



ADULT SOCIAL CARE CHARGING

An introduction to Adult Social Care Charging

Unlike Continuing Healthcare from the NHS, which is free, local Authorities have the power to charge for social care. There are limits to what they can charge, set by regulations under the Care Act 2014). Local authorities have discretion to be more generous than the regulations allow, but they cannot be less generous.

These are the key elements of framework for financial assessment which are most likely to affect SIA members:

- Financial assessment should only be carried out after assessment of care and support needs.
- Local authorities have discretion to be more generous than the regulations allow, but they cannot be less generous; this applies both to their local charging policy for everyone, and also to an individual who, due to their particular circumstances, is in hardship despite the calculation being done lawfully.
- The assessment starts with a "Minimum income guaranteed amount" (given in a Local Authority Circular each year): this used to be defined by taking a basic benefits amount (i.e. income support or state pension) including any premiums except severe disability premium, then adding 25% again. Now the levels are set by regulation and revised annually by Local Authority Circular, but they are arrived at in the same way. This is understood to cover basic everyday living costs. Councils cannot reduce income below this through contributions to care costs; but anything above this level may be taken in social care charges.
- Attendance Allowance (or DLA/PIP care or daily living component) is counted: up to the AA lower rate or the DLA Middle rate if you only get care through the LA by day or only by night; up to highest rate if by day and night. The whole of the PIP daily living component can be counted, regardless of what care you get, although local policy may vary. Some councils are starting to count highest rate of the daily living component of DLA, regardless of what care you get: this may be unlawful and open to legal challenge. The mobility component of DLA/PIP cannot be counted.

- The severe disability premium (SDP) on other benefits can also be counted. (Subject to a means test, SDP is for people who get AA, DLA middle or high rate care or PIP high care daily living, as long as no one claims Carers Allowance for their care and no one over 18 who doesn't also get AA, DLA mid/high care or PIP high daily living.)
- Housing costs and **disability related expenditure (DRE)** are offset against the charge. DRE is often missed, or unlawfully disallowed due to overly rigid rules about evidence; DRE is any necessary expense due to disability, which can include major items (cost spread over time) and extra costs necessitated by having to take PAs on holiday (but of course, as PAs, not as family members).
- Savings above £14,250, may be treated as equivalent to a weekly income of £1 for each £250 or part of £250; if you have over £23,250 you may be charged up to the full cost of care provision (not including costs to the council for assessment, monitoring etc.).
- If you deliberately dispose of capital in order to reduce your charges, the council can treat you as if you still have that capital.
- Personal injury compensation in a Personal Injury Trust is not counted as savings or income.
- Income earned from employment or self-employment is not counted (but it will be counted if it becomes savings), but private pensions are counted in full. This can mean that someone who pays no charges while they are working suddenly has to start paying when they retire.
- There are other disregards which I shan't list here. There is more information in the Care Act guidance about how income and capital should be treated.
- The assessment should be of your income and outgoings as an individual, not those of your partner (although there can be something of a grey area where you have access to resources held in your partner's name); and just as the contribution you are charged should not bring your individual income below a certain threshold, similarly it should not bring you and your partner's income as a couple below a certain threshold for the two of you as a couple

- There are additional rules for particular circumstances.

Councils make their own policies, which you should be able to see. They are increasingly tending to charge the most that is allowed. They cannot lawfully change their policy without proper consultation of those affected, giving accurate and comprehensible information about the changes, and they must properly weigh up what they learned in the consultation. They must, in the legal phrase, have "due regard" to the impact on the equality of protected groups under the Equality Act, which includes disabled people and carers. There is a 3 months' time limit from a decision to bring a judicial review (legal challenge) against a change of policy, and even before this it is difficult to overturn a policy once it has been implemented. A challenge may be brought by an individual who is likely to be affected by a policy change, but before they have been reassessed under the policy. If an individual brings a challenge and loses, they may have the local authority legal costs awarded against them (and this can be very expensive) - but for those who qualify for full legal aid, these costs are covered so the individual is not at risk.

More information

Follow the links below to download more information

Care Act Statutory Guidance – [Chapter 8](#) and [Annexes B,C,D and E](#)
This guidance contains strong guidance that cannot be lawfully ignored and can only be over-ridden with good clear reasons.

[Local authority circular updating the charging regulations for 2017-18](#)
[Local Authority circular updating charging regulations for 2018-19](#)

Of particular interest in both these documents – Regulation 7 under part III.

You can get further advice and information about assessments and other social care matters from SIA's Social Care Advice Service. Contact our Social Care Caseworker, Simon Legg, on **07535 774135**, s.legg@spinal.co.uk, or via the SIA Freephone Advice Line.

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ABOUT SIA

The Spinal Injuries Association (SIA) is the leading national user-led charity for spinal cord injured (SCI) people. Being user led, we are well placed to understand the everyday needs of living with spinal cord injury and are here to meet those needs by providing key services to share information and experiences, and to campaign for change ensuring each person can lead a full and active life. We are here to support you from the moment your spinal cord injury happens, and for the rest of your life.

For more information contact us via the following:

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T: 0800 980 0501 (Freephone Advice Line, Mon – Fri, 11am – 1pm/2pm – 4.30pm)

W: www.spinal.co.uk

E: sia@spinal.co.uk

Charity No: 1054097

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SIA relies on fundraising, donations and gifts in wills to provide services that help spinal cord injured people rebuild their lives.

With your help, we can provide the right support to spinal cord injured people and their families and friends so they can enjoy a full and independent life after injury. Your donation today will go towards changing someone's life.

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