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**Derbyshire County Council Adult Care
Co-Funding For Non Residential Care Services**

Approval and Authorisation

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Change History

Version	Date	Name	Reason
V0.1	February 2010	Andrew Bartle	Initial draft
V1	February 2011	Andrew Bartle	First full version
V2	October 2014	Andrew Bartle	Update following changes approved by DCC cabinet
V3	March 2016	Andrew Bartle	Updated following legislative changes with the Care Act
V4	July 2016	Andrew Bartle	Update to include compensation for personal injury
V5	April 2019	Gaynor Bulheller	Review, minor updates and terminology review

This document will be reviewed on a regular basis – if you would like to make any comments, amendments, additions etc please email Phil Robson– Policies and Procedures, phil.robson@derbyshire.gov.uk

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1. Legal Framework

- 1.1 Local authorities have discretion to choose whether or not to charge under section 14 of the Care Act following a person's needs assessment.
- 1.2 Where the council decides to charge, it must follow the [Care and Support \(Charging and Assessment of Resources\) Regulations 2014](#) and have regard to the [Care and Support Statutory Guidance](#), October 2014 or as further amended.
- 1.3 The council will apply the principles set out in the [Mental Capacity Act 2005](#) concerning clients lacking capacity to manage their finances. Where a client lacks capacity to make decisions about their finances, the council will try to identify whether they have appointed an attorney under a Lasting Power of Attorney for finances or whether an order has been made by the Court of Protection appointing a deputy for their finances. The attorney or deputy is a lawfully appointed representative of the client.
- 1.4 Where the client has no lawfully appointed representative, the council will communicate with family members to obtain financial information and encourage family members where appropriate to apply to the Court of Protection to be appointed as deputy of the client's finances. Only where there are no family members or friends will the council consider applying to be appointed as the client's deputy of their finances.

2. Policy Aims and Objectives

- 1.5 The council's contributions policy has been designed to comply with the Care and Support (Charging and Assessment of Resources) Regulations 2014 and have regard to the Statutory Guidance.
- 1.6 The aim of the contributions policy is to provide a reasonable, fair and consistent contribution framework for all clients. The policy is also designed to ensure that no individual is treated less favourably on the basis of difference and this policy has been subject to an Equality Impact Assessment.
- 1.7 It is the purpose of the income generated from contributions to help maintain and develop services for vulnerable people.

3. Principles of the Policy

- 3.1 Any co-funding contributions requested will take account of the relevant legislation and guidance.
- 3.2 All requested contributions will aim to be fair and reasonable. No one will be asked to contribute more than it is reasonably practicable for them to pay in accordance with their means

- 3.3 This contributions policy aims to be transparent and easy to understand.
- 3.4 As an integral part of the financial contributions process, all clients or their representative will be offered appropriate benefits advice and assistance. This will ensure that client's incomes are maximised.
- 3.5 Any contribution requested will be compatible with the current Care and Support (Charging and Assessment of Resources) Regulations, including:
- ensuring client's net income is not taken below the basic level of income support/employment support allowance/guarantee element of pension credit plus a 'buffer' of 25% (Minimum Income Guarantee)
 - where the client has a dependent child (**as defined in 12.1**) the appropriate additional allowance will be given in the calculation of the client's Minimum Income Guarantee
 - The value of the main residence of the client will be disregarded
 - capital assets and savings will be assessed at a minimum level in line with the Charging Regulations and the Statutory Guidance
 - clients who work will not have their earnings included in the calculation of household income
 - partners' income and savings will be disregarded (unless received as part of a joint entitlement)
 - the additional cost of disability will be recognised and appropriate allowances made
 - clients with Creutzfeldt Jakob Disease (CJD) will not be asked to contribute
 - the total of any contributions made within the financial year will not exceed the total cost of services provided in that period
 - relevant allowances will be made in relation to unmet Housing Costs (**see 5.8**)
- 3.6 Clients or their representative will have recourse through the [Disputed Financial Assessment Procedure](#) to ask for a review of their contribution if they feel:
- there has been an error made in the collection of the information for the formal financial assessment
 - they believe that the co-funding contributions policy has not been applied correctly to their particular financial circumstances
- Or the [Financial Contribution Review Procedure](#), if they believe:
- payment of the contribution would be more than is reasonably practicable for them to pay based on proof of their means
- 3.7 Where a personal care budget is made available or services are provided for carers support following a "Carers Assessment," the council will use its discretion and will not request a financial contribution from the carer.
- 3.8 The council will also use its discretion to not request a financial contribution from those clients who are terminally ill. Terminal illness for these purposes is defined as where a person has received a prognosis of less than six months life expectancy. Confirmation of this is required from a relevant health professional or by the completion of a DS1500 form designed for the purposes of claiming Attendance Allowance/Disability Living Allowance (Care)/Personal Independence Payment under the special rules provisions.

- 3.9 Where a client has not been required to make a co-funding contribution due to meeting the terminal illness criteria, this will need to be reviewed after 12 months of the original decision where the client is still in receipt of non-residential services.
- 3.10 The fieldworker will make a formal approach to involved health care professionals to seek their current opinion of the client's condition. At this 12 month review a health professional, in order for the "Terminal Illness Nil Contribution" to continue, will need to formally confirm that the client, in their professional opinion, has a terminal illness with a prognosis of less than six months life expectancy. This includes those clients who were awarded Attendance Allowance/Disability Living Allowance (Care)/Personal Independence Payment under the Special Rules provisions.
- 3.11 Where this prognosis has changed from the previous decision, the client will be required to be financially assessed in accordance with this policy. Any determined contribution will be due from the date the decision the terminal diagnosis no longer applies.
- 3.12 Decisions regarding the provision of non-residential services will be taken independently of client's financial circumstances.
- 3.13 Co-funding contributions will be determined against the client's confirmed Personal Budget, with adjustments made where the contribution charged exceeds the cost of care commissioned or Personal Budget received.
- 3.14 Where possible the council will undertake a light touch financial assessment. This will involve confirming with the Department for Work and Pensions (DWP) and other agencies details of state benefits and allowances paid, and income details submitted to make such claims. The council is entitled to undertake these checks in line with the data sharing agreements between the DWP, local authorities and county councils, following the introduction of the Welfare Reform Act 2012.
- 3.15 Where it is not possible to confirm a co-funding contribution via a light touch assessment, clients or their representative, will be required to give a formal and accurate full declaration of their financial circumstances to allow the determination of the correct contribution level. If the client lacks capacity to deal with their financial affairs, the council will need to be informed of the name and contact details of the person or professional who is their appointee or lawfully appointed representative, such as an attorney under a Lasting Power of Attorney for finances or a financial deputy.
- 3.16 Alternatively, if they do not have a lawfully appointed representative they will be asked to indicate which relative or friend is assisting them with their finances and to agree to allow the relevant fieldworker to liaise with that relative or friend so that disclosure of financial information can be made promptly. The client's lawfully appointed representative or if none, their informal representative, will be expected to furnish full and accurate financial information and to be willing to sign a financial declaration to that effect.
- 3.17 Financial declarations will only be accepted by completion of the formal declaration documentation, usually at a meeting between a financial assessments and benefits officer (FABO) and the client or their financial representative. Under certain circumstances, a telephone declaration may also be given directly to the Financial Assessments and Charging Team (FACT) or the Welfare Rights Service (WRS).

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- 3.18 Clients, (or, if they lack capacity for their finances, their representative) who refuse to give sufficient information and appropriate evidence to enable a full financial declaration to be completed, will be assumed to be able to meet the full cost of their care and support and will be asked to contribute accordingly. **See Section 16 for further information.** Details of current contribution levels and capital bandings are at **Appendix 1.**
- 3.19 Co-funding contributions, for those clients who receive services commissioned on their behalf, will be collected on a regular and timely basis, usually by direct debit to the council.
- 3.20 Clients in receipt of a direct payment will usually have their payment made gross to themselves or their nominated/authorised person. Only in exceptional circumstances will co-funding contributions be netted off the direct payment.
- 3.21 The non-payment of contributions will lead to the instigation of the [debt recovery procedures](#).
- 3.22 Generating income from contributions is essential to maintain and modernise our services to vulnerable people.

4. Reviews of the Policy

- 4.1 Guidance recommends that Adult Care should review their co-funding contribution policy annually, in consultation with stakeholders.
- 4.2 As co-funding contributions are based on those allowances that are usually uplifted in April each year, contributions will also be re-assessed at least annually, following the April uplift.
- 4.3 The pension age set by the government is currently increasing to bring the pension age for women to the same as that for men. This is creating some pension ages that have to be expressed in terms of years and months. The council have decided to adopt a straightforward approach for aspects of this policy where reference needs to be made to pension age (in particular Minimum Income Level) by defining pension age for all clients with reference to the increasing pension age for women; and by reviewing this pension age annually, in increments of a full year, and in arrears of the government set age increasing. For ease of completion, the declaration clients, or their representative, will be asked to give will refer to “born before” and “born after” dates.
- 4.4** All co-finding contributions and this policy will, in accordance with guidance, be reviewed annually. The current contributions are detailed in **appendix 1**

5. Financial Contribution Procedures

- 5.1 Risk assessments for people refusing to make payment of co-funding contributions involve the following:
- group managers will decide all cases where consideration should be given to providing services even when co-funding requirements are removed, i.e. services will be provided free of charge.
 - in addition to policy exceptions described above, the group manager may also agree to free services if there are clear safeguarding concerns should the person have services withdrawn or denied
 - they will also take into account whether the client has capacity to refuse services or to refuse to pay their co-funding contribution or lacks capacity to deal with their finances
 - they may additionally provide free services for a short period to facilitate a further assessment of risks
- These decisions should be reviewed regularly.
- 5.2 Clients who receive the following services will not be required to make a contribution whilst they are in receipt of those services:
- short term services/interim services (usually for a maximum of 6 weeks)
 - services fully funded by the NHS under the Continuing Health Care (CHC) provisions
 - after care services provided under Section 117 of the Mental Health Act
 - services or a direct payment received following a Carers Assessment (**see 3.7 for more details**)
 - services received for clients who are terminally ill (**see 3.8 for more details**)
 - community equipment (aids and minor adaptations costing £1,000 or less)
 - advice or assessment services
- 5.3 Clients, will only be required to make a co-funding contribution from those non means tested benefits paid for their care and/or support needs, i.e. Attendance Allowance, Disability Living Allowance (Care) and Personal Independence Payments. Only under exceptional circumstances will clients be required to contribute from their capital. These circumstances may include those clients with above the capital eligibility threshold but who do not have the capacity or support network to manage the commissioning and/or on-going payment arrangements.
- 5.4 Separate contribution arrangements will continue to apply in relation to:
- accommodation and support programme
 - long term care in a registered care home setting
 - respite care in a registered care home setting
 - equipment maintenance
 - transport
 - wellbeing and support services
- 5.5 Clients who receive one or more of the services listed in **5.4** will still be eligible to receive income and benefit maximisation advice as part of the Universal Offer.

- 5.6 Clients receiving the following services will be required to make a financial declaration in order to determine the level of their contribution:
- direct payments
 - home care
 - day care
 - supported living
 - other community based care packages
 - telecare

In cases where the client has a representative, they will be required to make the declaration.

- 5.7 The council, in line with Treatment of Income of the [Care and Support Statutory Guidance issued under the Care Act 2014](#), will have regard to unmet housing costs in the determination of contributions.
- 5.8 For the purposes of this policy “unmet housing costs” are defined as:
- mortgage payments net of any benefits provided to support these costs
 - rent net of any benefits provided to support these costs
 - Council Tax net of any benefits provided to support these costs
- 5.9 In order for an allowance of unmet housing costs to be made, the client must provide evidence of their formal occupancy status along with details of the formal rent agreement with their social landlord or housing association or the liability for mortgage payments.
- 5.10 Unmet housing costs do not include non-commercial “sublet” tenancies or non-commercial “board and lodging” payments made to the tenant/owner of the property in which the client may reside.
- 5.11 For board and lodging payments or subletting rental payments to be classed as a housing cost, it must be paid on a commercial basis and **must not** be provided by a close relative or family member (as defined in the guidance) of the client. Relevant evidence of the commercial arrangement will need to be supplied for consideration if the appropriate allowance to be made.
- 5.12 Clients will have the right to have an allowance given for unmet housing costs when calculating their eligible income for co-funding purposes.
- 5.13 In order for any allowance for unmet housing costs to be given, evidence of both the cost and the shortfall will need to be provided. Where no evidence is provided, then no allowance(s) will be given.
- 5.14 Where an income maximisation check identifies benefits that are due in relation to housing costs it is expected that the client will, with or without support, make appropriate application(s) for those benefits.
- 5.15 Where a client declines to make an application for housing costs, the county council will calculate their co-funding contribution as if those benefits and allowances are in payment.
- 5.16 In line with **19.11 and 19.12**, where there is a change in the client’s financial circumstances which affects the level of unmet housing costs then the council should be notified and where requested, relevant evidence provided. **Section 16** details how

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the council will deal with the consequences for non-disclosure of financial information.

- 5.17 The client, or their representative, must notify of any changes in unmet housing costs, either increases or decreases, in order that the relevant reassessment of co-funding contributions can be undertaken.
- 5.18 Failure to notify the council of any changes in unmet housing costs will result in requests for an increase in the allowance being given, from the date of the request and revised evidence is provided to the council.
- 5.19 Failure to notify the council of any reduction in the amount of unmet housing costs will result in a reassessment of the co-funding contribution from the day the reduction in unmet housing allowance should have been applied. In the event that this reassessment results in arrears of co-funding contributions being due then these must be paid in full.

6. Income Maximisation

- 6.1 For clients approaching the council for a care needs assessment, a referral will be made requesting an income maximisation check.
- 6.2 In order for the income maximisation check to be undertaken, a member of the Welfare Rights Service (WRS) will initially make contact with the client, or their representative, by telephone to establish if it is possible and reasonable to undertake the income maximisation and contribution determination without the need for a personal visit. Where this is possible, all relevant documentation and confirmation details will be sent to the client by post. However, the WRS will bear in mind that personal help and advice will often be required to avoid confusion.
- 6.3 Where it is not possible to undertake the income maximisation and/or contribution determination over the telephone, an appointment will be made for a member of staff to visit the client and/or their representative. Where practicable, written confirmation of the date, time and name of the staff attending will be sent prior to the meeting.
- 6.4 Under these co-funding arrangements, there is an expectation that clients or their representatives will claim/apply for any additional income that the income maximisation exercise identifies. Where necessary, appropriate support will be identified to assist the client to do so.
- 6.5 Any refusal by the client ,or if they lack capacity to deal with their finances their representative, to make application for any benefits or allowances that the income maximisation identifies as likely to be due, will result in any contribution being determined as though the appropriate benefits and allowances are in payment.
- 6.6 Co-funding contributions will reflect the identified increased income during the period the claim is being made. However, any additional amount may be accrued until such time as the additional income the client has is in payment, at which point any arrears of contribution accrued will be required to be paid.

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- 6.7 Where it is unclear what actual resources the client has, the council will contact the DWP, including Job Centre Plus, disability benefits centres and pension services and any other organisations for confirmation. This will be undertaken in line with the data sharing agreements between the DWP, local authorities and county councils, following the introduction of the [Welfare Reform Act 2012](#).
- 6.8 The client may be requested, and supported, to supply relevant documentary evidence to ensure that correct applications can be made for relevant benefits and allowances not currently in payment.
- 6.9 As co-funding is a partnership arrangement between the client and the council, failure to provide all requested documentation may result in the contributions being levied as though the benefit/allowance are in payment.
- 6.10 Where it would appear that the outcome of this income maximisation exercise may change any previous contribution, WRS will make the client aware of this information and that the outcome of the benefit claim will be notified to the finance team.
- 6.11 Notification of the result of the income maximisation will be passed to the finance team who will verify the contribution; formally notify the client of the weekly co-funding contribution due, how this has been calculated and the arrangements for payment. This information will be provided as promptly as possible, once a person's needs have been assessed and a decision has been made about the care to be provided, or after any increase co-funding in contribution.
- 6.12 As co-funding is a partnership arrangement between the client and the council, individuals not in receipt of Attendance Allowance, Disability Living Allowance (Care) or Personal Independence Payment and who decline the offer of an income maximisation check will be recommended to make their own application for Attendance Allowance or Personal Independence Payment. The client can at any time request the support of the WRS in making such a claim. Failure by the client, or if they lack capacity to deal with their finances, their representative, to make such a claim may result in the contribution being requested as though those benefits/allowances are in payment.
- 6.13 The council fully accepts the client's right to seek independent advice on benefits and income issues and that in these circumstances a client may decline an income maximisation check. However, clients or their representative would still be required to complete an income declaration (**see section 16**).

7. Treatment of Income

- 7.1 This policy will have regard to the treatment of income in line with [Treatment of Income of the Care and Support Statutory Guidance](#), issued under the Care Act 2014.
- 7.2 Clients will not be asked to make a contribution from their income with the exception of those benefits and allowances specifically made available in relation to an assessed care/support need, i.e. Attendance Allowance, Disability Living Allowance

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(Care), and Personal Independence Payment.

- 7.3** The maximum that clients will be requested to contribute from these forms of income is a percentage of either the lower rate of Attendance Allowance, middle rate Disability Living Allowance (Care), or standard rate of Personal Independence Payment, even if the higher rates are in payment . The current levels of percentage contribution can be found at **Appendix 1**

8. Treatment of Capital

- 8.1 This policy has regard for the capital levels as determined in the ‘Treatment of Capital of the Care and Support Statutory Guidance issued under the under the Care Act 2014, however the council at this time has applied its discretion to allow clients to retain a greater proportion of their capital before it is included in any contribution determination.
- 8.2 The value of a client’s property which is owned and which is their main residence is not treated as a capital asset for the purposes of this policy in line with [“Treatment of Capital of the Care and Support Statutory Guidance, issued under the Care Act 2014.”](#)
- 8.3 The value of any property owned that is not the main residence of the client will be treated as a capital asset and will be deemed to be capital for the purpose of the “Financial Declaration”. This will also apply to the value of any second and subsequent properties and land that is owned both in the United Kingdom and abroad.
- 8.4 Any capital held by the client which has been acquired through equity release will be treated as available capital for the purpose of this policy.
- 8.5 There may be instances where a client’s capital is not held as available assets (e.g. a second property). In these circumstances it is likely a contribution towards the individual’s personal care budget would be required due to the level of capital assets. Where it would not be reasonable for this element of the contribution to be made available from other existing resources, the council will consider accruing this proportion of the contribution. If it considers it necessary, the council may require the client to enter into a formal agreement to secure the debt and ensure any monies due are ultimately repaid.

9. Disability Related Expenditure (DRE)

- 9.1 The council will not require clients to pay more than the percentage of low rate Attendance Allowance, middle rate Disability Living Allowance (Care component) or standard rate Personal Independence Payment as detailed at **Appendix 1**, even if the higher rates are in payment. The balance of Attendance Allowance, Disability Living Allowance (Care) or Personal Independence Payment may therefore form part of a client’s disposable income to be used to help meet any additional costs associated with the client’s disability.

- 9.2 Where a client feels that they have additional costs related to their disability, over and above that already allowed in the contribution determination, they are entitled to an individual assessment of their disability related expenditure. Details of the Financial Contribution Review Procedure can be found in [here](#).

10. Basic Income Levels

- 10.1 In determining the basic income levels and Minimum Income Guarantee (MIG) the council will comply with the Care and Support (Charging and Assessment of Resources) Regulations and have regard to the statutory guidance.
- 10.2 The statutory guidance requires that the Council's contribution policy should ensure that the client's net income will not be reduced below the basic level of Income Support and/or Pension Credit (Guarantee Element) plus a 25% buffer.
- 10.3 The Council, in line with the Statutory Guidance, will protect a client's income and will not reduce this below the basic level of Income Support and/or Pension Credit (Guarantee Element) plus a 25% buffer through payment of the co-funding contribution.
- 10.4 For clients under pension age, (see 4.3), the council has set the minimum income level to an amount equivalent to the Support Group rate of Employment Support Allowance (ESA) plus a buffer of 25%. For simplicity, this minimum income level will be applied to all those under pension age at the rate set by government for ESA for those over the age of 25 rather than having a third rate for those under 25. Clients in the first 13 weeks of their claim for Employment and Support Allowance, and so receiving the lower 'assessment phase' rate of benefit will have this source of income ignored when considering their financial resources in relation to the minimum income level. For clarity it should be stated that ESA Support Group rate exceeds the Income Support level set out in the Statutory Guidance.
- 10.5** Where a client has an eligible "Dependent Child" in their household an allowance for each eligible child will be given when calculating the minimum income guarantee in compliance of the Care and Support (Charging and Assessment of Resources) Regulations. **(See Section 12).**
- 10.5 Tariff income from capital will be determined in accordance with the starting lower threshold used for individuals entering residential and nursing care, in line with the Statutory Guidance. However, the council has decided to use its discretion to increase the capital bands from £250 to £500.
- 10.6 Any calculated tariff income will be included in the determination of a client's eligible income for co-funding purposes.
- 10.7 The current values of the MIG along with the current capital threshold amounts for both contribution and income calculation purposes can be found in appendix 1.

11. Treatment of Couples (Including Civil Partners)

- 11.1 When completing a financial declaration for one of a couple, the council will have regard for the treatment of income and assets in line with Treatment of Capital and Treatment of Income of the Care and Support Statutory Guidance, issued under the Care Act 2014.
- 11.2 The guidance states: the council “has no power to assess couples or civil partners according to their joint resources. Each person must therefore be treated individually.”
- 11.3 The council will only have regard to an individual client’s means and not their partner’s means when assessing their ability to make a co-funding contribution.
- 11.4 Each individual of a couple will be deemed to hold equal shares of capital held together unless evidence can be provided to the contrary.
- 11.5 Where means tested benefits are assessed/received jointly, e.g. Employment Support Allowance, Pension Credit, Universal Credit or Income Support, each client will be deemed to have a right to 50% of that income for the purposes of determining the client’s minimum income level.

12. Dependent Children

- 12.1 For the purpose of this policy the definition of a dependent child is as follows:
1. The child can be up to 18 years* of age **but also must:**
 2. be either;
 - of pre-school age, or
 - in full time non advanced education(1) or
 - approved unwaged training(2).
 3. The child lives in the same household as the client.
 4. The client receives Child Benefit and/or Child Tax Credits or Universal Credit for the child, or they are not in receipt of Child Benefit and/or Child Tax Credits as they have income above the upper earnings threshold but would be entitled to those benefits were their income to be reduce.
 5. Where the client requesting a “*Dependent Child Allowance*” satisfies points 1-4, but is not the recipient of the relevant qualifying benefits (point 4) but is the spouse, civil partner or unmarried partner (as defined for state benefit purposes) of the qualifying benefit recipient, the allowance will be given.
- 12.2 The council will consider on an individual basis the continuation of a dependent child allowance when the child is over the age of 18 years where points 2–4 still all apply.

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- 12.3** In order for the appropriate allowance(s) for each dependent child, all of the above criteria must be met for each child that an allowance is requested for. **(See Appendix 1).**
- 12.4 Where all the above criteria are not met, or the required evidence to confirm eligibility to the dependent child allowance is not provided, then no allowance for that child will be made when determining the co-funding contribution.
- 12.5 The council reserves the right to only include any dependent child allowance in the calculation of the co-funding contribution from the date that all relevant information and evidence is provided to the council.
- 12.6 The client must notify the council if they believe that their entitlement to a dependent child allowance changes. Reasons to notify may include, but are not limited to the child attaining 16 years of age but is:
- not in full time non advanced education(1) or
 - approved unwaged training(2)
 - the child no longer living in the client's household
 - the ceasing of Child Benefit/Child Tax Credit/Universal Credit payments in respect of the child
- 12.7 Failure to notify the council of any increase in the number of dependent children in the client's household will result in any requests for additional allowances only being given from the date the request and revised evidence is provided to the council.
- 12.8 Failure to notify the council of any reduction in the number of dependent children in the client's household will result in a reassessment of the co-funding contribution from the day the reduction should have been applied. In the event that this reassessment results in arrears of co-funding contributions being due then these must be paid in full.

(1) Non advanced education i.e. more than 12 hours per week at school or college. (university education is not included in this description as it is deemed to be advanced education).

(2) The training must not be provided under a contract of employment. Nineteen year olds can only be included if they started such education or approved training before their nineteenth birthday.

You cannot count homework, private study, unsupervised study or meal breaks towards the 12 hours and the education can only be up to and including A-level, Scottish Highers, NVQ Level 3 or equivalent. Traineeships as part of the 16 – 19 study programmes are deemed to be full-time non-advanced education.

13. Direct Payments/Personal Budgets

- 13.1 When determining any co-funding contribution this will take account of the client's confirmed personal care budget.
- 13.1 Where a client takes their personal budget as a direct payment, only in exceptional circumstances will this be made available net of the co-funding contribution.

14. Maximum and Minimum Contributions

- 14.1 The current maximum contributions can be found in Appendix 1
- 14.2 Where a client's co-funding contribution is determined at less than £2.00 per week this will not be deemed financially viable to collect.

15. Voluntary Contributions

- 15.1 In occurrences where the client's financial declaration would result in them not being required to make a contribution, despite Attendance Allowance, Disability Living Allowance (Care) or Personal Independence Payment being in payment, the client may wish to make a voluntary contribution. An example of this may be where a client has significant disregarded income.
- 15.2 Any voluntary co-funding contribution will not be expected to exceed the percentage Attendance Allowance low rate, Disability Living Allowance (Care) middle rate or standard rate Personal Independence Payment as detailed in **Appendix 1**
- 15.3 The council will accept a voluntary co-funding contribution for as long as the client wishes to make this contribution.

16. Non-Disclosure of Financial Information and False Co-funding Financial Declarations

- 16.1 All clients or their representatives will only be asked to disclose information that will enable an accurate income maximisation check to be undertaken and appropriate information of their capital so that the council can accurately determine the level of contribution to be levied.
- 16.2 Clients have the right to decline to give this detailed information; however, in doing so, they will become liable for 100% of their care costs. Clients declining to make a full co-funding declaration will be signposted to the brokerage service to identify appropriate care and support providers to allow them to commission services directly and to arrange to pay in full for their care costs. This also applies when representatives of those clients who lack capacity decline to make a full co-funding financial declaration.
- 16.3 Where a client declines to give a co-funding financial declaration, but wishes to receive services from the council, they will be charged in accordance with the [Direct Care Trading Policy](#) and not the co-funding policy.

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- 16.4 Clients or their representative who refuse to give a co-funding financial declaration, and as such are liable for the maximum contribution, have the right to contact FACT at any time to request the opportunity to make a full financial declaration and to sign a financial declaration agreement. Any subsequent reduction in co-funding contributions will only be applied from the date the client returns the signed financial declaration to FACT, and will not normally be backdated.
- 16.5 Any client found to have given an inaccurate declaration of their financial circumstances, either knowingly or unwittingly, will be subject to a revised co-funding contribution determination. This determination will be undertaken irrespective as to whether the client is still receiving any non-residential services.
- 16.6 Any revised co-funding contribution, either by formal financial determination or default maximum cost, will be applied from the appropriate date the contribution should have applied. If the backdating of this contribution results in arrears of client contributions being due, then these will be required to be promptly paid in full. Failure to make payment of any arrears of contribution will result in the instigation of the [Debt Recovery Procedures](#).

17. Deprivation of Assets

- 17.1 When consideration is given as to whether a deprivation of assets has occurred, the council will have regard to [Deprivation of assets](#) of the Care and Support Statutory Guidance, issued under the Care Act 2014.
- 17.2 In deciding whether a client has deprived themselves of income and/or capital for the purposes of reducing any contribution liability, the council will have due regard to the timing and reason of the disposal.
- 17.3 Where the council considers that deprivation of assets has occurred, any contribution deemed to be due will be determined as though the client continues to receive or hold those assets.
- 17.4 Where the client has transferred an asset to a third party in an attempt to reduce their liability to contributions, the third party will be liable to pay the council the difference between what would have been charged and the co-funding contribution being made by the client.
- 17.5 Where the client has transferred assets to more than one third party, each of the individuals will be liable to pay the council the difference between what would have been charged and the contribution being made by the client in proportion to the amount they received.
- 17.6 The maximum liability of a third party will be limited to the benefit they received from the transfer.
- 17.7 Clients or their representative have recourse through the [Disputed Financial Assessment Procedure](#) should they disagree with the council's deprivation of assets decision.

- 17.8 Failure by the client or the third-party who has received the asset to make payment of the contributions will result in the instigation of the [Debt Recovery Procedures](#).

18. Notification of Contributions

- 18.1 All clients or their representatives will be provided with a breakdown of how their co-funding contribution has been determined.
- 18.2 Any co-funding contribution determined will be payable from the date the commissioned service(s) are received by the client or the commencement date that a personal care budget is made available as a direct payment. Notification of the contribution will be provided as promptly as possible after a client's needs have been assessed and a decision has been made about the care to be provided. This will also apply where there is an increase or decrease in client contribution due to a change in an individual's Personal Budget.
- 18.3 This notification will also provide details of the initial processes to follow should the client feel that a mistake has been made in the calculation of their contribution, or that they are unable to make payment of their contributions such that it is not reasonably practicable for them to pay the contribution based on their means.

19 Changes in Clients' Circumstances

- 19.1 Clients will be required to make their determined weekly co-funding contribution whilst they receive either commissioned services or a direct payment, irrespective of the frequency and duration of the service. This will include the weeks that the client does not actually receive or commission services with the exception detailed at **19.4**, **19.7** and **19.9**. Only where the total of the contributions during a financial year, i.e. April to March, would result in the total co-funding contributions collected exceeding the annual Personal Budget will the client not be required to make the contribution.
- 19.2 Clients will continue to make payment of their co-funding contribution during the first four weeks of any hospital admission whilst Attendance Allowance, Disability Living Allowance (Care) or Personal Independence Payment remains in payment.
- 19.3 If, whilst an in-patient, it is confirmed that the client will no-longer require non-residential services, any co-funding contribution will cease from the date of this decision. However, any outstanding contributions due prior to this decision will still be required to be paid.
- 19.4 Where a client is still eligible for a Personal Budget, only if their Attendance Allowance, Disability Living Allowance (Care) or Personal Independence Payment is suspended, for example during an extended hospital admission, will they not be required to make their contribution. Once Attendance Allowance, Disability Living Allowance (Care) or Personal Independence Payment is reinstated, the contribution will then, again, become payable.

- 19.5 Those clients making a co-funding contribution from capital assets, (e.g. those clients with above the capital threshold but the council has agreed to continue to commission the services on their behalf), will also be required to make their contribution for the first 4 weeks of any hospital admission after which time the contribution will suspend in line with **19.2**.
- 19.6 If following a reassessment a client's Personal Budget is increased or reduced, any necessary adjustments will be made to the co-funding contribution.
- 19.7 Clients who are discharged from hospital and receive short term services provided by Direct Care will not be required to make any co-funding contribution during the reablement period. However, any outstanding contributions due prior to the period of short term services will still be due to be paid.
- 19.8 Following a period of short term services, unless the client's financial circumstances have changed, any previously assessed co-funding contribution will be re-instated. This will be from the date the non-residential services recommence.
- 19.9 Clients will be required to make payment of the determined weekly contribution including weeks that they do not receive services with the exception of respite care in a registered care home setting. As clients are required to make a contribution towards respite care in a registered care home setting, under the Care and Support Statutory Guidance, October 2014 or as further amended, they will not be required to make co-funding contributions for any nights that the client spends in respite care. However, clients will still be liable to make payment of the proportion of their co-funding contribution for the number of days they are at home in any week.
- 19.10 Where there is a change in a clients financial circumstances, either up or down, the client or their representative *must* notify the council, and this may result in a review of their contribution. **Section 16** sets out the procedure regarding the consequences of non-disclosure of financial information. If the client lacks capacity to deal with their finances, then their representative must notify the council if there is a change in the client's financial circumstances.
- 19.11 Where a client notifies the council of a reduction in income or capital, any subsequent reduction in contribution will only apply from the date a new formal financial declaration, with appropriate evidence, is given.
- 19.12 Increases in income and/or capital may result in an increase in contribution, e.g. a successful claim/backdating for Attendance Allowances/Disability Living Allowance (Care)/Personal Independence Payment or where additional benefits/allowances become available to the client. The non-notification by a client of a change in their financial circumstances will result in the backdating of the increased contribution and arrears being due.
- 19.13 Where a client becomes aware that they are the beneficiary under the terms of a Last Will and Testament it is required that the client takes all reasonable steps to acquire the legacy available to them in a timely manner.
- 19.14** The council will deem the reassigning or refusal to accept a legacy as deprivation of assets, and reserves the right to financially assess the client as though they were in possession of those assets when determining any co-funding contribution. (**See Section 17**)

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- 19.15 In the event that a client does reassign or give away a legacy, but does not pay the increased co-funding contribution, the council will consider transferring liability for any additional co-funding contribution to the individual(s) receiving the client's share of the legacy assets. This liability will be limited to the value of the legacy asset received by the individual(s).
- 19.16 It is expected that clients or their representatives will take proactive steps to receive any legacy by doing one or more of the following:
- if the client is the executor of the estate that they take steps to administer estate personally, including making application for probate if necessary, or appoint an appropriate person, e.g. solicitor
 - if the deceased has made a will but the client is not the executor of the estate, the client should make representation to the executors to ensure that the legacies are made in an appropriate timeframe
 - if there is no will, but the client is an entitled relative, that they make application for Letters of Administration or appoint someone to do it upon their behalf
- 19.17 If the relevant application/representations are not made within 6 weeks of the deceased demise, without good reason, the council reserves the right to deem the client to be in possession of the legacy and look to recalculate the co-funding contribution on the client's assumed revised assets.
- 19.18 Capital limits will be reviewed at least annually to ensure that they are at least in line with Treatment of Capital of the Care and Support Statutory Guidance, issued under the Care Act 2014.
- 19.19 Where a client feels that a mistake has been made in the calculation of the contribution, they will have a right to a review under the [Disputed Financial Assessment Procedure](#).
- 19.20 Where services end, the co-funding contribution will be collected up to the day the services ended or the client passed away.

20. Compensation for Personal Injury

- 20.1 Capital awarded by a court, or as part of a settlement outside court as a result of compensation for personal injury is dealt with in different ways. This will depend on whether the capital awarded is held in trust or administered by the court or a deputy, or whether it is paid direct to the individual. The client will be required to provide the council with copies of trust documents and court orders in relation to the compensation award and any court order appointing a deputy in the financial assessment process.
- 20.2 Where the capital awarded by the court is held in trust or administered by a court or a deputy, or it can only be disposed of by a court order, then the capital must be disregarded in full.
- 20.3 When compensation for personal injury is not held in trust and not administered by a court or under a deputyship order, personal injury payments (which may, for example, include an interim payment) will be disregarded only for 52 weeks from the date that they are received under an award (Annex B, paragraph 48 (c) of the Care and Support Statutory Guidance, October 2014 or as further amended).

20.4 *Personal Injury Compensation* provides full information relating to the treatment of compensation for personal injury. This is Appendix 2.

21. Performance Standards

- 21.1 All people who come into contact with the welfare benefits, financial assessments and benefits officers and financial assessments and charging teams, expect:
- to be treated with dignity and respect and in a courteous manner
 - that all staff will be trained and be competent in their particular role
 - staff will only ask for information that is needed for the Care and Support (Charging and Assessment of Resources) Regulations 2014 and the Care and Support Statutory Guidance, October 2014 or as further amended
 - all information, both personal and financial, will be treated in the strictest of confidence and not divulged without that individual's consent (or where they lack capacity to consent, their representative's consent) **except** in cases where information is required to be shared to prevent crime and disorder, and/or to prevent significant harm to adults or children as required by [Safeguarding Children](#) and [Vulnerable Adult](#) policy and procedures
 - if it is necessary to meet the client, or their representative, in their own home, the visiting officer will be punctual, or make contact to explain their delay and give the client/representative the opportunity to re-arrange the meeting
 - all visiting officers will carry photo identity badge along with details of how their identity can be verified - clients or their representative should not allow access to their property by anyone who does not have a Derbyshire County Council photo identification badge
 - clients or their representatives will be given details of who they can contact for advice, support and progress during and after the Care and Support (Charging and Assessment of Resources) process
 - copies of all forms completed during the Care and Support (Charging and Assessment of Resources) process will be made available, upon request, to the client
 - clients or their representative will be made aware their rights including "Complaints, Comments and Suggestions" and [Financial Contribution Review Procedure](#)
- 21.2 What we expect from clients and/or their representatives:
- clients and their representatives will treat the council's staff with the same dignity and respect that they would expect to receive
 - representatives will show proof that they have been lawfully appointed as representatives, such as giving a copy of the Court of Protection Order or the Lasting Power of Attorney for Finances document to the council staff
 - all questions will be fully and accurately answered
 - the weekly contribution levied will be paid promptly by the agreed method
 - clients or their representative will raise any concerns or issues with us in a timely manner - thereby allowing the council the opportunity to resolve these as soon as possible
 - all additional information and documents requested will be supplied in a timely manner

22. Quality Monitoring and Evaluation

- 22.1 All welfare rights finance staff will be subject to regular reviews to ensure compliance, accuracy and consistency.
- 22.2 All clients, or their representatives, will be offered the opportunity to be selected to take part in client surveys and reviews to monitor the Care and Support (Charging and Assessment of Resources) client journey.
- 22.3 The client experience of the Care and Support (Charging and Assessment of Resources) process will include:
- interaction with staff of the department
 - accuracy of the information requested and gathered
 - accuracy of the contributions calculated
 - the standard of correspondence and information provided

Appendix 1: Current Contribution Levels and Capital Banding

Current Weekly Maximum Contribution Amounts from Attendance Allowance or Disability Living Allowance (Care) or Personal Independence Payment (PIP)

75% Attendance Allowance (Low Rate)	£44.02
75% Disability Living Allowance Care (Middle rate)	£44.02
75% Personal Independence Payment (Std rate)	£44.02

Capital Thresholds

For inclusion in determination of Co-funding contributions:

Below £50,000	NIL
Capital above £50,000	Full cost

Minimum Income Guarantee Levels

Customers **over** Pension Age:

Single person	£209.07
With Carer's premium	£255.13

Customer **under** Pension Age:

Single person	£160.57
With Carer's premium	£206.63

For each dependent child the adult is responsible for that is a member of the same household an additional allowance of £83.65

Capital Bandings (For establishing minimum income levels only)

Lower threshold	£14,250.00
Capital bands	£500.00

Maximum Weekly Contributions

1st April 2019 100% of Care Costs

No customer will be asked to contribute more than the annual value of their personal care budget or the actual costs of services received during the year.

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Appendix 2. Compensation for Personal Injury

Derbyshire County Council's policy is that, where possible, clients or their representative with claims for damages for personal injury or disease should recover the cost of the domiciliary care services paid for by the council from the party with the liability to pay compensation. The council regards it as fair and just that, in principle, a defendant who has caused a client to suffer from personal injury or disease should meet the cost of the client's care and that the money spent by the council on that care should be available to meet the needs of other clients who need care.

However, it is recognised that circumstances can vary and that each client's case will therefore fall to be considered on their own merits, in consultation with that client. The policy below applies to contributions made by a client towards their non-residential social care support (including direct payments).

Charges for Care Provided Prior to the Receipt of an Award of Damages

The Court of Appeal in *Avon County Council v Hooper* 1997 decided that it is permissible for local authorities to charge for care which had already been provided to a claimant before the award of damages is received. The claimant had a right to be indemnified by the organisation that caused the injury against liability for the cost of services provided by the council. This right constituted "means" which may legitimately be taken into account by a council in assessing charges.

The procedure which the council will ordinarily follow for **pre award cases** is as follows:

- at the time it is made aware that a client who is in receipt of domiciliary care services is bringing a claim for compensation for injury, the council will provide calculations of the charges for the services delivered since the injury was incurred to the client so that they can seek to claim back those charges from the person or organisation that they have sued for the personal injury ("the respondent")
- the client will also inform the council whether they are seeking to obtain full funding for all of his or her care from the respondent so that in the future the client will not seek domiciliary care services from the council or whether the client is asking the council to continue to provide such services, and therefore the client will receive a reduced compensation award - this is in keeping with the principle of double recovery that the client should not obtain 100% compensation for future care to be delivered privately and at the same time ask the council to provide such services
- The client will inform the council if he or she is claiming a reduced award based on contributory negligence and what that percentage is and whether the client will then continue to seek services from the council

Charges for Care Following Receipt of an Award of Damages

It was decided in *Crofton v National Health Support Litigation Authority* 2007 that the Department of Health *Fairer Charging Guidance* 2003, on charging for domiciliary care services should be regarded as incorporating the treatment of awards of compensation for personal injury as capital under the *Charging for Residential Accommodation Guide (CRAG)*. Those rules disregarded "the value of funds held in trust or administered by a court which derive from a payment for personal injury to the resident" as capital. However, the Crofton judgment acknowledged that the Fairer Charging Guidance was less clear as to the treatment of income derived from a personal injury award and whether a local authority could take such income into account for charging purposes.

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Since the Care Act came into force on 1st April 2015, any capital or income from personal injury compensation which is held in a trust or administered by a Court or under a deputyship order cannot be taken into account for charging purposes.

When compensation for personal injury is not held in trust and not administered by a court or under a deputyship order, personal injury payments (which may, for example, include an interim payment) will be disregarded only for 52 weeks from the date that they are received under an award (Annex B, paragraph 48 (c) of the Statutory Guidance).