



FREQUENTLY ASKED QUESTIONS

1. GENERAL

Q101. Will you be publishing a new CRAG and Fairer Charging Guidance?

A101. Statutory guidance on charging for care and support under the Care Act 2014 is provided in the Care and Support Statutory (CASS) Guidance published in October 2014. All previous guidance documents, such as the CRAG and Fairer Charging Guidance came to an end on 1st April 2015 and no further versions of these documents will be produced.

The CASS Guidance on charges and paying for care will be revised for the introduction of the capped cost scheme, recommended by the Dilnot Commission, in April 2016. The Guidance will be reviewed regularly thereafter.

Q102. From what date can local authorities charge people?

A102. Under the Care Act, local authorities have powers to charge for care and support to cover the costs they incur when contracting for care. The local authority can, therefore levy charges from the date when it starts to incur costs to meet a person's care and support needs. However, we would usually expect the local authority to work out how much the adult can afford to pay for their care and support before the local authority collects any money from them. An exception to this would be where a person refuses to co-operate with the financial assessment.

We would expect a local authority to complete a financial assessment as quickly as possible to avoid people being faced with large and unexpected bills. Where any arrears of charges are due, people should be given a reasonable length of time in which to pay the money and should not be expected to pay it all off in one go.

Q103. Are there any plans to change how single premium investment bonds are treated in the financial assessment for care and support charging?

A103. Single premium investment bonds that contain an element of life insurance are currently disregarded in the financial assessment no matter how small the

element of life insurance. Consideration is being given to how these bonds should be treated in future.

Q104. In deciding how much people can pay for care and support, how should local authorities treat joint assets? Should they assess couples?

A104. As previously, a local authority should only assess the resources of the cared for person, or their share of joint resources, when deciding how much to charge. It should not take into account assets owned by another person.

Previously, local authorities charged for residential care under Section 22 of the National Assistance Act 1948 and for domiciliary care under Section 17 of the Health and Social Services and Social Security Adjudications Act 1983. Both envisaged that local authorities would only take into account the cared for person's resources. The Care Act 2014 maintains this arrangement.

However, assessing the resources of a cared for person can be complex. Couples, in particular, will have jointly held assets. Some will be in both people's names while others may be in one person's name, but in practice be used as a joint asset. Local authorities will need to consider the facts in each individual case.

Where an asset is jointly held the starting assumption should be that each person holds an equal share and only the cared for person's share should be taken into account in the assessment of what they can afford to pay. In addition, where a cared for person is in a care home, after charges have been deducted local authorities should ensure that the partner living in the family home has enough money to live on. For domiciliary care local authorities have discretion to have more generous charging rules than those set out in the regulations and guidance.

Q105. Must local authorities charge each person individually or can they charge everyone the average cost to simplify the administration of charging?

A105. As under the previous legislation, the Care Act enables local authorities to recover from the cared for person the cost to the local authority of arranging of their care. Therefore, a local authority may not charge the cared for person more than the actual cost to the local authority of care to meet the person's needs.

Q106. Are "Preventive Services" covered by the Charging and Assessment of Resources Regulations 2014?

A106. No. The Charging and Assessment of Resources Regulations only cover care and support arranged under sections 18 to 20 of the Act. The treatment of

preventive services is set out in *The Care and Support (Preventing Needs for Care and Support) Regulations 2014* and chapter 2 of the CASS Guidance.

Q107. Are the charging rules changing as a result of the new pension flexibilities?

A107. People will be assessed based on where their assets are at the point of needing care. If they have chosen to take advantage of the new pension flexibilities and if, for example, they have moved their pension pot to a savings account, the full amount will be taken into account as capital in the financial assessment.

Where someone is over state pension credit qualifying age and has not taken any decision on how to access their defined contribution pension, the local authority may continue to apply notional income. The rules on how notional income should be applied have been adjusted to state that the notional income that can be applied is equal to the maximum income that would be available under an annuity.

Q108. What does it mean to “meet needs”?

A108. The local authority is under a duty to meet a person’s eligible care needs. It is for the local authority to determine what care and support will meet these needs.

The Care Act envisages that needs should be met in a more varied and diverse way than under previous legislation. For example, needs may be met directly by the local authority, by commissioning care from a provider or making a Direct Payment so the individual can arrange their own care; needs may be met through universally available types of care or by putting someone in touch with a local community group of voluntary sector organisation; and local authorities may also broker a service on behalf of an individual. However, the duty to meet eligible needs rests with the local authority and where delivery of services is delegated or contracted, the local authority remains responsible for ensuring the person’s needs are met.

Arranging services that meet people’s needs should be achieved, wherever possible, through discussion and agreement with the person who has eligible needs, their families and friends so that the outcomes people wish to achieve are taken into account. Any dispute about whether and how needs are being met should be channelled through the appropriate local authority dispute resolution procedure.

Paragraphs 10.10 to 10.19 of the CASS Guidance provide more detailed guidance on meeting needs.



FREQUENTLY ASKED QUESTIONS

2. DOMICILIARY CARE

Q201. Under the Fairer Charging Guidance local authorities could not charge a person for services provided before the financial assessment was completed. Has this changed?

A201. From April 2015 the implementation of the Care Act modified the position and made charging arrangements for care and support more consistent between care homes and other locations. Local authorities can charge people what they can reasonably afford to pay. This will help ensure they have the resources to provide care and support to people who need it.

However, we would expect a local authority to complete a financial assessment as quickly as possible. Local authorities should try to ensure that people are not faced with large and unexpected bills. Where any arrears of charges are due, people should not be expected to pay it all off in one go and should be given a reasonable length of time in which to pay the money.

Q202. Working tax credits were previously disregarded in domiciliary care charging but the Care and Support Statutory Guidance says they should be taken into account. How should they be treated?

A202. A number of queries have been raised about the Care and Support Statutory Guidance published in October 2014. On 17th March the Department issued a document, "*Update on final Orders under the Care Act 2014*", which tries to clarify elements in the CASS Guidance that people have queried. Paragraph 29(b) of the "*Update*" says that Working Tax Credit should be disregarded in the calculation of income for and support arranged other than in a care home.

Q203. How should AA and DLA day and night payments be treated in domiciliary care charging?

A203. We would expect local authorities to take steps to ensure that adults in receipt of care and support before the implementation of the Care Act are not made worse off as a result of any changes to the charging rules. In addition, as previously, local authorities can design policies which are more generous than the minimum requirements set out in regulations and statutory guidance.

Paragraph 42 of the Fairer Charging Guidance said that it would normally be reasonable for local authorities 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. However, this was modified by paragraph 47 of the Guidance because DLA is being replaced by PIP, which has two rates rather than three and makes no distinction between day and night care.

Under the Care Act, the treatment of day and night care is covered in paragraphs 37 and 38 of Annex C of the CASS Guidance. In effect, this says that day or night care which is not being arranged by the local authority should be included in the adult's disability-related expenditure. Local authorities should make an assessment of a person's disability-related expenditure and allow them to keep enough benefit to meet any needs not being met by the local authority.

Q204. Does Annex E (Deprivation of Assets) apply to domiciliary care? All the examples refer to care in a care home.

A204. Annex E of the CASS Guidance on the deprivation of assets relates to section 70 of the Care Act 2014 and covers domiciliary care and care in a care home. Unfortunately, the CASS Guidance currently only gives examples of residential care. We will try to address this in future versions of the CASS Guidance.

Q205. There are a number of places where local authority domiciliary care charging policies are more generous than the new regulations. Does this mean they have to charge people more under the Care Act?

A205. The Care Act broadly maintains the previous charging system. For domiciliary care local authorities will continue to design their own charging policies subject to regulations and guidance issued by the Department.

While it is true that under the Care Act the charging regulations, for the first time, apply to domiciliary care, these only set a minimum level below which local authorities cannot go. Local authorities can have more generous domiciliary charging policies if they wish and the CASS Guidance includes a number of instances where local authorities should disregard sums which are not automatically disregarded in the regulations.

Q206. How should Savings Credit be treated for domiciliary care? Annex C of the CASS guidance is contradictory.

A206. The intention is that the charging arrangements under the Care Act should be broadly the same as under the rules that preceded it.

There is an inconsistency in the statutory guidance regarding the treatment of Savings Credit. This has arisen due to the merging of two charging systems. For people receiving care and support other than in a care home savings credit should be fully disregarded. However, for care home residents only part of the savings credit should be disregarded, as set out in paragraph 31. On 17th March the Department issued a document, *“Update on final Orders under the Care Act 2014”*, which tries to clarify elements in the CASS Guidance that people have queried. Paragraph 29(f) of the *“Update”* says that where people are receiving care and support other than in a care home, any savings credit the adult receives should be fully disregarded and that a paragraph to this effect will be included in the revised Guidance.

Q207. Must local authorities use the capital limits in the Charging and Assessment of Resources Regulations 2014 for domiciliary care? Can they set higher limits?

A207. The intention is to maintain the existing position which is that local authorities may not contribute towards the cost of care and support in a care home where the adult has more than £23,250 in capital. However, for adults receiving care and support in other locations the upper and lower capital limits are simply a minimum and local authorities have discretion to set their own higher capital limits if they wish provided they are no lower than £23,250 for the upper limit and £14,250 for the lower limit.

This is included in paragraph 25 of the *“Update on final Orders under the Care Act 2014”*, which tries to clarify elements in the CASS Guidance that people have queried.

Q208. Can a local authority provide support with the cost of care where a person has more than £23,250 in capital?

A208. The intention is to maintain the previous position which is that local authorities may not contribute towards the cost of care and support in a care home where the adult has more than £23,250 in capital. However, for adults receiving care and support in other locations the limit of £23,250 is simply a minimum and local authorities can provide support to people with more than £23,250 in capital if they wish. This is covered by regulation 12.

Under regulation 12(1) a local authority may not contribute to the cost of care in a care home for an adult with more than £23,250 in capital. Under regulation 12(2) a local authority may, if it wishes, contribute towards the cost of care and support in any location other than a care home where the adult has more than £23,250 in capital. This enables local authorities to set their own upper capital limit provided it is no lower than £23,250.

Q209. The Fairer Charging Guidance says local authorities should take account of any higher disregards applied in “local schemes” to War

Disability Pensions and War Widows Pensions for Housing Benefit and Council Tax Benefit purposes. How should these be treated under the CASS Guidance?

A209. Local authorities design their own charging policies. The regulations and CASS Guidance set minimum requirements for things like disregards but local authorities can be more generous if they wish. Local authorities should continue to 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.

Q210. Regulation 7(8) talks about varying the MIG where non-care related support is provided. What does this mean?

A210. Where a local authority provide care support to people other than under sections 18 to 20 of the Care Act, such as meals on wheels, this can also be charged for. However, as this service is not provided to meet care and support needs, people pay for it themselves and the level of their MIG should be reduced accordingly.

Q211. The regulations refer to recreational activities. What does this mean?

A211. Recreational activities are not defined in the regulations. However, they will not include any care or support service arranged under sections 18 to 20 of the Care Act to meet eligible care needs. We would expect local authorities to adopt a common-sense interpretation on what is and what is not recreation.

Q212. Has the policy on the treatment of personal injury compensation payments in the financial assessment for charging for domiciliary care changed?

A212. With regard to the treatment of capital, there is no change in the way personal injury compensation payments are treated. Previously, under section 8 of the “Fairer Charging” Guidance personal injury compensation placed in a personal injury compensation trust was fully disregarded. The “Charging and Assessment of Resources” Regulations 2014 and the CASS Guidance maintain this position.

However, from April 2015 the implementation of the Care Act modified the position to make charging arrangements for care and support more consistent between care homes and other locations. One effect is that, under paragraph 15(3)(c) in Schedule 1 to the 2014 regulations, local authorities can no longer take into account income from personal injury and discretionary trusts.

Q213. Can local authorities set a higher MIG than the amounts in the regulations?

Q213. Yes. Regulation 7 of The Care Act (Charging and Assessment of Resources) Regulations 2014 set a minimum below which a person's income may not be reduced. However, as set out in paragraph 46 of Annex B to the Care and Support Statutory Guidance, this is only a minimum and local authorities have discretion to set a higher level. In addition, we would expect local authorities to ensure that people who are already receiving care and support are not disadvantaged by the changes.



FREQUENTLY ASKED QUESTIONS

3. CARE HOME CARE

Q301. How should a local authority charge for the first eight weeks in a care home? Currently, local authorities can choose to charge what they consider to be reasonable.

A301. The intention of the regulations and guidance is that, as previously, local authorities should not be required to use the Charging and Financial Assessment of Resources Regulations as the basis of charging someone for the first eight weeks of their stay in a care home. It is then up to the local authority to decide what to charge.

Under Regulation 8 a local authority may charge a short-term care home resident (i.e. someone who is in a care home for a period not exceeding eight weeks) as if they are receiving domiciliary care. This is also set out in paragraph 8.34 of the CASS Guidance. It is for individual local authorities to design their own domiciliary care charging policies, including setting out how it will charge people for respite care etc. Paragraph 8.2 sets out the charging principles that local authorities should take into account. Amongst these is: *“ensure that people are not charged more than it is reasonably practicable for them to pay.”* Local authorities charging policies can be more generous than the minimums set out in the regulations and guidance.

Q302. Can a local authority support a person in a care home who has more in capital than the upper capital limit? Paragraph 8.55 and paragraph 24 of Annex B to the CASS Guidance suggests they cannot.

A302. I agree this is a little misleading and we will amend the guidance. Paragraphs 8.55 to 8.63 and paragraph 24 of Annex B of the CASS Guidance are intended to provide guidance on the point at which local authorities have a duty provide financial support towards a person’s care and support needs (i.e. pay towards the cost). A local authority has a duty to fund a person’s care and support needs where they have less than the upper capital limit. It also has a duty, under section 18(4), to arrange care and support where the person has capital above the upper capital limit, lacks capacity and has no one to act on their behalf.

However, as set out in section 18(1) of the Care Act 2014, where a person is assessed as having eligible care and support needs the local authority has a duty to arrange care to meet those needs. In addition, under section 19, local authorities have a power to meet needs, if they choose, in other circumstances.

Q303. Can a local authority charge people with resources above the upper capital limit for temporary stays in a care home?

A303. Yes. The only restriction on a local authority is that under Regulation 12(1) of the “Charging and Assessment of Resources” Regulation 2014 a local authority is not permitted to pay towards the cost of permanent care in a care home for a person with more than £23,250 in capital.

Q304. Is a care home provider able to charge self-funders differently for care and support after April 2015?

A304. Some people are reading the Care Act 2014 as saying that a care home provider cannot charge residents different amounts, or even that it will be illegal for them to do so. This is not the case.

The overall position regarding care home contracts has not change. Care home providers are independent contractors and are free to decide for themselves the rates they charge for their services. As a block purchaser of care home places local authorities are able to give care home operators greater confidence about future occupancy levels and this security about business prospects allows local authorities and care home owners to agree lower fees than is the case when an individual self-funder contracts direct with a care home.

When, in due course, section 18(3) of the Care Act is implemented, if they wish, self-funder will be able to ask their local authority to arrange care in a care home for them, including negotiating the level of their fees. However, section 18(3) is not being implemented in respect of care home at present.

Q305. It appears that people who have been in a care home for some time will no longer be entitled to have their home disregarded for the first 12-weeks of local authority supported care. Is that correct?

A305. The Care Act changes the way the 12-week property disregard applies. Previously, the disregard applied to a property for the first 12-weeks of local authority supported care. This included for people who had been in a care home for some time as self-funders. Under the Care Act the disregard only applies to a permanent resident’s main or only home for the first 12-weeks in a care home. A person who has been in a care home for some time will, therefore, no longer automatically be entitled to have their home disregarded.

However, self-funders will still be entitled to the 12-week property disregard in certain circumstance. These are as follows:

- a) Until they are financially assessed under the Care Act or until 1st April 2016 when they must move to the financial assessment rules under the Care Act, whichever date is the sooner.
- b) Where a property disregard other than the 12-week property disregard ends unexpectedly.

In addition, local authorities have discretion to apply a 12-week property disregard where there is an unexpected change in the resident's financial circumstances.



FREQUENTLY ASKED QUESTIONS

4. CHOICE OF ACCOMMODATION AND TOP-UP PAYMENTS

Q401. Can residents and third parties still make top-up payments direct to the care provider?

A401. The Care Act 2014 and the CASS Guidance maintains the arrangements for top-up payments in place under the National Assistance Act 1948 and the former statutory guidance contained in LAC(2004)20.

When entering into a contract to provide care and support in a particular setting the local authority is responsible for the full cost of that care and support. Therefore, for example, where a local authority arranges care and support for an individual in a care home that costs more than the amount identified in the individual's personal budget it must contract to pay the fees in full including any top-up payment. The individual's or third party's top-up payment is treated as part of the individual's income in the financial assessment for charging and the local authority will be able to recover it in that way. This is the preferred method of making such arrangements.

However, it is open to the local authority, the individual and the care provider to jointly agree that, instead of paying the top-up payment to the local authority, the individual or third party will pay it direct to the care provider with the local authority paying the difference. In such a case all the parties need to agree to the arrangement. It should also be noted that even where there is such an agreed arrangement, the local authority must contract with the provider so that it remains responsible for the full cost of care and support should the individual or the third party fail to pay the top-up payment to the provider. Local authorities should, therefore, maintain an overview of all top-up agreements.



FREQUENTLY ASKED QUESTIONS

5. DEBT RECOVERY

Q501. Can local authorities continue to collect money through a charge against the value of a person's property under section 22 or 23 of the Health and Social Services and Social Security Adjudications (HASSASSA) Act 1983 or must it make new arrangements under section 69 of the Care Act?

A501. By virtue of the Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015, local authorities cannot create any new property charge under section 22 or make any new order under section 23 of the 1983 Act from 1st April 2015. Section 69 of the Care Act 2014 must be used to recover debts.

However, any property charge under section 22 or order under section 23 which exists on 31st March 2015 will remain in force until they reach their natural conclusion (i.e. the resident dies or the parties agree to terminate the arrangement) and can be used to recover charges accruing under the old law and under the Care Act 2014.

Q502. Where a local authority incurs administrative costs as part of debt recovery, can it recover these sums from the person who owes it money?

A502. Yes. All the costs of care and support should be included in the amount that a person is charged. If there are recurring costs as a result of Court action, local authorities should ensure these are included in the claim.

A local authority can also seek to recover interest as part of the County Court process to recover debts. Currently, this can be up to 8%. This will need to be specifically applied for as part of the process and local authorities should follow the guidance on how to do this.