

5.7 The council, in line with treatment of income of the Care and Support Statutory Guidance issued under the Care Act 2014, will have regard to unmet housing costs in the determination of contributions.

5.8 For the purposes of this policy “unmet housing costs” are defined as:

- mortgage payments net of any benefits provided to support these costs
- rent net of any benefits provided to support these costs
- council tax net of any benefits provided to support these costs
- service charges (net of utilities)

5.9 For an allowance of unmet housing costs to be made, the person must provide evidence of their formal occupancy status along with details of the formal rent agreement with their social landlord or housing association or the liability for mortgage payments.

5.10 Unmet housing costs do not include non-commercial “sublet” tenancies or non-commercial “board and lodging” payments made to the tenant/owner of the property in which the person may reside.

5.11 For board and lodging payments or subletting rental payments to be classed



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as a housing cost, it must be paid on a commercial basis and **must not** be provided by a close relative or family member (as defined in the guidance) of the client. Relevant evidence of the commercial arrangement will need to be supplied for consideration if the appropriate allowance to be made.

- 5.12 Clients will have the right to have an allowance given for unmet housing costs when calculating their eligible income for co-funding purposes.
- 5.13 For any allowance for unmet housing costs to be given, evidence of both the cost and the shortfall will need to be provided. Where no evidence is provided, then no allowance(s) will be given.
- 5.14 Where an income maximisation check identifies benefits that are due in relation to housing costs it is expected that the individual will, with or without support, make appropriate application(s) for those benefits.
- 5.15 Where someone declines to make an application for housing costs, the council will calculate their co-funding contribution as if those benefits and allowances are in payment.
- 5.16 In line with 19.11 and 19.12, where there is a change in an individual's financial circumstances which affects the level of unmet housing costs then the council should be notified, and where requested, relevant evidence provided. Section 16 details how the council will deal with the consequences for non-disclosure of financial information.
- 5.17 The person, or their representative, must notify of any changes in unmet housing costs, either increases or decreases, so the relevant reassessment of co-funding contributions can be carried out.
- 5.18 Failure to notify the council of any changes in unmet housing costs will result in requests for an increase in the allowance being given, from the date of the request and revised evidence is provided to the council.
- 5.19 Failure to notify the council of any reduction in the amount of unmet housing costs will result in a reassessment of the co-funding contribution from the day the reduction in unmet housing allowance should have been applied. If this reassessment results in arrears of co-funding contributions being due, then these must be paid in full.

## 6. Income Maximisation

- 6.1 For people approaching the council for a care needs assessment, a referral will be made requesting an income maximisation check.
- 6.2 For the income maximisation check to be carried out, a member of the Welfare Rights Service (WRS) will initially contact the person, or their representative, by telephone to establish if it is possible and reasonable to undertake the income maximisation and contribution determination without the need for a personal visit. Where this is possible, all relevant

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documentation and confirmation details will be sent to the client by post. However, the WRS will bear in mind that personal help and advice will often be required to avoid confusion.

- 6.3 Where it is not possible to undertake the income maximisation and/or contribution determination over the telephone, an appointment will be made to visit the person and/or their representative. Where practicable, written confirmation of the date, time and name of the visiting officer attending will be sent prior to the meeting.
- 6.4 Under these co-funding arrangements, there is an expectation that individuals' or their representatives will claim/apply for any additional income that the income maximisation exercise identifies. Where necessary, appropriate support will be identified to assist them to do so.
- 6.5 Any refusal by the person, or if they lack capacity to deal with their finances, their representative, to make application for any benefits or allowances the income maximisation identifies as likely to be due, will result in any contribution being determined as though the appropriate benefits and allowances are in payment.
- 6.6 Co-funding contributions will reflect the identified increased income during the period the claim is being made. However, any additional amount may be accrued until such time as the additional income the person has is in payment, at which point any arrears of contribution accrued will be required to be paid.
- 6.6 Where it is unclear what actual resources the person has, the council will contact DWP, including Job Centre Plus, disability benefits centres and pension services and any other organisations for confirmation. This will be undertaken in line with the data sharing agreements between DWP, local authorities and county councils, following the introduction of the [Welfare Reform Act 2012](#).
- 6.7 The person may be requested, and supported, to supply relevant documentary evidence to ensure that correct applications can be made for relevant benefits and allowances not currently in payment.
- 6.8 As co-funding is a partnership arrangement between the individual and the council, failure to provide all requested documentation may result in the contributions being levied as though the benefit/allowance are in payment.
- 6.9 Where it would appear the outcome of this income maximisation exercise may change any previous contribution, WRS will make the person aware of this information and that the outcome of the benefit claim will be notified to the finance team.
- 6.10 Notification of the result of the income maximisation will be passed to the finance team who will verify the contribution; formally notify the person of the weekly co-funding contribution due, how this has been calculated and the arrangements for payment. This information will be provided as promptly as

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possible, once a person's needs have been assessed and a decision has been made about the care to be provided, or after any increase co-funding in contribution.

- 6.11 As co-funding is a partnership arrangement between the client and the council, individuals' not in receipt of attendance allowance, disability living allowance (care) or personal independence payment and who decline the offer of an income maximisation check will be recommended to make their own application for attendance allowance or personal independence payment. The individual can at any time request the support of the WRS in making such a claim. Failure by the individual, or if they lack capacity to deal with their finances, their representative, to make such a claim may result in the contribution being requested as though those benefits/allowances are in payment.
- 6.12 The council fully accepts an individual's right to seek independent advice on benefits and income issues, and that in these circumstances they may decline an income maximisation check. However, they, or their representative would still be required to declare their income (see [section 16](#)).

<b>7. Treatment of Income</b>
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- 7.1 This policy will have regard to the treatment of income in line with [Treatment of Income of the Care and Support Statutory Guidance](#), issued under the Care Act 2014.
- 7.2 Individuals' will not be asked to make a contribution from their income with the exception of those benefits and allowances specifically made available in relation to an assessed care/support need, i.e., attendance allowance, disability living allowance (care) and personal independence payment.
- 7.3 The maximum someone will be requested to contribute from these forms of income is a percentage of either the lower rate of attendance allowance, middle rate disability living allowance (care), or standard rate of personal independence payment, even if the higher rates are in payment. The current levels of percentage contribution can be found at [Appendix 1](#).

<b>8. Treatment of Capital</b>
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- 8.1 This policy has regard for the capital levels as determined in the 'Treatment of Capital of the Care and Support Statutory Guidance issued under the under the Care Act 2014. However, the council at this time has applied its discretion to allow people to retain a greater proportion of their capital before it is included in any contribution determination.
- 8.2 The value of a person's property which is owned and which is their main residence is not treated as a capital asset for the purposes of this policy in line with ["Treatment of Capital of the Care and Support Statutory Guidance, issued under the Care Act 2014"](#).

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- 8.3 The value of any property owned that is not the main residence of the individual will be treated as a capital asset and will be deemed to be capital for the purpose of the “financial declaration”. This will also apply to the value of any second and subsequent properties and land owned both in the United Kingdom and abroad.
- 8.4 Any capital held by the person which has been acquired through equity release will be treated as available capital for the purpose of this policy.
- 8.5 There may be instances where a someone’s capital is not held as available assets (e.g., a second property). In these circumstances it is likely a contribution towards the individual’s personal care budget would be required due to the level of capital assets. Where it would not be reasonable for this element of the contribution to be made available from other existing resources, the council will consider accruing this proportion of the contribution. If it considers it necessary, the council may require the individual to enter into a formal agreement to secure the debt and ensure any monies due are ultimately repaid.

**9. Disability Related Expenditure (DRE)**

- 9.1 The council will not require people to pay more than the percentage of low rate attendance allowance, middle rate disability living allowance (care component) or standard rate personal independence payment as detailed at Appendix 1, even if the higher rates are in payment. The balance of attendance allowance, disability living allowance (care), or personal independence payment may therefore form part of an individual’s disposable income to be used to help meet any additional costs associated with their disability.
- 9.2 Where someone feels they have additional costs related to their disability, over and above that already allowed in the contribution determination, they are entitled to an individual assessment of their disability related expenditure. Details are in the Financial Contribution Review Procedure.

**10. Basic Income Levels**

- 10.1 In determining the basic income levels and minimum income guarantee (MIG) the council will comply with the Care and Support (Charging and Assessment of Resources) Regulations and have regard to the statutory guidance.
- 10.2 The statutory guidance requires that the council’s contribution policy should ensure that an individual’s net income will not be reduced below the basic level of income support and/or pension credit (guarantee element) plus a 25% buffer.
- 10.3 The council, in line with the statutory guidance, will protect a person’s income and will not reduce this below the basic level of income support and/or pension credit (guarantee element) plus a 25% buffer through payment of

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the co-funding contribution. An applicable allowance will be given in respect of savings credit. See Appendix 1

- 10.4 For those people under pension age, (see 4.3), the council has set the minimum income level to an amount equivalent to the support group rate of employment support allowance (ESA) plus a buffer of 25%. For simplicity, this minimum income level will be applied to all those under pension age at the rate set by government for ESA for those over the age of 25 rather than having a third rate for those under 25. Those people in the first 13 weeks of their claim for employment and support allowance, and so receiving the lower 'assessment phase' rate of benefit will have this source of income ignored when considering their financial resources in relation to the minimum income level. For clarity it should be stated that ESA support group rate exceeds the income support level set out in the statutory guidance.
- 10.5 Where someone has an eligible "dependent child" in their household an allowance for each eligible child will be given when calculating the MIG in compliance of the Care and Support (Charging and Assessment of Resources) Regulations. See section 12.
- 10.6 Tariff income from capital will be determined in accordance with the starting lower threshold used for individuals' entering residential and nursing care, in line with the statutory guidance. However, the council has decided to use its discretion to increase the capital bands from £250 to £500.
- 10.7 Any calculated tariff income will be included in the determination of an individual's eligible income for co-funding purposes.
- 10.8 Where someone is unable to pay the standard contribution, a tapered contribution will be levied to ensure those who have eligible income are not taken below the weekly MIG.
- 10.9 The current values of the MIG along with the current capital threshold amounts for both contribution and income calculation purposes can be found in Appendix 1.

## 11. Treatment of Couples (Including Civil Partners)

- 11.1 When completing a financial assessment for one of a couple, the council will have regard for the treatment of income and assets in line with Treatment of Capital and Treatment of Income of the Care and Support Statutory Guidance, issued under the Care Act 2014.
- 11.2 The guidance states: the council "has no power to assess couples or civil partners according to their joint resources. Each person must therefore be treated individually."
- 11.3 The council will only have regard to an individual's means and not their partner's means when assessing their ability to make a co-funding

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contribution.

- 11.4 Each individual of a couple will be deemed to hold equal shares of capital held together unless evidence can be provided to the contrary.
- 11.5 Where means tested benefits are assessed/received jointly, e.g., employment support allowance, pension credit, universal credit or income support, each client will be deemed to have a right to 50% of that income for the purposes of determining the client's minimum income level.

## 12. Dependent Children

- 12.1 For the purpose of this policy the definition of a dependent child is as follows:
1. The child can be up to 18 years\* of age
  2. **but also must be either:**
    - of pre-school age, or
    - in full time non advanced education(1) or
    - approved unwaged training(2)
  3. The child lives in the same household as the client.
  4. The individual receives child benefit and/or child tax credits or universal credit for the child, or they are not in receipt of child benefit and/or child tax credits as they have income above the upper earnings threshold but would be entitled to those benefits were their income to reduce.
  5. Where the person requesting a “*dependent child allowance*” satisfies points 1- 4 but is not the recipient of the relevant qualifying benefits (point 4) but is the spouse, civil partner or unmarried partner (as defined for state benefit purposes) of the qualifying benefit recipient, the allowance will be given.
- 12.2 The council will consider on an individual basis the continuation of a dependent child allowance when the child is over the age of 18 years where points 2–4 (above) still all apply.
- 12.3 For the appropriate allowance(s) for each dependent child, all the above criteria must be met for each child that an allowance is requested for. (See [Appendix 1](#)).
- 12.4 Where all the above criteria are not met, or the required evidence to confirm eligibility to the dependent child allowance is not provided, then no allowance for that child will be made when determining the co-funding contribution.
- 12.5 The council reserves the right to only include any dependent child allowance in the calculation of the co-funding contribution from the date that all relevant

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information and evidence is provided to the council.

- 12.6 The individual must notify the council if they believe their entitlement to a dependent child allowance has changed. Reasons to notify may include, but are not limited to the child attaining 16 years of age but is:
- not in full time non advanced education(1) or
  - approved unwaged training(2)
  - the child is no longer living in an individuals' household
  - the ceasing of child benefit/child tax credit/universal credit payments in respect of the child
- 12.7 Failure to notify the council of any increase in the number of dependent children in the household will result in any requests for additional allowances only being given from the date the request and revised evidence is provided to the council.
- 12.8 Failure to notify the council of any reduction in the number of dependent children in the household will result in a reassessment of the co-funding contribution from the day the reduction should have been applied. If this reassessment results in arrears of co-funding contributions being due, then these must be paid in full.
- (1) *Non advanced education i.e., more than 12 hours per week at school or college (university education is not included in this description as it is deemed to be advanced education).*
- (2) *Training must not be provided under a contract of employment; 19 year olds can only be included if they started such education or approved training before their 19th birthday.*
- (3) *You cannot count homework, private study, unsupervised study or meal breaks towards the 12 hours and the education can only be up to and including A-level, Scottish Highers, NVQ Level 3 or equivalent. Traineeships as part of the 16 –19 study programmes are deemed to be full-time non-advanced education.*

### 13. Direct Payments/Personal Budgets

- 13.1 When determining any co-funding contribution this will take account of the person's confirmed personal care budget.
- 13.1 Where someone takes their personal budget as a direct payment, only in exceptional circumstances will this be made available net of the co-funding contribution.

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#### **14. Maximum and Minimum Contributions**

The current maximum contributions can be found in [Appendix 1](#)

- 14.1 Where an individual's co-funding contribution is determined at less than £2.00 per week this will not be deemed financially viable to collect.

#### **15. Voluntary Contributions**

- 15.1 In occurrences where the someone's financial assessment would result in them not being required to make a contribution, despite attendance allowance, disability living allowance (care) or personal independence payment being in payment, they may wish to make a voluntary contribution. An example of this may be where they may have significant disregarded income.
- 15.2 Any voluntary co-funding contribution will not be expected to exceed the percentage attendance allowance low rate, disability living allowance (care) middle rate or standard rate personal independence payment as detailed in [appendix 1](#).
- 15.3 The council will accept a voluntary co-funding contribution for as long as the person wishes to make this contribution.

#### **16. Non-Disclosure of Financial Information and False Co-funding Financial Declarations**

- 16.1 All clients or their representatives will only be asked to disclose information that will enable an accurate income maximisation check to be undertaken and appropriate information of their capital so that the council can accurately determine the level of contribution to be levied.
- 16.2 People have the right to decline to give this detailed information. However, in doing so, they will become liable for 100% of their care costs, and in declining to make a full co-funding declaration will be signposted to the brokerage service to identify appropriate care and support providers to allow them to commission services directly, and to arrange to pay in full for their care costs. This also applies when representatives of those people who lack capacity decline to make a full co-funding financial declaration.
- 16.3 Individuals' or their representative who refuse to give a co-funding financial declaration, and as such are liable for the maximum contribution, have the right to contact Client Financial Services (CFS) at any time to request the opportunity to make a full financial declaration. Any subsequent reduction in co-funding contributions will only be applied from the date they, or their representative, provides all required evidence to CFS.
- 16.4 Anyone found to have given an inaccurate declaration of their financial circumstances, either knowingly or unwittingly, will be subject to a revised co-funding contribution determination. This determination will be undertaken



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irrespective as to whether they are still receiving any community care services.

- 16.5 Any revised co-funding contribution, either by formal financial determination or default maximum cost, will be applied from the appropriate date the contribution should have applied. If the backdating of this contribution results in arrears of contributions being due, then these will be required to be promptly paid in full. Failure to make payment of any arrears of contribution will result in the instigation of the Debt Recovery Procedures.

## 17. Deprivation of Assets

- 17.1 When consideration is given as to whether a deprivation of assets has occurred, the council will have regard to Deprivation of Assets - Annex E of the Care and Support Statutory Guidance, issued under the Care Act 2014.
- 17.2 In deciding whether someone has deprived themselves of income and/or capital for the purposes of reducing any contribution liability, the council will have due regard to the timing and reason of the disposal.
- 17.3 Where the council considers that deprivation of assets has occurred, any contribution deemed to be due will be determined as though the person continues to receive or hold those assets.
- 17.4 Where the individual has transferred an asset to a third party in an attempt to reduce their liability to contributions, the third party will be liable to pay the council the difference between what would have been charged and the co-funding contribution being made by the individual.
- 17.5 Where assets have been transferred to more than one third party, each individual of the third party will be liable to pay the council the difference between what would have been charged and the contribution being made by the client in proportion to the amount they received.
- 17.6 The maximum liability of a third party will be limited to the benefit they received from the transfer.
- 17.7 Clients or their representative have recourse through the Disputed Financial Assessment Procedure should they disagree with the council's deprivation of assets decision
- 17.8 Failure by the individual or the third-party who has received the asset to make payment of the contributions will result in the instigation of the Debt Recovery Procedures.

## 18. Notification of Contributions

- 18.1 All individuals' or their representatives will be provided with a breakdown of how their co-funding contribution has been determined.
- 18.2 Any co-funding contribution determined will be payable from the date the

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commissioned service(s) are received by the individual or the commencement date a personal care budget is made available as a direct payment.

Notification of the contribution will be provided as promptly as possible after a person's needs have been assessed and a decision has been made about the care to be provided. This will also apply where there is an increase or decrease in contribution due to a change in an individuals' personal budget.

- 18.3 This notification will also provide details of the initial processes to follow should they feel a mistake has been made in the calculation of their contribution, or because they are unable to pay their contribution because it is not reasonably practicable for them to do so based on their income.

## 19 Changes in Circumstances

- 19.1 Individuals' will be required to make their determined weekly co-funding contribution whilst they receive either commissioned services or a direct payment, irrespective of the frequency and duration of the service. This will include the weeks they do not actually receive or commission services with the exception detailed at 19.4, 19.7 and 19.9. Only where the total of the contributions during a financial year, i.e., April to March, would result in the total co-funding contributions collected exceeding the annual personal budget will they not be required to make the contribution.
- 19.2 Individuals' will continue to make payment of their co-funding contribution during the first four weeks of any hospital admission whilst attendance allowance, disability living allowance (care) or personal independence payment remains in payment.
- 19.3 If, whilst an in-patient, it is confirmed that the person will no longer require community care services, any co-funding contribution will cease from the date of this decision. However, any outstanding contributions due prior to this decision will still be required to be paid.
- 19.4 Where someone is still eligible for a personal budget, only if their attendance allowance, disability living allowance (care) or personal independence payment is suspended, for example during an extended hospital admission, will they not be required to make their contribution. Once attendance allowance, disability living allowance (care) or personal independence payment is reinstated, the contribution will then, again, become payable.
- 19.5 Those people making a co-funding contribution from capital assets, (e.g., those individuals' with above the capital threshold, but the council has agreed to continue to commission the services on their behalf), will also be required to make their contribution for the first 4 weeks of any hospital admission after which time the contribution will suspend in line with 19.2.
- 19.6 If, following a reassessment, someone's personal budget is increased or reduced, any necessary adjustments will be made to the co-funding contribution.

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- 19.7 Anyone discharged from hospital who receives short-term services provided by Direct Care will not be required to make any co-funding contribution during the reablement period. However, any outstanding contributions due prior to the period of short-term services will still be due to be paid.
- 19.8 Following a period of short-term services, unless the person's financial circumstances have changed, any previously assessed co-funding contribution will be re-instated. This will be from the date the community care services recommence.
- 19.9 Individuals' will be required to make payment of the determined weekly contribution including weeks they do not receive services, except for respite care in a registered care home setting. As they are required to make a contribution towards respite care in a registered care home setting, under the Care and Support Statutory Guidance, October 2014 or as further amended, they will not be required to make co-funding contributions for any nights that they spend in respite care. However, they will still be liable to make payment of the proportion of their co-funding contribution for the number of days they are at home in any week.
- 19.10 Where there is a change in a person's financial circumstances, either up or down, they or their representative **must** notify the council, and this may result in a review of their contribution. Section 16 sets out the procedure regarding the consequences of non-disclosure of financial information. If the person lacks capacity to deal with their finances, then their representative must notify the council if there is a change in the person's financial circumstances.
- 19.11 Where someone notifies the council of a reduction in their income or capital, any subsequent reduction in contribution will only apply from the date a new formal financial declaration, with appropriate evidence, is given.
- 19.12 Increases in income and/or capital may result in an increase in contribution, e.g., a successful claim/backdating for attendance allowances/disability living allowance (care)/personal independence payment, or where additional benefits/allowances become available to the individual. Non-notification of a change in financial circumstances will result in the backdating of the increased contribution and arrears being due.
- 19.13 Where an individual becomes aware they are the beneficiary under the terms of a last will and testament it is required that they take all reasonable steps to acquire the legacy available to them in a timely manner.
- 19.14 The council will deem the reassigning or refusal to accept a legacy as deprivation of assets and reserves the right to financially assess the person as though they were in possession of those assets when determining any co-funding contribution. (See Section 17).
- 19.15 In the event someone does reassign or give away a legacy, but does not pay the increased co-funding contribution, the council will consider transferring liability for any additional co-funding contribution to the individuals' receiving

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the person's share of the legacy assets. This liability will be limited to the value of the legacy asset received by the individuals.

19.16 It is expected clients, or their representatives, will take proactive steps to receive any legacy by doing one or more of the following:

- if the person is the executor of the estate that they take steps to administer the estate personally, including making application for probate if necessary, or appoint an appropriate person, e.g. solicitor
- if the deceased has made a will but the person is not the executor of the estate, they should make representation to the executors to ensure the legacies are made in an appropriate timeframe
- if there is no will, but the person is an entitled relative, make application for letters of administration or appoint someone to do it upon their behalf

19.17 If the relevant application/representations are not made within six weeks of the deceased demise, without good reason, the council reserves the right to deem the person to be in possession of the legacy and look to recalculate the co-funding contribution on their assumed revised assets.

19.18 Capital limits will be reviewed at least annually to ensure they are at least in line with Treatment of Capital of the Care and Support Statutory Guidance, issued under the Care Act 2014.

19.19 Where someone feels a mistake has been made in the calculation of their contribution, they will have a right to a review under the Disputed Financial Assessment Procedure.

19.20 Where services end, the co-funding contribution will be collected up to the day the services ended, or the person passed away.

## 20. Compensation for Personal Injury

20.1 Capital awarded by a court, or as part of a settlement outside court because of compensation for personal injury is dealt with in different ways. This will depend on whether the capital awarded is held in trust or administered by the court or a deputy, or whether it is paid direct to the individual. The individual will be required to provide the council with copies of trust documents and court orders in relation to the compensation award and any court order appointing a deputy in the financial assessment process.

20.2 Where the capital awarded by the court is held in trust or administered by a court or a deputy, or it can only be disposed of by a court order, then the capital must be disregarded in full.

20.3 When compensation for personal injury is not held in trust and not administered by a court or under a deputyship order, personal injury payments (which may, for example, include an interim payment) will be

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disregarded only for 52 weeks from the date that they are received under an award (Annex B, Paragraph 48 (c) of the Care and Support Statutory Guidance, October 2014 or as further amended).

20.4 *Personal injury compensation* provides full information relating to the treatment of compensation for personal injury. See [appendix 2](#).

## 21. Performance Standards

- 21.1 everyone who comes into contact with the welfare benefits, and client financial services teams, expect:
- to be treated with dignity and respect and in a courteous manner
  - all staff will be trained and be competent in their particular role
  - the council to only ask for information that is needed for the Care and Support (Charging and Assessment of Resources) Regulations 2014 and the Care and Support Statutory Guidance, October 2014 or as further amended
  - all information, both personal and financial, to be treated in the strictest of confidence and not divulged without that individual's consent (or where they lack capacity to consent, their representative's consent) except in cases where information is required to be shared to prevent crime and disorder, and/or to prevent significant harm to adults or children as required by safeguarding children and vulnerable adult policy and procedures
  - if it is necessary to meet the individual, or their representative, in their own home, the visiting officer will be punctual, or make contact to explain their delay and to re-arrange the meeting
  - all visiting officers will carry a photo identity badge along with details of how their identity can be verified – individuals' or their representative should not allow anyone access to their property who does not have a Derbyshire County Council photo identification badge
  - individuals' or their representatives to be given details of who they can contact for advice, support and progress during and after the Care and Support (Charging and Assessment of Resources) process
  - copies of all forms completed during the Care and Support (Charging and Assessment of Resources) process to be made available, upon request, to the person concerned
  - individuals' or their representative to be made aware their rights including "Complaints, Comments and Suggestions" and Financial Contribution Review Procedure
- 21.2 What we expect from individuals' and/or their representatives:
- to treat council staff with the same dignity and respect that they would expect to receive
  - representatives will show proof that they have been lawfully appointed as representatives, such as giving a copy of the Court of Protection order or the

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lasting power of attorney for finances document to the council

- all questions will be fully and accurately answered
- the weekly contribution levied will be paid promptly by the agreed method
- individuals' or their representative will raise any concerns or issues with us

in a timely manner - thereby allowing the council the opportunity to resolve these as soon as possible

- all additional information and documents requested will be supplied in a timely manner

## 22. Quality Monitoring and Evaluation

22.1 All welfare rights and finance teams will be subject to regular reviews to ensure compliance, accuracy and consistency.

22.2 All individuals', or their representatives, will be offered the opportunity to be selected to take part in surveys and reviews to monitor the Care and Support (Charging and Assessment of Resources) journey.

22.3 The person's experience of the Care and Support (Charging and Assessment of Resources) process will include:

- interaction with employees of the department
- accuracy of the information requested and gathered
- accuracy of the contributions calculated
- the standard of correspondence and information provided

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**Appendix 1 - Contribution Levels and Capital Bandings 8 April 2024 to 14 July 2024**

**Current Weekly Maximum Contribution Amounts from Attendance Allowance or Disability Living Allowance (Care) or Personal Independence Payment (PIP)**

The maximum contribution from 8 April 2024 until 14 July 2024 is **£51.07** per week.

**Capital Thresholds**

For inclusion in determination of Co-funding contributions:

Below £50,000	NIL
Capital above £50,000	Full cost

**Minimum Income Guarantee Levels**

Customers **over** Pension Age:  
Those born before 6/4/1959

Single person	£272.69
With Carer's premium	£329.69

Customer **under** Pension Age:  
Those born on or after 6/4/1959

Single person	£198.82
With Carer's premium	£255.82

*An applicable allowance of up to £6.95 per week will be given in respect of savings credit.*

*For each dependent child the adult is responsible for that is a member of the same household an additional allowance of £101.25.*

**Capital Bandings (For establishing minimum income levels only)**

Lower threshold	£14,250.00
Capital bands	£50,000.00

**Maximum Weekly Contributions** 100% of Care Costs

No customer will be asked to contribute more than the annual value of their personal care budget or the actual costs of services received during the year.

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## Appendix 2 - Compensation for Personal Injury

Derbyshire County Council's policy is that, where possible, individuals' or their representative with claims for damages for personal injury or disease should recover the cost of the domiciliary care services paid for by the council from the party with the liability to pay compensation. The council regards it as fair and just that, in principle, a defendant who has caused someone to suffer from personal injury or disease should meet the cost of their care and the money spent by the council on that care should be available to meet the needs of other people who need care.

However, it is recognised circumstances can vary and each person's case will therefore fall to be considered on their own merits, in consultation with that client.

The policy below applies to contributions made by someone towards their community care social care support (including direct payments).

### Charges for care provided prior to the receipt of an award of damages

The Court of Appeal in *Avon County Council v Hooper* 1997 decided that it is permissible for local authorities to charge for care which had already been provided to a claimant before the award of damages is received. The claimant had a right to be indemnified by the organisation that caused the injury against liability for the cost of services provided by the council. This right constituted "means" which may legitimately be taken into account by a council in assessing charges.

The procedure which the council will ordinarily follow for **pre award cases** is as follows.

- At the time it is made aware that someone who is in receipt of domiciliary care services is bringing a claim for compensation for injury, the council will provide calculations of the charges for the services delivered since the injury was incurred to them so they can seek to claim back those charges from the person or organisation that they have sued for the personal injury ("the respondent")
- They will also inform the council whether they are seeking to obtain full funding for all of their care from the respondent so that in the future they will not seek domiciliary care services from the council or whether they are asking the council to continue to provide such services, and therefore they will receive a reduced compensation award - this is in keeping with the principle of double recovery that they should not obtain 100% compensation for future care to be delivered privately and at the same time ask the council to provide such services
- They will inform the council if they are claiming a reduced award based on contributory negligence and what that percentage is and whether they will then continue to seek services from the council



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## Charges for care following receipt of an award of damages

It was decided in *Crofton v National Health Support Litigation Authority* 2007 that the Department of Health *Fairer Charging Guidance* 2003, on charging for domiciliary care services should be regarded as incorporating the treatment of awards of compensation for personal injury as capital under the *Charging for Residential Accommodation Guide (CRAG)*. Those rules disregarded “the value of funds held in trust or administered by a court which derive from a payment for personal injury to the resident” as capital. However, the Crofton judgment acknowledged that the Fairer Charging Guidance was less clear as to the treatment of income derived from a personal injury award and whether a local authority could take such income into account for charging purposes.

Since the Care Act came into force on 1 April 2015, any capital or income from personal injury compensation which is held in a trust or administered by a Court or under a deputyship order cannot be taken into account for charging purposes. When compensation for personal injury is not held in trust and not administered by a court or under a deputyship order, personal injury payments (which may, for example, include an interim payment) will be disregarded only for 52 weeks from the date that they are received under an award (Annex B, paragraph 48 (c) of the Statutory Guidance).

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## Author History

### Approval and Authorisation History

Authored by	Andrew Bartle	Finance Manager	July 2016
Approved by	Julie Vollar	Assistant Director	July 2016
Authorised by		Quality Assurance Group	July 2016

### Change History

Version 1	February 2011	Andrew Bartle	First full version
Version 2	October 2014	Andrew Bartle	Update following changes approved by DCC cabinet
Version 3	March 2016	Andrew Bartle	Updated following legislative changes with the Care Act
Version 4	July 2016	Andrew Bartle	Update to include compensation for personal injury
Version 5	April 2019	Gaynor Bulheller	Review, minor updates and terminology Review
Version 6	July 2022	Gaynor Bulheller	Review and update
Version 7	April 2023	Gaynor Bulheller	Review and update
Version 7.1	March 2024	Gaynor Bulheller	Appendix 1 updated