



By Anna Lloyd – *Legal Executive*

# Funding Home Care



As is often the case with social care, the current system of charges for home care is the product of small scale step-by-step development, rather than any rational planning. It is therefore extraordinarily complex.

Social care is means-tested. However, there are different charging systems for residential care and for care provided to people in their own homes.

With residential care, if a person who meets Local Authority (“LA”) eligibility criteria can afford to pay for it themselves, and is able to arrange it or has someone who is able and willing to do it for them, it is deemed to be ‘otherwise available’ to them. The LA therefore does not have a legal duty to arrange residential care.

The duty to arrange care and support for someone living in their own home is assessed differently. Providing the person meets eligibility criteria and is assessed as requiring care in their own home, the LA has a duty to arrange it and also to ensure that the care is meeting the person’s needs, regardless of his or her means. The LA can however charge for the support it arranges. This includes domestic assistance, personal care, day care, and other services, including transport.

Charging systems for residential care, on the one hand, and for services for people who are still living in their own homes, on the other hand, also differ.

Charges for residential care are determined by national guidance, but charges for care provided in people’s homes, or in a community setting, such as day care centres, are determined locally; although they are subject to national guidance. The law states that a person must not be required to pay more for a

service than it is reasonably practical for them to do so.

Means-testing is not a relevant factor with home care, until it comes to charging; the LA must assess a person for the home care and support they need. The LA should not investigate someone’s income and assets until they have reached a decision to offer home care support to the person.

## **National Guidance on Charging for Home Care**

There are two pieces of guidance on charging for home care. The first on ‘fairer charging’ sets out a framework for charging. This is supplemented by the second piece of guidance on ‘fairer contributions’.

Fairer charging sets out a framework for calculating the charges. The charges should not reduce the person’s income to less than the value of income support plus 25% and should not take earned income into account.

People’s assets (savings and capital) can be taken into account. The amount of capital disregarded should not be lower than the national guidelines prescribed for charging for residential care. The upper limit for residential care charging is £23,250. If you have more than this the Local Authority (“LA”) may ask you to pay the full cost for care. Under residential charging rules, capital of between £14,250 and £23,250 will be assessed on the basis of an assumed (or “tariff”) income. For every £250 (or part of £250) of capital you have over £14,250, you will be assessed as though you have an extra £1 per week of income. This assumes a return of £52 per annum on an investment of £250, i.e. of more than 20%, which is quite clearly unachievable.

Unlike residential care funding, the person's home is not taken into account when calculating home care charges. This is because the home is needed for the person to live in.

Capital earmarked for a specific item can be disregarded but this needs to be declared and the reason explained. Spouses'/partners' income and assets are not normally taken into account either. The situation is slightly different where assets are held jointly.

'Personal budgets' are designed to allow people to spend an allocated budget on care and support, as they wish, rather than being allocated a given number of hours of care by the LA.

The 'fairer contributions' system attempts to sort out the basis of charging where there is no fixed number of hours of care. The charge is calculated on a percentage basis according to income and capital.

The philosophy behind this is one of 'personalisation' to enable people to receive the support *they* choose and to enable people to spend their budget as they think best. The result of this well-intentioned thinking is that it is not very clearly defined and so makes it difficult to challenge a personal budget set by the LA which is too low. There have been a number of cases brought to Court to challenge insufficient home care provision where the LA has set too high or tight 'eligibility criteria' resulting in insufficient care or payment for care.

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**If you require advice on this matter please contact Anna at our Sheringham office on 01263 825959. If you require advice on any other legal matter please telephone our Sheringham office on 01263 825959 or email [law@hayes-storr.com](mailto:law@hayes-storr.com)**