

**CARE ACT 2014**  
**Charging and Deferred Payments**

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# Introduction

- Provides a single legal framework for charging for care and support
- This talk will refer to
  - The basic principles of charging
  - The exclusions and general limits
  - Cost capping
  - Financial assessments
  - Deferred payments

## Charging - currently



- Current power to charge adult recipients of non-residential services
- Discretionary
- Section 17 of the Health and Social Services and Social Security Adjudications Act 1983
- Broad discretion as to design of charging scheme – up to local council
- Duty to charge for residential services under s22 NAA
- Almost all councils charge for domiciliary services in accordance with CRAG

## Charging under Care Act 2014

- S14 gives local authorities a general power to charge for certain types of care and support, at their discretion.
- This is where it is providing services to meet needs under section 18-20 of the Act.
- Extends to all types of care and support.
- Regulations may state that specific services are to be provided free.
- In addition, in certain circumstances the council may also make a charge for putting in place the arrangements for meeting a person's needs: s14(1)(b)

## Charging under Care Act 2014 (cont)

- Detail of how to charge is different depending on whether someone is receiving care in a care home, or in their own home, or another setting.
- Where charging applies, regs determine the maximum amount that a LA can charge a person.
- Only in care homes, where the financial assessment identifies that a person's resources exceed the capital limits, is the LA precluded from paying towards the cost of care.
- For other settings – LA discretion but subject to the limits contained in regs and statutory guidance.

## General limits

- Local authority may not charge a person more than what it costs to provide or arrange the care and support: s14(4)
- Power to charge is subject to the capping provisions in s15: 14(2).
- A person's income must not fall below a certain level as a result of charging – to be set by regulations.
- The power to make a charge for meeting a carer's needs by providing care and support to the adult needing care may not be exercised so as to charge the carer.

# Capital limits



- “Upper capital limit” exists for the purposes of the financial assessment
- Sets out at what point a person is entitled to access LA support to meet their eligible needs
- The lower capital limit sets the point below which a person does not need to contribute to the cost of their care and support from their capital.
- The current UCL is £23,250. The current LCL is £14,250.
- Capital falling between the two sums will deem the person able to make a contribution to the cost of his care.

## Exclusions from charging (1)

- Wide ranging powers under s14(5)-(8) to make regulations setting limits on who, what, when and for how long, charges can be levied
- The Care and Support (Charging and Assessment of Resources) Regulations 2014
- Reg 3 and 4 specifies the services which are to be provided free of charge:
  - Community equipment (aid and minor adaptations)
  - Intermediate care, including reablement – foc for up to six weeks
  - Care and support provided to people with CJD

## Exclusions from charging (2)

- S14(7) – refers to an income level below which charges may not be made
- Varies according to age and circumstances. Discretion to set it higher by LA.
- Details contained in regs 6 - 8.
- Reg 6 sets the allowance for a resident in a care home.
- Reg 7 applies to those whose needs are being met otherwise than by the provision of accommodation in a care home
- Reg 8 enables a short-term care home resident to be charged as if they were receiving care and support otherwise than by the provision of accommodation in a care home.

## Exclusions from charging (3)

- Guidance makes clear that the following cannot be charged:
  - After-care services / support provided under s117 MHA
  - Any service or part of service which the NHS is under a duty to provide
  - More broadly, any service which a local authority is under a duty to provide through other legislation
  - Assessment of needs and care planning may also not be charged for, since these processes do not constitute “meeting needs”.

## When will this come into force?

- The Care and Support (Charging and Assessment of Resources) Regulations 2014
  - Not yet in force
  - Will come into force immediately after section 14(5) and 17(7) are both fully in force – not currently.
  - Expectation is April 2016

## Capping – why? DH Factsheet:

- “The current system is unfair. Only people with assets of less than £23,250 and low incomes receive any help from the State with their care and support costs. People who develop severe care and support needs that need to be met over many years may stand to lose almost everything they have worked hard and saved for during their lives before they can get any financial support from the State.
- We know that 1 in 8 of us will be unlucky enough to face the highest costs but no-one knows which of us that will be. These reforms will give everyone the peace of mind that they will be protected if they are unlucky enough to develop severe care and support needs.”

## Capping – the basics

- S15(1) stipulates that the LA cannot charge an adult for meeting needs if the adult has reached the cap on care costs;
- 15(2) and (3) defines what is meant by the costs accrued in meeting eligible needs and what are “eligible needs”
- The cap is to be specified in regulations: 15(4)
- Costs only start accruing after commencement.
- Costs accrued exclude daily living costs
- s15(7) makes clear that the LA can still charge for daily living costs.

## Capping – (cont)

- Power to make regulations
- Currently draft regulations only: The Care and Support (Cap on Costs, etc) Regulations 2015
- Consultation running until March 30 2015
- <https://www.gov.uk/government/consultations/care-act-2014-cap-on-care-costs-and-appeals>

## The proposal in the draft Regs

- Under current rules, if a person has less than £23,250 in assets they will receive means-tested help – and they will contribute only what they can afford from their income if their assets are below £14,250. 13.
- Under the new system, people in a care home with less than £118,000 in assets will qualify for means-tested local authority help with their care costs - and they will contribute only what they can afford from their income if their assets are below £17,000.
- This means that, in 2016- 17 alone, up to 23,000 additional people will receive support with their care costs.

## Proposal (cont)



- The same means test will also apply after people reach the cap to determine what proportion of £230 per week they can afford to contribute towards their daily living costs.
- The means-tested contributions from the local authority will count towards the cap
- This means that people receiving means-tested support will pay less than £72,000 of their own money before they hit the cap, with the local authority making up the difference.

## How do you know you have reached the cap?



- Everyone in need of care and support will have a Care Account that will be held by the local authority to record their progress towards the cap: s29
- It will set out the rate at which a person is progressing and how much they have accrued towards the total.
- Local authorities will send statements at least annually. Detail to be set out in Regulations.
- Records must be retained for 99 years after the account was last updated.

## Assessment of financial resources – s17



- Very technical exercise and fairly complex
- In summary
  - LA must carry out a financial assessment if they have chosen to charge for a particular service under the powers in s14
  - This is to determine the individual's contribution towards their care and support
  - Detail is contained in the Care and Support (Charging and Assessment of Resources) Regulations 2014
  - Replace the provisions in s22 of the NAA 1948

## “light touch financial assessments”

Where LA is satisfied on the basis of evidence that the recipient of services can afford, and will continue to be able to afford, any charges due - a LA may choose to treat a person as if a financial assessment had been carried out.

For example:

- Where the person has significant financial resources and does not wish to undergo a full financial assessment
- Where the LA charges a small or nominal amount for a particular service (eg subsidised service) which a person is clearly able to meet and have MIG left
- Where person in receipt of benefits demonstrating they would not be able to contribute to cost.

## Deferred Payments

- Sections 34-36
- A deferred payment agreement is an agreement under which a LA agrees not to require, until a specified time:
  - payment of specified sums due under the charging scheme and/or
  - repayment of a loan made under the agreement by the LA for the purposes of assisting the adult to obtain the provision of care and support.
- Detail contained in The Care and Support (Deferred Payment) Regulations 2014

- Accordingly a deferred payment agreement can provide additional flexibility for when and how someone pays for their care and support.
- However, the payment for care and support is deferred and not ‘written off’ – 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.
- The scheme will be universally available throughout England – LAs will be required to offer DPA to people who meet certain criteria governing eligibility for the scheme.

## Criteria

LAs **must** offer a DPA if the person meet all three of the following criteria and who is able to provide adequate security for the debt:

- 1) anyone whose needs are to be met by the provision of care in a care home. This is determined when someone is assessed as having eligible needs which the local authority decides should be met through a care home placement.
- 2) anyone who has less than (or equal to) £23,250 in assets excluding the value of their home (i.e. in savings and other non-housing assets); and
- 3) anyone whose 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



- Adequate security defined in Reg.4
- The deferred amount and any interest and administration costs which have been treated in the same way as the deferred amount must not exceed the equity limit (there are exceptions): Reg 5(3) and (4)
- Equity limit is 90% of the value of the asset less £14,250 and the amount of any encumbrance secured on it which ranks in priority to the authority's charge: Reg 5(5).

## LA may offer DPAs even if criteria not met



- Guidance sets out circumstances in which a person may not meet the criteria but where LAs should nonetheless actively consider offering a DPA.

## Permission to refuse a DPA

- LAs may refuse a request for a DPA even if a person meets the eligibility criteria:
  1. where a local authority is unable to secure a first charge on the person's property;
  2. where a person does not agree to the terms and conditions of the agreement, e.g. requirement to insure and maintain the property; and/or
  3. where someone is seeking a top up.

Re 3) Guidance states that LA should still seek to offer a DPA but should be guided by principles to determine a maximum amount that is sustainable and agree a deferral. The person can then choose whether they wish to agree.

## Terms of DPAs

- Regs lay down terms of the agreements: regs 7-11.
- Time for repayment is the sooner of sale / disposal of asset or 90 days after the death of the adult with whom agreement is made OR such longer time as the LA may permit: reg 7.
- Adult can terminate at any time by giving LA reasonable notice in writing and paying deferred amount plus admin costs and interest: reg 8.
- Limits on interest rate and admin costs: Regs 9-10.
- Reg 11 sets out terms, conditions and information including 30 days minimum advance notice where deferral stopping because equity limit reached (and then LA may need to start paying in any event)

# CONCLUSIONS



- Aim of new legislative scheme is to provide transparency and harmonisation in respect charging scheme and deferred payments.
- Financial assessments will be challenging – rules are very technical.
- Care accounts will take on great importance for the purposes of establishing the cap on contributions: where there are errors and so a person has paid beyond the cap – will there be an entitlement to be repaid and if so from whom?

# Q & A