

# Residential Charging Policy

Social Services and Well-being (Wales) Act 2014

Cardiff Council  
Adult Social Services



A policy in relation to charging for  
residential care and support services

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<b>Author &amp; Contact Details</b>	Policy and Procedure Work Stream Cardiff and Vale of Glamorgan - Adult Social Services Contact: Nicola Hayne, Carers Policy & Development Officer Email: <a href="mailto:nhayne@cardiff.gov.uk">nhayne@cardiff.gov.uk</a>

## Previous versions

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0.4		Revised following advice from Legal	
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*Please note that wherever possible, policies should not be printed or downloaded. It is your responsibility to ensure that you are accessing the most recent and up-to-date policy which is available on the intranet.*

## 1. Introduction

This policy sets out the responsibilities of Cardiff Council concerning charging for costs incurred when providing care and support in residential or nursing accommodation.

This policy is part of a suite of policies and procedures around charging for care and support.

Details of practice and specific processes are to be found in the procedure documents, which sit underneath this policy. This policy **must** always be read in conjunction with those procedures, the Social Services and Well-being (Wales) Act 2014, associated Regulations and Codes of Practice.

## 2. Legislative Context – Summary

The Social Services and Well-being (Wales) Act 2014 (henceforth ‘the 2014 Act’) is the legal framework that brings together and modernises social services law in Wales. The 2014 Act sets out the requirements for local authorities in relation to charging and financial assessment under Part 5 of the 2014 Act on those who are to receive care and support, or support in the case of carers.

This policy and its related procedures are written with particular reference to the following documents, which, in addition to the Act itself, should be the principle points of reference for those in need of further information:

The Act:	<a href="#"><u>The Social Services and Well-being (Wales) Act 2014</u></a>
	<a href="#"><u>The Care and Support (Financial Assessment) (Wales) Regulations 2015</u></a>  <a href="#"><u>The Care and Support (Charging) (Wales) Regulations 2015</u></a>  <a href="#"><u>The Care and Support (Deferred Payments) (Wales) Regulations 2015</u></a>
Regulations:	<a href="#"><u>The Care and Support (Review of Charging Decisions and Determinations) Wales Regulations 2015</u></a>  <a href="#"><u>The Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017</u></a>  <a href="#"><u>The Care and Support (Charging) (Wales) (Amendment) Regulations 2018</u></a>

	<p><a href="#"><u>The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulation 2019</u></a></p> <p><a href="#"><u>The Care and Support (Choice of Accommodation) (Wales) Regulations 2015</u></a></p>
Codes of Practice:	Part 4 and 5 Code of Practice (Charging and Financial Assessment)
Other legislation:	<p><a href="#"><u>Mental Capacity Act 2005</u></a></p> <p><a href="#"><u>United Nations Principles for Older Persons</u></a></p> <p><a href="#"><u>United Nations Convention on the Rights of Disabled People</u></a></p> <p><a href="#"><u>Human Rights Act 1998</u></a></p>

Individuals who require care and support will be financially assessed in line with the above legislation and guidance as to their ability to pay towards the residential or nursing care services they receive.

### 3. Principles

Cardiff Council are committed to giving people a stronger voice and real control over the support they need, to remove barriers to their well-being.

The 2014 Act places responsibility on individuals exercising functions under the 2014 Act, Local Authorities, and other public bodies for meeting needs and delivering outcomes, with the Local Authority being obliged to meet any eligible need, and/or help deliver any relevant outcome, which would not otherwise (i.e. without intervention) be met.

We will ensure that charging, where it occurs, is consistent, fair and clearly understood. Individuals who are asked to pay a charge will only be required to pay what they can afford.

We will take into account the principles set out in the charging and financial assessment framework introduced by the 2014 Act.

We will ensure there is information and advice about charging available in appropriate formats, which take account individual communication needs, in particular for those with a sensory impairment, learning disability or for whom Welsh or English is not their first language. This is to ensure that individuals are able to understand why they are being charged and how charges have been calculated.

Where an individual lacks capacity they will still be subject to a financial assessment in order to determine if they are required to contribute towards the cost of their care and support. We will use appropriately skilled staff to communicate with an individual, taking into consideration their capacity as well as any medical condition or impairment they might have. Where possible we will consult with family members who may have the legal authority to make financial decisions on behalf of an individual who lacks capacity. If there is no such person, then an approach to the Court of Protection may be required.

#### **4. Summary of Key Duties and Requirements**

##### **Choice of Accommodation and Additional Costs**

Sections 35 to 38 of the 2014 Act requires us to support an individual to find a suitable placement of their choice once they have been assessed as requiring accommodation in a care home. The individual has the right to express a preference for a care home of their choosing provided that:

- the care home is suitable to meet their assessed needs;
- to do so would not cost us more than we would usually expect to pay for accommodation of that type;
- a place in the care home is available; and
- the provider of the care home is willing to enter into a contract with our terms and conditions.

We have an agreed set rate which we pay care home providers which can be found in our Residential Charging Procedure. We will work with the individual to identify the best accommodation for their care and support needs.

In some cases, an individual may choose a care home where charges are in excess of our set rate. In those cases, the individual or a third party such as a family member or representative will be required to negotiate and enter into a separate arrangement to pay these fees directly to the relevant care provider. This will also apply if the request is for a care home in another county. Further details can be found in our Choice of Accommodation protocol.

If an individual chooses to be placed outside Cardiff, we will still arrange for their preferred accommodation provided the above conditions are met. We will subsequently follow guidance in Section 194 of the 2014 Act on ordinary residence. Further details can be found in our Ordinary Residence policy.

##### **Charging for Care and Support in a Care Home**

We will support the individual to identify how best to pay their assessed charge. This will include offering the individual a deferred payment agreement against the value of

a property taken into account in the financial assessment (see Deferred Payments below and our Residential Charging procedure).

Individuals in a care home with capital at or below the capital limit (as set by the Welsh Government) will contribute most of their income, excluding their minimum income amount, towards the cost of their care and support.

Respite care, as detailed in a care and support plan, up to eight weeks will not be subject to this charging policy as individuals will be charged in line with our Non-residential Charging policy.

An individual who is self-funding their care and support because they have capital at or above the capital limit can choose to ask us to arrange their care and support to meet their eligible care and support needs. Individuals in this position will be required to pay the full cost of their care and support.

In the cases of an individual who is self-funding their care and support, if there is a change of financial circumstances and the individual no longer has capital at or above the capital limit and still has eligible care and support needs that require accommodation in a care home we will complete a new financial reassessment. If the care home provider charges more than our agreed set rate and an additional cost will be incurred, we will agree to the placement at that accommodation if there is a third party willing to accept responsibility for the additional payment and enter into an agreement with us and the care home provider. Further details can be found in our Choice of Accommodation protocol.

## **Deferred Payments**

If an individual will be entering a care home to meet their care and support needs and their property is included in their financial assessment, we can defer or delay some of their costs.

We are required to enter into a deferred payment agreement if an individual is in or is entering care home accommodation as long as they meet the eligibility criteria set out in the Care and Support (Deferred Payment) (Wales) Regulations 2015. We must ensure there is sufficient security for the amount being deferred.

We are required to enter into a deferred payment agreement if:

- We have assessed the individual's care and support needs and their care and support plan specifies that we are going to meet those needs through care home accommodation.
- We have completed a financial assessment with the individual and they are required to pay a charge.

We will charge administration costs for setting up the agreement. Any administration costs will not be more than the costs we incur and we will make the breakdown of costs available to the individual. More detail can be found in the Residential Charging procedure.

We will charge compound interest on the amount deferred, including administration costs and interest will be charged at 0.15% of the relevant rate. The relevant rate changes on 1 January and 1 July and is the weighted average interest rate on conventional gilts specified for the financial year in which the relevant period starts in the recent report published before the start of the relevant period by the Office of Budget Responsibility under section 4(3) of the Budget Responsibility and National Audit Act 2011. Interest will continue to accrue until the debt is settled.

More details on deferred payments can be found in our Residential Charging procedure.

### **Chargeable Services**

We will make a charge to an individual who receives care and support provided and/or arranged by us to meet their eligible needs when that care and support is:

- Temporary and permanent residential care
- Temporary and permanent nursing care
- Direct Payments

### **Non-Chargeable Services**

The following adult social care services are provided free of charge:

- Assessment of needs, care planning and reviews
- Information and advice provided under the 2014 Act.
- Independent professional advocacy provided in accordance with the 2014 Act.

### **Exemptions**

We have discretion to charge an individual for care and support provided to meet their needs. We will not charge for care and support provided or arranged in the following circumstances:

- To meet the needs of a child;
- For an individual who has Creutzfeldt-Jakob Disease which has been diagnosed by a registered medical practitioner;
- For an individual who has been offered or is receiving a service as part of a package of after-care services under Section 117 of the Mental Health Act 1983; or
- For a carer for support services provided directly to them as a carer. If the service is provided to the person with care and support needs (eg respite) it would form part of any charge for care and support provided to that person.

If services are delivered jointly with a Local Health Board the individual will only be charged for the social care element of each service.

## Financial Assessment

For chargeable services, we have a duty to carry out a financial assessment to determine how much an individual will be charged. The financial assessment will consider an individual's:

- Income
- Capital, including savings and property.

The financial assessment will make sure that all individuals receiving residential care and support retain the relevant minimum income amount (MIA) which is specified by the Welsh Government each year. This income will allow individuals money to spend on personal items such as clothes and other items that are not part of their care and support.

We have discretion to apply a higher MIA in individual circumstances, for example where the individual needs to contribute towards the cost of maintaining their former home or the individual has additional disability related expenditure. These additional expenses will be considered as part of a review requested by the individual following notification of their assessed charge.

Where an individual will be charged for a service, we will send them a written statement of the charge. The individual will be liable to pay the charge from the date care and support was first provided. The individual is not required to make payment until after the date on which the statement is sent to them.

An individual will be financially assessed in their own right. Only the individual's income will be counted, not that of their partner, spouse or carer. It may be beneficial for some individuals who are married or live with a partner to tell us about their joint income as it may result in a lower charge. We will always use the assessed charge that is best for the individual.

## Treatment of Capital

Capital in general refers to financial resources held by an individual which are available for use and tend to be from sources considered more durable than income in the sense that they can generate a return. In most cases capital will involve financial resources held by an individual in the form of savings, investment and property. The capital limit is set by Welsh Government each year and is outlined in the Residential Charging procedure.

An individual will not be charged on the same resources twice. Resources will only be treated as income or capital but not both.

A capital asset is normally defined as belonging to the individual in whose name it is held; the legal owner. However, there may be cases where the individual is the beneficial owner, even though the title of the asset is held by someone else, and such assets or a share of such assets may also be considered a capital asset held

by the individual.

We will determine the value of the capital asset before it is taken into account in the financial assessment. Other than National Savings Certificates, valuation must be the current market or surrender value of the capital asset, less any outstanding debt such as a mortgage and 10% of the value if there are expenses involved in selling the asset.

Following the financial assessment, if we estimate the value of the asset is more than the capital limit, then the individual is liable for the full cost of their care and support.

Any capital an individual holds at or below the capital limit, will be disregarded from their financial assessment and can be retained by the individual to use as they wish.

In some circumstances an individual may be treated as possessing capital even where they do not actually possess it. This is called notional capital and may be:

- available to the individual if they applied for it
- is paid to a third party in respect of the individual
- the individual has deprived themselves of it in order to reduce the amount of charge that they have to pay for their care and support

### **Capital Disregards**

If appropriate, we will apply additional capital disregards as listed in Part 4 and 5 Codes of Practice (Charging and Financial Assessments) an example of which, would be capital derived from an award of damages for personal injury. Any potential disregards would be discussed with the individual as part of the assessment process.

During discussions we will also advise anyone with an interest in the property that we also have an interest in, they will need to consider how they plan to use, maintain and insure their property if they take out a deferred payment agreement; that is whether they wish to rent it out, prepare it for sale, or leave it vacant for a period. The person should be advised if we intend to place conditions on how the property is maintained or used whilst any agreement is in place.

### **Property Disregards**

In the following circumstances the value of the individual's main or only home must be disregarded where capital is taken account of in a financial assessment:

- Where the individual is temporarily receiving care and support in a care home and they intend to return to that property and that property is still available to them **or** are taking reasonable steps to dispose of the property in order to acquire another more suitable property to which to return.

- Where the individual is receiving care and support in a care home and no longer occupies their main and only home, but it is occupied in part or whole as their main or only home by any of the people listed below, its value must be disregarded in a financial assessment where capital is taken into account. This only applies where that property has been continuously occupied since before the individual went into a care home:
  - The individual's partner, former partner or civil partner, except where they are estranged or divorced
  - A lone parent with a dependent child who is the individual's estranged or divorced partner
  - A relative of the individual or member of the individual's family who is:
    - Aged 60 or over, or
    - Is a child of the resident aged under 18, or
    - Is incapacitated.

For the purposes of this disregard:

- the meaning of "occupy" is not closely defined. In most cases it will be obvious whether or not the property is occupied by a qualifying relative as their main or only home. However, there will be some cases where this may not be clear and we will undertake a 'factual inquiry' weighing up all relevant factors in order to reach a decision. An emotional attachment to the property alone is not sufficient for the disregard to apply.

Circumstances where it may be unclear might include where a qualifying relative has to live elsewhere for a particular reason; for example for the purposes of their employment or due to them serving a prison sentence. Whilst they live elsewhere in order to undertake their employment, or serve their sentence, the property remains their main or only home. It would not be reasonable to regard their temporary accommodation as the individual's main or only home as they may well intend to return to the property in question in the future. Essentially in such circumstances the qualifying relative is occupying the property but is not physically present.

- a "relative" is defined as including any of the following:

Parent (including an adoptive parent)	Parent-in-law	Step-parent
Son (including an adoptive son)	Son-in-law	Step-son
Daughter (including an adoptive daughter)	Daughter-in-law	Step-daughter
Brother	Sister	Grandparent
Spouse	Unmarried partner	Civil Partner
Grandchild	Uncle	Aunt
Nephew	Niece	

- a member of the individual's "family" is defined as someone who is living with the qualifying relative as part of an unmarried couple, married to or in a civil partnership.
- the meaning of "incapacitated" is not closely defined. However, it will be reasonable to conclude that a relative is incapacitated if either of the following conditions applies:
  - a) The relative is receiving one (or more) of the following welfare benefits:
    - incapacity benefit
    - severe disablement allowance
    - disability living allowance
    - personal independence payments
    - armed forces independence payments
    - attendance allowance  
constant attendance allowance, or a similar benefit; or
  - b) The relative does not receive any disability related benefit but their degree of incapacity is equivalent to that required to qualify for such a benefit.  
Medical or other evidence may be needed on this before a decision is reached on whether to apply this.

### **Discretionary Disregard**

We have discretion to apply a property disregard in other circumstances, however, we will balance this discretion with ensuring an individual's assets are not maintained at public expense. An example where it may be appropriate to apply a discretionary disregard is where it is the sole residence of someone who has given up their own home in order to become a carer for the person who is now in a care home.

Where this happens we will consider all the relevant factors before deciding whether the property should be disregarded. Factors such as the timing and purpose of the move may be relevant to establishing if the property is the relative's main or only home. The purpose of the disregard in these circumstances is to safeguard certain categories of people from the risk of homelessness.

We will consider if the principle reason for the move is that it is necessary to ensure the relative has somewhere to live as their main or only home, rather solely to protect the family inheritance.

### **12-week Property Disregard**

We will disregard the value of the individual's main or only home for the first 12 weeks, where the property is taken into account in the financial assessment and the value of their savings etc, is below the capital limit. This disregard will be applied:

- When the individual first enters a care home as a permanent resident (or subsequently enters after a stay of less than 12 weeks so that they would receive the balance of the 12 weeks as a further disregard).
- When a property disregard based on a qualifying relative unexpectedly ends because the qualifying relative has died or moved into a care home.

### **26-week Disregard**

Where capital (excluding property) is taken into account in a financial assessment we will disregard the following capital assets for at least 26 weeks:

- Assets of any business owned or part-owned by the individual in which they were a self-employed worker and has stopped work due to some medical condition or impairment but intends to take up work again when they are fit to do so. Where the individual is in a care home, this should apply from the date they first took up residence.
- Money acquired specifically for repairs to, or replacement of, the individual's home or personal possessions provided it is used for that purpose. This should apply from the date the funds were received.
- Premises which the individual intends to occupy as their home where they have started legal proceedings to obtain possession. This should be from the date legal advice was first sought or proceedings first commenced.
- Premises which the individual intends to occupy as their home where essential repairs or alterations are required. This should apply from the date the individual takes action to affect the repairs.
- Capital received from the sale of a former home where the capital is to be used by the individual to buy another home. This should apply from the date of completion of the sale.
- Money deposited with a Housing Association which is to be used by the individual to purchase another home. This should apply from the date on which the money was deposited or grant was made under a Housing Act which is to be used by the individual to purchase a home or pay for repairs to make the home habitable. This should apply from the date the grant is received.

We may consider, if appropriate, to apply the disregard for longer. For example: where an individual is taking legal steps to occupy premises as their home, but the legal processes take more than 26 weeks to complete.

### **52-week Disregard**

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We will disregard the following payments of capital received by an individual, for a maximum of 52 weeks from the date they are received, the balance of any arrears of, or any compensation due to non-payment of:

- Mobility supplement
- Attendance Allowance
- Constant Attendance Allowance
- Disability Living Allowance / Personal Independence Payment
- Exceptionally Severe Disablement Allowance
- Severe Disablement Occupational Allowance
- Armed forces service pension based on need for attendance
- Pension under the Personal Injuries (Civilians) Scheme 1983, based on the need for attendance
- Income Support/Pension Credit
- Minimum Income Guarantee
- Working Tax Credit
- Child Tax Credit
- Housing Benefit
- Special payments to pre-1973 war widows

Payments or refunds for:

- NHS glasses, dental treatment or patient's travelling expenses
- Cash equivalent of free milk and vitamins
- Expenses in connection with prison visits
- Personal Injury Payments.

We will also disregard payments made under a trust established out of funds by the Secretary of State for Health in respect of vCJD to:

- A member of the victim's family for two years from the date of death of the victim (or from the date of payment from the trust if later); **or**
- A dependent child or young person until they turn 18.

### **Calculation of Income**

Any money an individual receives in benefits will be included as income in the financial assessment. More details can be found in the Charging Policy procedures.

Where any welfare benefit payment has been reduced (other than a reduction because of voluntary unemployment), for example because of an earlier overpayment, any amount taken into account should be the gross amount of the benefit before reduction.

We also consider any private pension, annuity income, or other regular income from investments. An annuity is a type of pension product that provides a regular income for a number of years in return for an investment. Such products are usually purchased at retirement in order to provide a regular income. While the capital is

disregarded, any income from an annuity may be taken fully into account except where it is:

- purchased with a loan secured on the person's main or only home; or
- a gallantry award such as the Victoria Cross Annuity or George Cross Annuity.

Where an individual in a care home is paying half of the value of their occupational pension, personal pension or retirement annuity to their spouse or civil partner who is still resident in the property, the Council will disregard 50% of the value of the annuity where it takes it into account.

We will not take into account certain income or benefits in the financial assessment. These can change and further details can be found in our Residential Charging policy.

We will take into account the individual circumstances of the payment before making a decision on whether to disregard such payments. In general, a charitable or voluntary payment which is not made regularly is treated as capital, whilst regular payments will be disregarded.

### **Expenditure Allowances**

We will consider taking into account if an individual requires an increase in their minimum income allowance to cover any disability related expenditure or household commitments, especially if they are a temporary resident in a care home. Where an individual believes they have additional expenditure over and above the minimum income allowance, they have the right to seek a review and a more detailed consideration of their disability related costs may then be undertaken.

### **The Maximum Charge Payable**

The maximum charge for residential adult social care services will need to be determined on an individual basis, according to an individual's means and cost of placement.

Individuals will only be charged what they have been financially assessed they can reasonably afford to pay and after any service charges are made they will be guaranteed to still retain a level of income equivalent to the minimum income amount.

### **Decline to Provide Financial Details**

All individuals have the right to choose not to provide their financial details to us. In such cases we are unable to undertake a financial assessment and the individual will be charged the full amount for the care they receive at our agreed rate for the type of residential care and support they receive.

## **Financial Representatives**

In circumstances where an individual lacks capacity but has a third party acting formally on their behalf we will contact the representative for information on financial matters and should they take responsibility for making payments, the representative will be billed directly for the care contributions.

## **Completing the Financial Assessment**

Where an individual has been assessed as requiring a service covered under this policy we will offer each individual a financial assessment. Individuals will be contacted to arrange a visit with a Visiting Officer. If a visit is not possible, individuals will be advised of the information that is required which must be posted or e-mailed to us. The financial assessment is based on the information provided by the individual.

If an individual delays completing the financial assessment by more than 15 working days after the request is made they may be required to pay the subsidised cost of the service until a financial assessment is completed. We may extend this period if a request for an extension of time with reasons for the delay is made. If the financial assessment, when completed results in a lower charge than this, consideration will be given to refunding the difference depending on the circumstances of each case. The Director of Social Services will hold discretion in this matter, in consultation with the other Senior Officers of the Council.

## **Change of Financial Circumstances**

If an individual's financial circumstance changes they must advise us as soon as possible as this may affect their assessed charge. Changes which should be notified include, but are not limited, to:

- Receipt of a new benefit
- Changes in capital
- Changes to income or allowable expenditure
- Changes to living arrangements

At any time, individuals may inform us of any other changes to their financial circumstances if they would like a financial assessment to be undertaken. After an individual has told us about changes in their financial circumstances a new financial assessment will be completed using the most up to date information that is provided. If the revised financial assessment results in a decrease in the weekly charge this will usually be backdated to the date that the individual's circumstances changed.

This will be explained in writing to the individual. If it results in an increased charge the individual will be informed of the outcome of their financial assessment in writing. This correspondence will state the date from which their charge commences.

We will consider an individual's financial assessment on at least an annual basis. The periodic re-assessment ensures that an individual's financial circumstances are correct when assessing charges for services and that they are only asked to pay what they can reasonably afford.

### **The Charging Period and Charge Payable**

Charges will be raised for each four-week period.

All individuals will be informed of the outcome of their financial assessment in writing. This correspondence will state the date from which their charge commences. If for any reason the individual overpays a charge, they will be notified and we will reimburse them or credit the overpayment against future charges for service.

### **Methods of Payment**

There are a range of methods to pay charging invoices. Details of these methods are included on the back of the bill sent to out each month.

### **Debt Recovery**

Where an individual accrues a debt we will take all reasonable steps to ascertain the reasons why this has occurred and only when it is clear that it is as a result of an individual's deliberate non-payment will debt recovery be considered, in line with the requirements of the 2014 Act.

### **Review and Complaints**

An individual may request a review of their financial assessment where they feel an inappropriate decision has been made, either in the level of the charge or in relation to the basis upon which the decision to impose a charge was made. If they wish the individual may provide additional information that may be considered, for example, additional disability related expenditure. We will set up a Review Panel headed by the Social Services Director to consider these requests.

If an individual is unhappy with the Review Panel's decision they will be able to make a formal complaint about this to us in accordance with the Council's Complaints policy.

## **5. Putting Policy into Practice**

This policy outlines the key duties and requirements in relation to charging for care and support across the region. More detailed guidance notes and procedures will be available to support and assist practitioners with the interpretation of this policy and the relevant sections of the 2014 Act. These may be produced on an individual Local

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Authority basis, depending on regional variations (see the Social Services and Well-being (Wales) Act Guidance for Practitioners).

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## 6. Policy Approval and Review

Policy Approved By:	
Date Approved:	
Review Frequency:	Every three years
Date Policy To Be Reviewed:	April 2023 or as necessary
Responsible Officer(s):	

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