



Department  
of Health

# Fairer Charging Policies for Home Care and other non- residential Social Services

**Guidance for Councils with Social Services  
Responsibilities**

June 2013

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# Fairer Charging Policies for Home Care and other non-residential Social Services

## Guidance for Councils with Social Services Responsibilities

Prepared by Department of Health

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***Fairer Charging Policies for Home Care and other non-residential Social Services***, Guidance for Councils with Social Services Responsibilities,

This guidance is issued under section 7 of the Local Authority Social Services Act 1970

**Executive summary**

1. This guidance does not make any presumption that councils will charge for non-residential social services, nor does it introduce any requirement to charge. Councils have had discretionary powers to charge for many years, subject to a general requirement of reasonableness. (Section I)
2. The guidance aims to help local councils which decide to charge for any non-residential services to design reasonable and fair charging policies. It seeks to ensure greater consistency in charging policies. It provides that:
  - Deciding whether to charge for non-residential social services continues to be a matter for councils' discretion. (Section I)
  - Charges for different types of non-residential social service, and allied services, and how they affect individuals should be considered together, not in isolation. (Section III)
  - Where councils charge for these services, flat-rate charges are acceptable only in limited circumstances. (Sections III, IV, and XIII)
  - Regard should be paid to the effect of any charge on a user's net income; net incomes should not be reduced below defined basic levels of Income Support or the Guaranteed Credit of Pension Credit, plus 25%. Charging policies which reduce users' net incomes below these defined basic levels are not acceptable and undermine policies for social inclusion and the promotion of independence. (Sections IV, V, VI, XIII, and XIV)
  - With regard to the transition to Universal Credit between October 2013 and April 2017, in the interests of equitable treatment and administrative simplicity, local authorities should continue to allow Income Support or the Guaranteed Credit element of Pension Credit plus 25% to all service users, pending further guidance from the Department.
  - Councils should consider and specifically consult on the need to set a maximum charge. (Sections IV, V, and XIII)

- Where disability benefits are taken into account as income in assessing ability to pay a charge, councils should assess and allow for the individual user's disability-related expenditure. Councils should specifically consult on the need to assess disability-related expenditure for other users. It is not acceptable to make a charge on disability benefits without assessing the reasonableness of doing so for each user. (Sections VI, XIII, and XIV)
- Councils should ensure that comprehensive benefits advice is provided to all users at the time of a charge assessment. Councils have a responsibility to seek to maximise the incomes of users, where they would be entitled to benefits, particularly where the user is asked to pay a charge. (Sections VI and VII)
- As a minimum, the same savings limits as for residential care charges should be applied. Councils are free to operate more generous rules, as with other parts of the guidance. (Section VIII)
- Guidance is included on the treatment of partners' resources. (Section IX)
- To ensure that disabled people and their carers, who wish to do so, are able to enter and progress in work, the guidance expects that earnings will be disregarded in charge assessments. (Section X)
- Where carers receive services in their own right under the Carers and Disabled Children Act, 2000, the guidance includes specific advice on ensuring the fairness of any charges. (Section XIV)
- Good management by councils of charging policies continues to be important. Councils need to monitor the impact of charging policies on users and need to know how much it costs to administer their system. As with other services, the user's and carer's needs, including their need for good information, should be put first. (Section XIX)

## I. Introduction

1. Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 (HASSASSA Act 1983) gives councils a discretionary power to charge adult recipients of non-residential services. Section 7 of the Local Authority Social Services Act 1970 allows the Secretary of State to issue guidance to councils on the exercise of their social services functions, including those which are exercised under discretionary powers. In exercising those functions, councils must have regard to guidance issued under section 7.
2. Section 17 of the HASSASSA Act 1983 provides that councils may recover such charges as they consider reasonable in respect of relevant services. Annex A sets out the provisions of HASSASSA on services in respect of which charges may be levied.
3. This guidance includes advice on a number of issues where councils need to take particular care to ensure that any charging policy is reasonable. Councils need to ensure both that their charging policies are demonstrably fair as between different service users and that the overall objectives of social care, to promote the independence and social inclusion of service users, are not undermined by poorly designed charging policies. These objectives - and the guidance following - apply equally to carers receiving services.
4. There is no presumption by the Government that all councils will charge for the various kinds of non-residential social services and councils retain the discretion not to do so. Where service users are asked to contribute a charge towards the cost of non-residential social services, this can raise additional income, which should be used to develop services.
5. Where they do decide to charge for services, councils also retain substantial discretion in the design of charging policies. This guidance sets out a broad framework to help councils ensure that their charging policies are designed to be fair and to operate consistently with their overall social care objectives. The guidance provides clear objectives, which all councils operating charging policies should aim to achieve. The Government's view is that these are minimum requirements to ensure that charges are reasonable in the terms of the HASSASSA Act 1983. In considering what are reasonable charges in their local circumstances, some councils may need to go beyond the minimum requirements in this guidance. Nothing in this guidance requires councils to make existing charging policies, which go beyond the requirements set out here, less generous to users than they are currently.

6. Councils will want to consider operational issues, including administration costs, in designing their charging policies.

## **II. Services which may not be charged for**

7. After-care services provided under section 117 of the Mental Health Act 1983 may not be charged for under section 17 of the HASSASSA Act 1983.
8. As set out in Section XI services users who are suffering from any form of CJD should be treated as automatically exempt from charges.
9. Councils may not charge for providing advice about the availability of services or for assessment, including assessment of community care needs.
10. Service users who are fully funded under continual health care CHC

## **III. Charges for different types of services**

11. This guidance concerns charges for all types of non-residential social services. The design of charges may vary between different services, but the relation between them, where users receive several services, also needs to be considered.
  - i. Meals at home, or in day care – many councils make a low flat-rate charge to all users, without applying a means test. This can be justified, as such charges substitute for ordinary living costs
  - ii. Day care
  - iii. Domestic help
  - iv. Personal home care
  - v. Other support from social services, eg, transport, equipment and housing adaptations not provided through Disabled Facilities Grants

Charging practices in respect of day care, domestic help, personal home care, and equipment and adaptations currently vary between councils, as described in the next section. Ability to pay should not be assessed and charges should not be levied for any one service in isolation. The impact of charges for one of these services on the user's income should be taken into account in assessing whether charges should be levied for another service. The same charge

assessment should normally be applied in assessing charges for these services.

Particular care needs to be taken to avoid an adverse impact on the user's income where flat-rate charges are applied, as described in the next section, if a user is receiving more than one service. Councils should ensure that such charges do not reduce any users' incomes below basic Income Support levels or the Guarantee Credit element of Pension Credit, plus a buffer of 25%, as described below. This would need to be done in the initial design of the charging policy, through consultation with and sample surveys of users, and by providing easy access to a review procedure.

As set out above, for the time being, during the transition to Universal Credit, local authorities should continue to allow all service users Income Support or the Guaranteed Credit element of Pension Credit plus 25%, pending further guidance from the Department.

vi. *Supporting People*

Starting from April 2003, the *Supporting People* grant has been made available to local councils to contribute to the funding of housing-related support. Local housing authorities, social services authorities, the NHS and other stakeholders will collaborate to decide how to make best use of the grant locally, within a framework set by the Government. Some service users will receive both support funded through *Supporting People* and social services home care as a package.

The framework governing local councils' use of the *Supporting People* grant will include specific requirements in relation to charging for support that receives grant funding. These are set out in detail in separate Department for Communities and Local Government (DCLG) guidance on charging. This will include discussion of charging where people receive packages of care from both social services and the *Supporting People* programme.

#### **IV. Charging according to the level of service and/or by reference to a service user's means**

12. The Audit Commission report, *Charging with Care*, published in May 2000, described four main charging models being operated by councils:

- a. a flat rate charge applied to all (but usually with an exemption for people receiving only Income Support/Jobseeker's Allowance (Income-based) (JSA-Income Based))
  - b. a charge assessed according to the level of service received, with no regard to the user's means
  - c. a charge assessed according to the user's means, with no regard to the level of service
  - d. a charge assessed by reference to both level of service and the user's means
13. As described in *Charging with Care*, charging model (b) poses particular problems for poorer users with high intensity care needs. The Government's view is that charging models which take no account of a user's means are not acceptable. They are unlikely to be reasonable in the terms of the HASSASSA Act 1983.
14. Other than for charges for meals at home or in day care, where these substitute for ordinary expenditure, there could be similar problems with model (a), but these may be overcome, if:
- i there are exemptions for people receiving Income Support or the Guarantee Credit element of Pension Credit, JSA-Income Based or Income Based Employment Support Allowance (ESA) or Universal Credit and others on similar levels of income; and
  - ii the charge is set as a low "token" contribution, to avoid reducing users' incomes below basic levels of Income Support or the Guarantee Credit element of Pension Credit, plus a buffer of 25%.

Flat rate charges applied to all users without any exemptions at all are not acceptable.

15. A potential problem with models (a) and (c) is that they may raise only limited charge income for service development, but this is an issue for councils to consider.
16. Model (d) had been adopted by most councils at May 2000, but there are wide variations of policy within this model and a number of problems. In particular:

- Where the policy sets no maximum charge and no regard is paid to the user's disposable income after the charge. This has resulted in some users' incomes being reduced below basic Income Support levels.
  - Broad income bandings used in some councils' policies can have "cliff edge" effects. Where there is no maximum charge, or no account taken of the effects of a charge on disposable income, some users' incomes may be reduced below basic Income Support levels or the Guarantee Credit element of Pension Credit, particularly for those at the bottom of a broad income band.

## V. The Effects of Charges on Users' Incomes

17. The purpose of Government policies for social care is to promote independence and social inclusion. Charging policies should be seen within this overall context. As a minimum, users' incomes should not be reduced by charges below "basic" levels of Income Support, as defined in this guidance, or the Guarantee Credit element of Pension Credit, plus a buffer of not less than 25%. The 25% buffer is added on to each user's Income Support allowances and premiums according to age, level of disability and family status, or the appropriate Guarantee Credit of Pension Credit. The buffer provides an additional safeguard to prevent users' independence of living from being undermined by charging policies.
18. It is inconsistent with promoting independent living to assume that all of a user's income above basic levels of Income Support or the Guarantee Credit element of Pension Credit plus 25% is available to be taken in charges. A buffer provides proportionately more help to those on low incomes and the Government sees this is a priority, given the evidence of poorer access to services by low-income groups.
19. As an additional way of ensuring that all users have some income, which is not taken in charges, councils may choose to set a maximum percentage of disposable income (over and above basic Income Support or the Guarantee Credit element of Pension Credit levels, plus 25%), which may be taken in charges. All councils should consider whether and how to set an overriding maximum charge and should consult users specifically on this issue. In some councils, this is set at a proportion of typical local residential care charges, to ensure that no perverse financial incentive is created for users to leave their own homes.
20. As a minimum, "basic" levels of Income Support or the Guarantee Credit element of Pension Credit plus 25% should be taken to include the personal

allowances and any premium or additional amount appropriate to the user, according to age, level of disability and family status, but need not include the Severe Disability Premium (SDP) or an amount for severe disability. SDP may be excluded, as it may be treated as analogous to other disability-related benefits, as set out in Section VI below. Where a carer is in receipt of Income Support or the Guarantee Credit element of Pension Credit or Jobseeker's Allowance (income-based), the "basic" level of benefit should include any carer premium in payment.

21. Councils should exempt from charges users whose overall income equals the defined "basic" levels where they are receiving Income Support, the Guarantee Credit element of Pension Credit, JSA-Income Based, Income Based Employment Support Allowance (ESA) or Universal Credit.
22. Councils will need to carry out a charge assessment for users not receiving Income Support or the Guarantee Credit element of Pension Credit or JSA-Income Based, Income Based Employment Support Allowance (ESA) or Universal Credit, (where they are not covered by other exemptions), to ensure:
  - a. that those on levels of income equal to basic levels of Income Support or the Guarantee Credit element of Pension Credit, plus 25%, do not need to pay charges; and
  - b. that any charges levied on users above these income levels do not reduce the user's income below basic levels of Income Support or the Guarantee Credit element of Pension Credit, plus 25%.
23. Income should be assessed net of any Income Tax and National Insurance contributions payable and net of housing costs and Council Tax. Housing costs and Council Tax should be assessed net of any Housing Benefit or support under the local Council Tax Reduction Scheme. This should help to minimise any "poverty trap" effects or work disincentives arising from withdrawal of Housing Benefit or support under the local Council Tax Reduction Scheme when a user's income increases. Councils will wish to consider taking account of other costs, such as water rates or charges and home insurance.
24. For users who receive other income in addition to Income Support or the Guarantee Credit element of Pension Credit or JSA-Income Based, Income Based Employment Support Allowance (ESA) or Universal Credit, taking them above the basic levels, (usually disability-related benefits such as Attendance Allowance (AA), Disability Living Allowance (DLA) or Personal Independence Payments (PIPs), but also including SDP or the support component of ESA for

Income Support or the additional amount for severe disability for Pension Credit), councils may choose: *either* to exempt such users from charges regardless of their additional income, *or* to include the user's overall income within a charge assessment. Where councils choose the latter, the aim should be to ensure that any charge levied does not reduce the user's net income below basic levels of Income Support or the Guarantee Credit element of Pension Credit, plus 25%. This is explained further in the next section.

25. Where councils decide to exempt from charges users receiving Income Support or the Guarantee Credit element of Pension Credit/JSA-Income Based or Income Based Employment Support Allowance (ESA) or Universal Credit regardless of their additional income, an equivalent approach should be taken with users not receiving Income Support or the Guarantee Credit element of Pension Credit /JSA-Income Based or Income Based Employment Support Allowance (ESA) or Universal Credit. Disability benefits and other income sources should then be disregarded in a similar way for users at equivalent income levels.
26. Disregards applied in paragraph 8.022 of CRAG of £10 per week and to War Widows Supplementary Pension, which is completely disregarded, should be applied at least at these levels by councils in assessing income as part of charge assessments. Councils should take account of any higher disregards applied in 'local schemes' to War Disability Pensions and War Widows Pensions for Housing Benefit and support under the local Council Tax Reduction Scheme purposes.
27. From 29th October 2012, councils should disregard entirely all Guaranteed Income Payments (GIPs) made under the Armed Forces Compensation Scheme (AFCS) to injured ex-service personnel, in assessments of service user's incomes. This change does not apply to GIPs paid to people who are not veterans – known as Survivor Guaranteed Income Payments – and these will continue to only carry a £10 per week disregard.
28. Since 6 October 2003, Pension Credit has been the system for calculating income-related benefits for people aged 60 and over, and will differ in a number of ways from Income Support, which remains the means of calculating income-related benefits for people aged under 60. Pension Credit replaced Minimum Income Guarantee, and is designed to top-up income to a minimum level set by the Government. There are two elements to Pension Credit: the guarantee credit, which was available to people over 60, and savings credit, which is, currently, available to people over 65. However, the qualifying age for Pension Credit is going up from 60 to 66 in line with the increase in state pension age

for women and the further increase from 65 to 66 for men. A calculator for calculating a person's State Pension Age is available at [www.nidirect.gov.uk/understanding-pension-credit](http://www.nidirect.gov.uk/understanding-pension-credit).

29. The appropriate Guarantee Credit, but not including any additional amount for severe disability, plus a 25% buffer should be taken as the minimum level of income below which a person should not be reduced through charges.
30. The savings credit should be totally disregarded in the calculation of charges.
31. From April 2003, means-tested support for adults with children was changed by the introduction of Child Tax Credit. Adults get Income Support, income-based Jobseeker's Allowance or Working Tax Credit for themselves and Child Tax Credit for their children. Child Tax Credit should be disregarded in calculating charges, where it is in payment.

## **VI. Treatment of disability-related benefits**

32. As set out in section 73(14) of the Social Security Contributions and Benefits Act 1992 (see Annex A), the mobility component of Disability Living Allowance (DLA) is excluded by law from being taken into account for charges. The mobility component of Personal Independence Payments (PIPs) should also be disregarded. Councils should disregard the War Pensioner's Mobility Supplement in assessing income, as this should be treated as analogous to DLA/PIP mobility component
33. Unlike a PIP, an Armed Forces Independence Payment (AFIP) is not divided into daily living and mobility components. However, the total amount of the payment is the same. Councils may choose to disregard AFIPs entirely. However, if they do not councils should disregard an amount equivalent to what they would disregard from a PIP.
34. Disability-related benefits at issue in this section are the Severe Disability Premium (SDP) of Income Support, Attendance Allowance (AA), DLA<sup>1</sup>, PIP<sup>2</sup>,

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<sup>1</sup> This and subsequent references to DLA are to the care component and do not include the mobility component.

<sup>2</sup> This and subsequent references to PIP are to the daily living component and do not include the mobility component.

Constant Attendance Allowance (CAA), and Exceptionally Severe Disablement Allowance (ESDA)<sup>3</sup>.

35. These benefits may be taken into account as part of a user's income – although it is open to councils not to do this. Where these benefits are taken into account, councils should be guided by the overriding principles that charges:
- do not reduce the user's net income below basic levels of Income Support, plus 25%; and
  - do not result in the user being left without the means to pay for any other necessary care or support or for other costs arising from their disability.
36. This aim is best achieved through charge assessments, which assess both the resources and expenditure of the user. Expenditure should include any disability-related expenditure. Councils are expected to assess and allow for disability-related expenditure specifically for all users whose disability-related benefits are taken into account as income. Councils should also consider and specifically consult users on any need to do this for other users, who may have disability-related expenditure.
37. Some councils may choose to disregard a standard element of disability benefits for all users receiving these. In these cases, any assessment of resources and expenditure should include an assessment of whether the individual user's disability-related expenditure exceeds the level of the disregard.

## Day and Night Care

38. AA is paid at a higher rate, if a person has day *and* night needs, or a lower rate, if a person has day *or* night needs.
39. The DLA care component is paid at the highest rate, if a person needs help both day *and* night; at the middle rate, if a person needs help during the day *or* night; or at the lowest rate, if a person needs some help during some of the day

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<sup>3</sup> CAA and ESDA are paid under the Industrial Injuries Disablement Benefits and War Pensions schemes. They are paid in place of AA or DLA.

(but less than the middle rate), or, if age 16 or over, would need help to prepare a cooked main meal.

40. CAA is paid at one of four rates: a part day rate, a full day rate, an intermediate rate or an exceptional rate. The intermediate rate and exceptional rates will always include an amount awarded in respect of night time care needs. A need for some night care is a possible, but not inevitable, condition for the full day rate. ESDA is paid at one rate and is only paid with the two higher rates of CAA.
41. In the case of *R v. Coventry City Council, November 2000*, the High Court found that it was unlawful and unfair for a council to treat as income available for day care sums of DLA paid for night care.
42. Councils will need to be aware of the rate at which AA or DLA care component is paid and whether this is in respect of night care. It would normally be reasonable to treat the difference between AA higher rate and lower rate and the difference between DLA care component highest rate and middle rate as the element paid for night care, unless, for example, it is clear that the additional element is paid in respect of day-time care.
43. For CAA the difference between the intermediate or exceptional rate and the full day rate should normally be treated as the element paid for night care. In some cases, councils will need to assess what part of a full day rate award is needed for night care. ESDA will always include an element for night care, as it is only awarded with the intermediate or exceptional rates of CAA.
44. Case law has held that “night” means “that period of inactivity or that principal period of inactivity through which each household goes in the dark hours and to measure the beginning of the night from the time at which the household, as it were, closed down for the night”. It was also held that dressing in the morning and undressing before going to bed were activities carried on during the day (*R. v National Insurance Commissioner, ex parte Secretary of State for Social Services [1974]*).
45. While no detailed reasoning was given in the judgement, it seems to be unlawful for councils to take into account an element of AA, DLA, CAA, or ESDA paid for night care as income where the council purchases no element of night care. Any element of care or support related to night care, for example,

an on-call service available at night, funded by the council, may in certain circumstances be regarded as night care.<sup>4</sup>

46. If the council purchases no element of night care, the night care element of AA, DLA, CAA, or ESDA should *not* be taken into account as income in the assessment. If, however, a user's expenditure related to night care exceeds the level of the night care element of AA, DLA, CAA, or ESDA, any such excess amount *should* be taken into account when assessing the user's disability-related expenditure (see below).
47. In calculating a person's entitlement to a PIP no distinction is made between day and night care but the person may still have day or night care needs. If Councils charge against PIP they should take account of the reality of a claimant's day and night care needs and the care the Council is providing. It is, therefore, reasonable for the Council to include all of an individual's care component of PIP when conducting a financial assessment. If the Council chooses to include PIP in the financial assessment then disability related expense should be identified and allowed for in relation to any day and night care needs and costs, which are not being met by the Council. Councils should also try to ensure that an existing service user moving from receiving DLA to receiving a PIP is not made worse off as a result of the charging process where the level of DWP support has not changed.
48. Councils may choose to disregard AFIPs entirely. However, if they do not councils should disregard an amount equivalent to what they would disregard for a PIP, where it is not arranging night care.

### **Assessment of disability-related expenditure**

49. It is not possible to give a completely comprehensive list of disability-related expenditure which could legitimately be claimed for. Councils will need to develop local policies consistent with this guidance. Paragraph 46 gives examples of the types of expenditure which should be considered. The list is not exhaustive; the overall aim should be to allow for reasonable expenditure needed for independent living by the user. Items where the user has little or no

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<sup>4</sup> For DLA, the Social Security Contributions and Benefits Act 1992, section 72, requires that a person should be, "so severely disabled physically or mentally that, at night, - (i) he requires from another person prolonged or repeated attention in connection with his bodily functions; or (ii) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him."

choice other than to incur the expenditure, in order to maintain independence or quality of life, should normally be allowed.

50. Many users are likely to claim for a small number of items. The process of assessment and claiming for items of disability-related expenditure should not be made unduly complex, particularly for users without high care needs. The process should not be primarily paper-based, or carried out by post, as a full list of possible items without explanation could be confusing for users. The process should be flexible enough to deal with differences in the needs of individual users. Users will very often need personal help and advice on how to claim. Assessments involving disability-related expenditure should, therefore, normally be carried out by personal interview in the user's own home. The approach should support self-assessment by the user as much as possible, taking a holistic view of the user's finances and personal needs, both to support the user's own independence of living and to ensure that any charge assessed is reasonable. Benefits advice should normally be offered to the user as part of the assessment (see below). Specialist assessment staff will need specific training in assessing claims for disability-related expenditure. The process should be simple and straightforward for the majority of users without high care needs, while at the same time ensuring that users with heavy disability-related expenditure can be fully supported to claim for this.

51. In assessing disability-related expenditure, councils should include the following:

- i Payment for any community alarm system [net of Housing Benefit or *Supporting People* grant].
- ii Costs of any privately arranged care services required, including respite care.
- iii Costs of any speciality items occasioned by disability – e.g.:
  - specialist washing powders or laundry
  - additional costs of special dietary needs due to illness or disability (the user may be asked for permission to approach their GP in cases of doubt)
  - special clothing or footwear, for example, where this needs to be specially made; or additional wear and tear to clothing and footwear caused by disability
  - additional costs of bedding, for example, because of incontinence
  - any heating costs, or metered costs of water, above the average levels for the area and housing type, occasioned by age, medical condition or disability

- reasonable costs of basic garden maintenance, cleaning, or domestic help, if necessitated by the individual's disability and not met by social services
- purchase, maintenance, and repair of disability-related equipment, including equipment or transport needed to enter or remain in work; this may include IT costs, where necessitated by the disability; reasonable hire costs of equipment may be included, if due to waiting for supply of equipment from the local council
- personal assistance costs, including any household or other necessary costs arising for the user
- other transport costs necessitated by illness or disability, including costs of transport to day centres, over and above the mobility component of DLA or PIP, if in payment and available for these costs. In some cases, it may be reasonable for a council not to take account of claimed transport costs - if, for example, a suitable, cheaper form of transport, eg, council-provided transport to day centres is available, but has not been used
- in other cases, it may be reasonable for a council not to allow for items where a reasonable alternative is available at lesser cost. For example, a council might adopt a policy not to allow for the private purchase cost of continence pads, where these are available from the NHS.

52. Although the user's care plan will normally be a guide to what is necessary for care and support, some discretion may be needed, eg, where needs for equipment are not detailed comprehensively, or where care and support was being purchased privately before the care plan was written.

53. Expenditure taken into account should not be limited to that on necessary care and support. So, for example, above average heating costs should be included, although they would not normally be covered by a care plan. Any additional expenses claimed in relation to a person's disability should be considered. Costs of infrequently purchased equipment will normally be annualised or amortised over a reasonable period for replacement and divided into a weekly equivalent.

54. To a limited degree, it may be possible for councils to set standard allowances for costs such as laundry, but councils will need to be able to justify the levels set and should explore with users at the initial assessment whether they may have higher costs.

55. Reasonable evidence of actual expenditure may be requested, at the council's discretion. Where receipts have not been kept, a council may request

that this be done for future expenditure. It is legitimate for councils to verify that items claimed for have actually been purchased, particularly in cases of unusual items or heavy expenditure.

56. Councils will need to hold information, for example, about typical heating costs for types of property in their areas, in order to assess a claim for above average heating costs; or about local costs of domestic help.

## **VII. Benefits Advice**

57. Councils should ensure that appropriate benefits advice is provided to all users of non-residential social services and carers services at the time of a charge assessment. As indicated above, any charge assessment should be focussed on the user's overall finances and personal needs. It will normally need to be carried out by personal interview in the user's own home by appropriately skilled staff. The service should include advice about entitlement, help with completion of benefit claims and follow-up action, if the user wishes.
58. It is for councils to decide exactly how any welfare rights service they provide is organised to ensure that advice on benefits is provided to users at the time of a charge assessment. In many cases, it may be both convenient for users and cost-effective to provide combined charge assessments and benefits advice, training staff to fulfil both roles.
59. Some users may prefer to obtain welfare rights advice from an independent source and should be offered this choice, where possible.
60. Where independent advice is accessed, arrangements should be made to exchange information for the charge assessment, with the user's permission.

## **VIII. Savings and Capital**

61. Councils may take account of a user's savings or other capital in assessing their resources, but are not obliged to do so. This section includes minimum requirements for treatment of savings. Councils need to consider and consult specifically on their policy in relation to savings, including circumstances where individual users may have particular needs for savings (paragraph 94).

62. Savings may be taken into account to calculate a tariff income on the same basis as set out in the *Charges for Residential Accommodation Guidance (CRAG)* in LAC(99)9. Users with savings of more than the upper limit may be asked to pay a full charge for the service. These savings levels will be updated automatically in line with any uplifts in *CRAG*. Councils may wish to set higher savings limits or more generous charging policies than those specified in *CRAG* for users with savings, but should not set lower limits.
63. The value of the main residence occupied by the user should not be taken into account for charges for non-residential social services, but other forms of capital may be taken into account, as set out in *CRAG*.
64. Consistent with the guidance in *CRAG*, ex gratia payments made to former Far Eastern prisoners of war and payments made under the Vaccine Damage Payment scheme should be disregarded entirely.
65. Provision should be made for charges to be reviewed at regular intervals, where savings are being used up by charges.

## **IX. Partners' income and savings**

66. Section 17 of the HASSASSA Act 1983 envisages that councils will have regard only to an individual user's means in assessing ability to pay a charge.
67. This will mean that parents and other members of an adult user's family cannot be required to pay the charges, except in certain legal circumstances, for example, where a family member may be managing the user's own resources.
68. Councils may wish to consider in individual cases whether a user's means may include resources not held in that person's name, but to which the user has a legal entitlement. The most likely instances of this kind will arise in relation to married or unmarried couples. In some circumstances, the user may have a legal right to a share in the value of an asset, for example a bank account, even if it is not in his or her name. In some circumstances, statutory provisions provide such a right. In other circumstances, what are known as "equitable principles" may apply to give such a right, for example where there is an unwritten agreement between partners that they both own a property or an asset, even though the title is in only one of their names. If the council has some reason to believe that the user does have means other than those initially

disclosed, a request may reasonably be made for the user to arrange for the partner to disclose his or relevant resources. If there is no such disclosure, the council may consider that it is not satisfied that the user has insufficient means to pay the charge for the service. It will be for the council to consider each case in the light of its own legal advice.

69. Issues of practicality and fairness arise in respect of the treatment of some benefits, which are calculated for the needs of a couple, and for jointly held savings. In cases where only the user's means are assessed, no assumption should be made that the whole of that person's disposable income is necessarily available for charging. For example, Income Support paid at the rate for a couple should not be taken into account without also taking account of the expenditure needs of both partners. Allocation of half of housing costs or other expenditure to an individual user may in some cases result in an unreasonable charge. Where an assessed charge for the individual user would reduce a couple or a household below basic levels of Income Support or guaranteed credit element of pension credit, plus a 25% buffer, taking account of the resources and expenditure of the couple or the household, as appropriate, then an assessment should be applied on the basis of the household.
70. Jointly held savings should be treated as divided equally between the owners, unless the contrary is demonstrated by, or on behalf of, the user. The minimum savings levels to be applied should be those set out in the *Charges for Residential Accommodation Guidance (CRAG)*.
71. Partners' earnings should always be disregarded in any charge assessment, in the same way as users' earnings, as set out in Section X.

## **X. Work incentives**

72. The Government's policy is to encourage and enable those who wish to take up employment, including disabled people and their carers, to do so. Charging policies should avoid creating disincentives to work.
73. Disincentives may be either disincentives to take work at all, or disincentives to work longer or earn more. Neither is acceptable. Disincentives may arise because many social security benefits are income-related and so are withdrawn as earnings increase. For example, both Housing Benefit and

support under the local Council Tax Benefit Reduction Scheme are withdrawn as earnings rise. Both these effects will be taken into account if councils follow the guidance at paragraph 81.vii below. If either benefit is withdrawn as earnings rise, increased net housing costs and Council Tax will be reflected in the assessment of expenditure.

74. Working Tax Credit was introduced in April 2003 and replaced Working Families Tax Credit and Disabled Person's Tax Credit. To ensure incentives for work, Working Tax Credit should be disregarded as income in charge assessments. [DN: seeking advice from DWP about affect of UC on these benefits. See also paragraphs 30 and 76.]
75. Some benefits, such as Income Support, are withdrawn when there is more than a limited weekly amount of employment. The requirements that charges should not reduce users' incomes below basic levels of Income Support or the Guaranteed Credit element of Pension Credit plus 25%, and to take specific account of users' expenditure, including disability-related expenditure, should help to minimise any disincentives to work arising, particularly for low earners.
76. Taking account of the whole picture, including loss of benefits, payment of income tax and National Insurance, and the costs of getting to work, any scope for charging is limited, if barriers to work for disabled people are to be removed. The Government believes it is right, therefore, that councils should disregard all earnings in charge assessments for non-residential social services, including charge assessments for carers. "Earnings" should be defined in the same way as in the *Charges for Residential Accommodation Guidance (CRAG)*.
77. To ensure incentives for work, Working Families Tax Credit and Disabled Person's Tax Credit should also be disregarded as income in charge assessments. [DN: seeking advice from DWP about affect of UC on these benefits. See also paragraphs 30 and 73.]

### **Independent Living Funds**

78. Charges for non-residential social services are netted off any charge assessed as payable to the ILF.

## **XI. Creutzfeldt Jacob Disease (CJD)**

79. The Government has made an undertaking that users of non-residential social services suffering from any form of CJD should not undergo a charge assessment, but should be treated as automatically exempt.

## **XII. Setting the Level of Charges**

80. This guidance is concerned mainly with setting boundaries of fairness for the assessment of users' ability to pay charges. The requirement for charges to be reasonable concerns also what may be charged, having regard to the costs of the service provided to the user.

81. Councils should take account of no more than the full cost of providing the service, excluding costs associated with the purchasing function and the costs of operating the charging system. It is a matter for councils to decide whether to levy a contribution to costs or to seek to recover full costs, where possible. Councils will need to consider inter alia whether to use the levels of charge to target subsidy at priority users or services and whether charging full costs for some users will create perverse financial incentives for them to enter residential care.

82. Charges which reflect the costs of services provided to users and are based on hours of service provided are generally preferable to charges based on broad 'usage' bands, which can create perverse incentives and spread subsidy unfairly.

83. Where the costs of services vary within the council's area, eg, because providers' costs vary, it is for the council to decide whether charges should reflect the cost differences or whether to have a notional average charge for all users with the same means. A notional average charge may be set, for example, to avoid disadvantaging users in rural areas.

## **XIII. Summary of Issues in Design of Charging Policies**

84. In summary, councils need to consider the following issues in designing a charging policy:

- a. As discussed at paragraph 13, flat rate charges or charges which do not vary with the level of service may be acceptable in limited circumstances (but are more generally acceptable for meals at home or in day care, where these charges substitute for ordinary expenditure). The level of charge will need to be set low in order to avoid reducing users' incomes below basic levels of Income Support or the Guaranteed Credit element of Pension Credit, plus 25%. Councils will need to establish what is a reasonable level of charge through consultation. In no case, however, (other than for meals at home) should charges be levied on users receiving Income Support, JSA-Income Based or Income Based Employment Support Allowance (ESA) or Universal Credit, whose overall income equals the defined basic levels, or those with similar levels of income.
- b. For most councils' charging policies, which are expected to be more sophisticated, councils should consider how to ensure that users' net incomes are not reduced below basic levels of Income Support or the Guaranteed Credit element of Pension Credit (whether they are receiving Income Support or Pension Credit or not), plus a buffer of 25%. For users who have income, which takes them above basic levels of Income Support, JSA-Income Based or Income Based Employment Support Allowance (ESA) or Universal Credit, plus 25%, councils should carry out charge assessments, which have regard to the effects of any charge on users' net incomes.
- c. Assessments should take full account of any disability-related expenditure, where disability-related benefits are taken into account as income. Councils will need to consider and consult specifically on how far this should happen where disability-related benefits are not part of a user's income.
- d. A buffer should be set of not less than 25% above Income Support or the Guaranteed Credit element of Pension Credit, personal allowances and premiums. This provides an additional safeguard to prevent users' independence of living being undermined by charging policies.
- e. As explained in Section V, councils should also consider and consult users specifically about whether and how to set an overriding maximum charge.
- f. Councils will want to have regard to any implications for administrative costs and staffing in deciding on a charging policy. Charging models, which involve detailed assessment of users' expenditure, may have initial costs, including those of staff recruitment and training. Councils running such policies have found that employment of specialist finance staff for assessment may produce more accurate assessments quickly and free care managers for work directly related to their expertise, reducing overall costs.
- g. Income should be assessed net of any Income Tax and National Insurance contributions payable and net of housing costs and Council Tax. Housing costs and Council Tax should be assessed net of any Housing Benefit or support under the local Council Tax Reduction Scheme. This should help to minimise any "poverty trap" effects or work disincentives arising from

withdrawal of Housing Benefit or support under the local Council Tax Reduction Scheme when a user's income increases. Some councils will wish to consider taking account of other costs such as water rates or charges and home insurance.

- h. Councils will need to consider how to treat savings and capital and partners' income and savings, as discussed in sections VIII and IX.
- i. Earnings should be disregarded from assessments of income to avoid creating disincentives to work.
- j. Councils will need to consider how to set the levels of charges in relation to the costs of the services provided to users.
- k. The Government expects all councils to explain how these issues will be addressed as part of consultation with users and carers on their charging policies.

#### **XIV. Carers**

85. Users may be charged only for services provided to them and carers only for services provided to them under the Carers and Disabled Children Act, 2000. Councils may not decide that a carer is the service recipient and therefore subject to a charge, purely on the grounds that a user is exempt from charges or has an assessable income which is less than that of the carer.
86. Where users and carers are spouses or partners and both are receiving services, the guidance in Section IX should be followed. All other parts of this guidance apply to charges for services provided to carers.
87. Particular issues arise with expenditure incurred by informal carers. For services provided to carers under the Carers and Disabled Children Act, 2000, councils should take account of costs such as:
- private purchase of care, for example, to allow short breaks from caring, or where this is needed to enable the carer to maintain employment or to fulfil obligations as a parent
  - adaptations to the carer's home, for example, where the disabled person moves to the carer's home

- additional transport or other costs, eg, taxis, which may arise unavoidably because the carer cannot long be absent from home
  - the range of additional costs for cleaning, clothing, laundry and other matters included at paragraph 46, where these are met by the carer
88. For services provided to the disabled user, account may also need to be taken of expenditure incurred by informal carers. Councils should take account of household resources and expenditure in cases where not doing so could result in an unreasonable level of charge, as set out at Section IX.
89. Councils may decide to include Invalid Care Allowance (ICA) within a carer's income as part of a charge assessment, where a carer is receiving this, but are not obliged to do so. The requirements that a charge should not reduce net income below basic levels of Income Support or the Guaranteed Credit element of Pension Credit, plus 25%, and to disregard earnings mean that most recipients of ICA will not in any event be liable to pay a charge.

## **XV. Direct Payments**

90. Councils should refer to *Fairer Contributions Guidance 2010, Calculating an Individual's Contribution to their Personal Budget*, when assessing how much users may be asked to contribute towards their Direct Payments and/or Personal Budgets. *Fairer Contributions* guidance sits alongside and should be read in conjunction with *Fairer Charging* guidance, as both use the same process for calculating an individual's contribution.

## **XVI. Use of Powers to transfer funds**

91. Local councils and health authorities may jointly commission social care services under section 28A of the NHS Act 1977. The details of any charges should be devised with advice from the local council's own lawyers. The council may recover from users up to the full cost of the social care service, even though the NHS may have met some or all of the cost of the social care service. Local councils must, however, bear in mind that section 17 of the HASSASSA Act 1983 is not a provision designed to enable them to raise general revenue. If a council purchases social care and a health authority

purchases health care services from the same provider, then charges to users may only be made for the social care element. Any services for which the NHS has underlying responsibility are automatically free at the point of use<sup>5</sup>, in whatever setting they are provided and whichever agencies provide or commission the service in practice

## **XVII. Health Act 2006 Partnerships**

92. *The National Health Service Act 2006 (which replaced the partnership provisions in the National Health Service Act 1999) did not alter the local authority powers to charge in the event of a partnership arrangement. In agreeing partnership arrangements, agencies will have to consider how best to manage charging (where local councils charge for services) and how to clarify the difference between charged-for and non-charged for services. There is no intention to increase or expand charging arrangements through the Partnership Arrangements. In entering into an arrangement, the partners will need to agree on the approach to be taken on charging.*
93. *Partners will need to bear in mind that, where charging is retained, the arrangements will need to be carefully explained to users of services, to avoid any misunderstanding that NHS services are being charged for, especially when an NHS Trust is providing a service, part of which is being charged for. It will be critical that charging arrangements are properly explained at the outset of the assessment process. See section XIX below. The existing charging review or appeals mechanisms should be made clear to the user.*

## **XVIII. Intermediate Care**

94. *The original guidance about charging arrangements for intermediate care - in HSC 2001/01/LAC 2001/01 – was superceded on 23 July 2009 by Intermediate Care – Halfway Home, Updated Guidance for the NHS and Local Authorities. Councils should have regard to that guidance where a time-limited package of intermediate care includes the provision of non-residential social services. It remains a requirement that non-residential social services which are an integral part of a time-limited package of intermediate care, as defined in the guidance, should be free at the point*

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<sup>5</sup> Other than services for which specific charging powers exist, such as NHS prescription charges.

**of use. Charging for reablement services is addressed in Local Authority Circular (DH) (2010) 6, issued on 28 October 2010. Local authorities should refer to these when assessing service users for intermediate care or reablement services.**

## **XIX. Management of charges and charging policies**

95. ***This section summarises some issues in the management of charges and charging policies. The advice on these issues draws on advice in the Audit Commission study, Charging with Care (May 2000) and advice issued by the former Association of County Councils and Association of Metropolitan Authorities - Discretionary Charges, a good practice handbook (July 1996).***
96. ***It is important for councils to get the key processes right if development of policies is to be well informed and local users are to understand and accept charging policies. A good practice 'checklist' from Charging with Care, covering both the design of policies and their management is reproduced at Annex B.***

### **Information about charges**

97. ***Clear information about charges and how they are assessed should be readily available for users and carers. Local Better Care, Higher Standards charters should include this information. Information should be made available at the time a person's needs for care are assessed.***
98. ***Once a person's care needs have been assessed and a decision has been made about the care to be provided, an assessment of ability to pay charges should be carried out promptly, and written information about any charges assessed as payable, and how they have been calculated, should be communicated promptly. This should normally be done before sending a first bill. Charges should not be made for any period before an assessment of charges has been communicated to the user, although this may be unavoidable where the user has not co-operated with the assessment. A first bill for a charge for a lengthy past period can cause needless anxiety. Any increase in charges should also be notified and no increased charge made for a period before the notification.***

## **Access to care and assessment of ability to pay charges**

99. *Assessment of a person's need for care should not be confused with financial assessment of a person's ability to pay a charge. Once someone has been assessed as needing a service, that service should not be withdrawn because the user refuses to pay the charge. The council should continue to provide the service, while pursuing the debt, if necessary through the civil courts. If a user refuses to provide information for a charge assessment, it may be reasonable to require payment of a full charge.*

## **Consultation**

100. *Consultation with users and carers about charging policies and increases or changes in charges should follow good practice advice, for example, the National Consumer Council's Involving Users: Improving the Delivery of Local Public Services. Consultation is one of the main principles, which should guide councils' Best Value reviews of local services.*

101. Where changes in charging policies would result in significant increases in charge for some users, this should be specifically explained and considered as part of the consultation.

## **Reviews and Complaints**

102. Section 17(3) of the HASSASSA Act 1983 gives a user the right to ask the council for a review of the charge which has been assessed, if the user considers that he/she cannot afford to pay it. Under the legislation, the council must be satisfied that the user's means are insufficient to pay the amount they would otherwise be charged, before deciding to reduce or waive a charge.

103. It is important that any request to review a charge is carefully considered. The fairness of the charge should be considered in the light of the individual's financial circumstances and in relation to the position of other users and charge payers. The review may need to go beyond considering whether the assessed charge accords with the terms of the council's policy, since it is unlikely that policies will be able to make provision for all conceivable personal circumstances. Requests for review, which should be considered seriously, may include those for a relaxation of the savings limits for a period where the

individual user has needs such as purchase of equipment related to their disability.

104. Information for charge payers should make clear that they may either seek a review of their assessed charge, or they may make a formal complaint to the council if they are dissatisfied with any aspect of the assessment. Councils will need to consider how best to make the facility for a review accessible to users and how to ensure consistency in decisions. Useful advice is included in *Discretionary Charges, a good practice handbook*, published by the former Association of County Councils and Association of Metropolitan Authorities.
105. As part of strategic management of charging policies, councils need to have regard to the costs of administering charges. This issue should be a consideration in the initial design of charging policies. Councils should collect information on the costs of administration and should monitor this. Comparison of administration costs should form part of Best Value reviews considering charging policies.
106. Procedures for verification of claims and for countering fraud should be considered in the design of charging policies and should be built into the assessment and administration of charges.

### ***Strategic Management of Charging Policies***

107. Charging with Care stresses the need for good strategic management of charging policies. Charging policies should be consistent with the council's service policies. They should not operate against the Government's policy agendas for social care, to promote independent living and social inclusion. It is important that consideration of charging policies is not purely budget based, but takes account of service needs. The design of charging policies needs to be sensitive to the variety of users' circumstances and needs. The ways in which charging policies are developed also need to be sensitive and to involve users and carers.
108. The need for strategic management of charging policies implies a need for monitoring, for example, of any users refusing services or part services because of charges, and of users falling into arrears. Service managers need to have access to this information.

109. *Charging with Care* identifies five categories of performance information needed to help councils to manage the service and charges, to ensure they are responsive to users' needs. These are:

- client numbers and service levels
- clients refusing/cutting down on services as a result of charging, or asking for charges to be reviewed
- levels and reasons for arrears
- levels of client incomes, in particular the take-up of different benefits
- cost of collection as a percentage of income

110. In reviewing charging policies, councils should take account of the further advice included in the good practice 'checklist' at [Annex B](#).

## **XX. Implementation**

111. Implementation from 8<sup>th</sup> April 2013.

**1. Section 17 of the Health and Social Services and Social Security Adjudications Act 1983**

Charges for local authority services in England and Wales

**17. (1)** Subject to subsection (3) below, an authority providing a service to which this section applies may recover such charge (if any) for it as they consider reasonable.

(2) This section applies to services provided under the following enactments-

- (a) section 29 of the National Assistance Act 1948 (welfare arrangements for blind, deaf, dumb and crippled persons etc.);
- (b) section 45(1) of the Health Services and Public Health Act 1968 (welfare of old people);
- (c) Schedule 8 to the National Health Service Act 1977 (care of mothers and young children, prevention of illness and care and after-care and home help and laundry facilities);
- (d) section 8 of the Residential Homes Act 1980 (meals and recreation for old people); and
- (e) paragraph 1 of Part II of Schedule 9 to this Act [other than the provision of services for which payment may be required under section 22 or 26 of the National Assistance Act 1948].

(3) If a person-

- (a) avails himself of a service to which this section applies, and
- (b) satisfies the authority providing the service that his means are insufficient for it to be reasonably practicable for him to pay for the service the amount which he would otherwise be obliged to pay for it,

the authority shall not require him to pay more for it than it appears to them that it is reasonably practicable for him to pay.

(4) Any charge under this section may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

**2. Section 73(14) of the Social Security Contributions and Benefits Act 1992**

A payment to or in respect of any person which is attributable to his entitlement to the mobility component, and the right to receive such a payment, shall (except in prescribed circumstances and for prescribed purposes) be disregarded in applying any enactment or instrument under which regard is to be had to a person's means.

**‘A Best Value charge?’: a checklist for councillors and managers** [based on *Charging with Care*, Audit Commission, May 2000, Table 2]

A number of questions will help councils to review how their approach to charging for home care compares with best practice.

Principle	Key Questions
<i>Establish clear principles to guide charging</i>	<p><i>Are there principles to guide charging for home care? Do they answer the key questions:</i></p> <ul style="list-style-type: none"> <li>• Who should subsidy be targeted at? Why?</li> <li>• How should charges vary with the level of service received? Why?</li> <li>• How should charges vary with users' means and how should national benefits be treated?</li> <li>• Is it clear how costs of disability are taken into account?</li> <li>• Are members committed to the principles and their implications for charges and services?</li> <li>• Are incentives to work for the user or carer preserved?</li> </ul>
<i>Consider charging as an integral part of service review</i>	<ul style="list-style-type: none"> <li>• Are charges reviewed as part of best value review and service planning?</li> <li>• Does the approach to charging fit with corporate priorities such as anti-poverty?</li> <li>• Are charges designed to deliver service objectives? Is the potential of charges to improve services or extend access considered?</li> <li>• Is there an effective process to review charges? (Are options evaluated? Is adequate information available?)</li> </ul>
<i>Meet the needs of users</i>	<p><i>Open communication and consultation</i></p> <ul style="list-style-type: none"> <li>• Does meaningful consultation take place over the design and management of charges? Do managers know users' key concerns?</li> <li>• Do users know that they can ask for charges to be reviewed or waived? Are</li> </ul>

	<p>such systems accessible to all? Is how to find out more or seek advice?</p> <ul style="list-style-type: none"> <li>• Are forms, letters and leaflets well designed (easy to follow, adequate print size, community languages)?</li> <li>• Are users told why information is required and given assurances over confidentiality?</li> </ul> <p><i>Ensuring users are able to pay:</i></p> <ul style="list-style-type: none"> <li>• Is the council effectively promoting benefits take-up by new and existing users? Is expert advice available to help users maximise their income?</li> <li>• Are users given a record of the assessment that explains how their charge has been calculated? Do users understand how/if their charge would change if their needs or means changed?</li> <li>• Is it clear how costs of disability have been taken into account? Will users know when they should ask for a review of their charges?</li> <li>• What happens when users cut down or withdraw from services? Are the reasons identified? What help is offered?</li> <li>• Does the council pro-actively monitor arrears to identify if users may be having difficulties paying, and initiate action to help tackle problems?</li> </ul>
<p><i>Manage performance effectively</i></p>	<p><i>Is key performance information gathered and acted upon? Are targets set and published?</i></p> <ul style="list-style-type: none"> <li>• Are financial assessments carried out efficiently? Are they accurate and are users made aware of the results as soon as possible?</li> <li>• Are users billed promptly and accurately?</li> <li>• Do managers monitor the impact of charges on users (users cutting down on services or building up arrears)?</li> </ul> <p><i>Are charges managed efficiently and effectively?</i></p> <ul style="list-style-type: none"> <li>• Are managers aware of the costs of charging?</li> <li>• Have the costs of charging been</li> </ul>

	<p>minimised by careful review of assessment processes, and methods of billing and payment?</p> <ul style="list-style-type: none"><li>• Could links be improved between finance and care management systems? Do different staff (social services, finance, welfare rights, care providers) work together effectively?</li><li>• Are variations in services processed promptly and accurately?</li><li>• Are staff adequately trained, so that users are treated consistently and sensitively?</li></ul>
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