

## FINANCIAL ASSESSMENT BRIEFING FOR ELECTED MEMBERS AND COMMUNITY AND VOLUNTARY SECTOR

August 2021

### Introduction

Under the Care Act 2014, anyone can request a care needs assessment if they have physical or mental impairments. This is carried out by Social services, (for people who have a disability from birth/childhood they will be supported by the Lifelong Services team), in West Sussex. The assessment will result in a care and support plan, which details how the care needs will be met.

For most children and adults this is delivered by domiciliary care or a personal assistant (PA) to provide a number of care hours per week and sometimes days at a day care centre. In more demanding cases this might require a care home or supported living accommodation. The cost is calculated along with the income (such as benefits) of the person receiving care. West Sussex County Council (WSCC) will decide how much the person concerned will pay towards their care in a financial assessment, unless the person has over £23,250 in savings, as this would mean they pay for their care support themselves. People who have been assessed to pay towards their care will then receive a charging order and be invoiced monthly.

In 2019, the cabinet members took the decision to reduce the amount the WSCC pay towards this care, but this was not implemented until January 2021. This has now resulted in more of the person's ESA and PIP or other income being paid to WSCC. Many are now struggling financially with some going into debt to maintain the care they need or going without some of the care. Healthwatch West Sussex is collecting data and case studies to present to WSCC to inform them of the hardships now being encountered. Healthwatch has asked the Health and Social Care Scrutiny Committee to scrutinise the decision and operation of the financial assessment service and the impact the decision has had on people. The committee have power to make strong recommendations and to hold services to account.

Click [here](#) to see West Sussex County Council's current charging policy (Sep 20 - Sep 21).

Financial assessment is a complex area. In this briefing we have endeavoured to provide the information needed to understand the current situation and to support and help residents who may have concerns over this process.

Thank you to residents and community partners who have shared experiences of the financial assessment process undertaken by Adult Social Care since January this year.

As well as formally escalating our concerns directly to the Council, we have been able to amplify the impact these changes have had for people. Added to the impact is the distress some people have experienced over not being listened to and their questions not being answered or followed-up in a timely way.

## For your urgent attention

We are concerned for residents and their families who are struggling to afford to pay for the care they have been assessed as needing. This has been incredibly distressing for people.

We are asking our community partners to reach out to any adult they support, to help them to feedback to the Council their experience of financial hardship or issues relating to the reassessment process. To support you to do this, we have provided a template letter that can be personalised.

You can also contact our helpdesk team for further information and advice on 0300 012 0122 or [helpdesk@healthwatchwestsussex.co.uk](mailto:helpdesk@healthwatchwestsussex.co.uk)

Some people may prefer to go directly to the Council's Welfare Benefits *Duty Team* for support - Email: [wba.dutyworker@westsussex.gov.uk](mailto:wba.dutyworker@westsussex.gov.uk) or 0330 222 5220.

Please also encourage people to be part of a national inquiry into challenging decisions about adult social care. The commission has launched its inquiry into how older and disabled adults and unpaid carers can challenge the local council decisions about social care and support. [Complete their survey](#) to help with this inquiry. Closing date: 15 September 2021.



## Context

The [Care Act Guidance](#) says of Adult Social Care charging:

The overarching principle is that people should only be required to pay what they can afford. People will be entitled to financial support based on a means-test and some will be entitled to free care. The framework is therefore based on the following principles that local authorities should take into account when making decisions on charging. The principles are that the approach to charging for care and support needs should:

- Ensure people are not charged more than it is reasonably practicable for them to pay
- Be comprehensive, to reduce variation in the way people are assessed and charged
- Be clear and transparent, so people know what they will be charged
- Promote wellbeing, social inclusion, and support the vision of personalisation, independent, choice and control
- Support carers to look after their own health and wellbeing and to care effectively and safely
- Be person-focused, reflecting the variety of care and caring journeys and the variety of options available to meet their needs
- Apply the charging rules equally so those with similar needs or services are treated the same and minimise anomalies between different care settings
- Encourage and enable those who wish to stay in or take up employment, education or training or plan for the future costs of meeting their needs to do so
- Be sustainable for local authorities in the long-term.

We appreciate the challenges facing the public purse. However, we are concerned, on behalf of West Sussex residents, that the improvements promised (around disability training, improved communications) made in 2018 have not yet been fully realised.

The Council has a responsibility to get the process right for those in receipt of adult social care funding, but it also has a responsibility to all residents to spend public funds effectively.

The Council recognised in 2019, following its public consultation to reduce the *minimum income guarantee*, that there were issues in the delivery of the financial assessment service. Understanding the issues and improving the effectiveness of the service became a driver for change. Since then, the service has been brought back under the Council's direct control.

Anyone likely to have an increase because of the reduction to the County Council's Minimum Income Guarantee should have received a letter from the County Council in **July 2019**. (If this is not the case, please let the council or us know so that we can ask the Council to look into this.)

For those who received this letter, they would have been asked to keep receipts for any extra costs they have. (Having a disability often means that the person has extra costs, compared to people who are not living with a disability. These are called *Disability Related Expenses*. For more information see [here](#).)

The letter also confirmed there was a delay to implementation of the reassessment. The reassessment process started in January 2021. We are told that those in receipt of adult care funding would have been sent a letter (dated 15 January 2021.) On the second page of this letter, it states:

*A member of the team will be in contact shortly to let you know when your financial reassessment will be and subsequently the amount you will have to pay towards the cost of your care. As the reassessment process for 2020/21 is much later than normal any change to the weekly charge will only be applied from January 2021. Also, any cap or limit that was previously part of any assessments will be removed from January 2021 so that the full charge will be applied.*

The reassessment process came at a time when many individuals and families were experiencing increased stress from isolating, for some a loss of purpose, additional caring responsibilities, and the potential for family financial hardship (due to extra costs, such as food delivery costs, furlough or job losses). In some cases this was then compounded by the issues/errors that have been reported to us.

In 2020, a case was brought against Norfolk County Council that appears to have similarities in practice with this County. We have raised concerns with West Sussex County Council given the legal precedence we believe was established in Norfolk.

*SH, R (On the Application Of) v Norfolk County Council & Anor* [2020] EWHC 3436 Mr Justice Griffiths noted that Norfolk had "exercised its discretion to charge SH the maximum permissible (disregarding only those elements it is required to disregard by law), and, at the same time, has lowered the overall cap on her charges by reducing the council's minimum income guarantee..... Mr Justice Griffiths set aside the council's decision(s) to charge the claimant pursuant to the Charging Policy and required the council to amend and/or withdraw the Charging Policy to remove the discriminatory impact.

<https://www.localgovernmentlawyer.co.uk/adult-social-care/391-adult-care-news/45719-local-authority-ordered-to-withdraw-charging-policy-for-council-provided-care>

# How is your voice helping to make a difference?

Using the insight we have received from West Sussex residents, we have endeavoured to work collaboratively with relevant individuals within the Council for a number of months. They have shared their confidence that reasonable progress has been made on its improvement journey for efficient and effective financial assessments. However, there is a recognition that certain areas remain of shared concern. For this reason, Keith Hinckley the Executive Director responsible for Adult Social Care has commissioned an internal audit starting in September 2021.

## Sharing insight to improve processes

After some delays, we now have in place a commitment for regular review meetings with key people within the Council to discuss your concerns and experiences. This means we can influence on your behalf the improvements needed. We want to make sure that anyone worried or struggling with the charging is supported to get help so that the service understands their personal situation and all their care and disability expenses are taken into account.

We expressed concern that this process is putting unnecessary demands on GPs by requiring people to obtain written evidence of dietary needs (despite presenting receipts). The team undertook to look into this.

## Getting information right

The process of financially assessing someone's ability to contribute towards the cost of their care is complex as every case is different.

However, it is essential that people fully understand the process and are supported to express their financial situation appropriately, particularly around the impact of disability costs, to make sure that the result of the assessment is affordable. Helping people to avoid the threat of debt recovery action should sit at the heart of our shared responsibility.

To this end, we are working with the Council on the following:

- Our #ConfusingComms Advisors will be reviewing the language and information in service communication (template letters, web-pages, leaflets.)
- Creating easy to understand visuals including an animation of the process.
- An online webinar where financial experts, community partners and local people can come together to discuss the process.

## Gathering evidence to bring peoples' experiences centre stage

Gathering data from the Council via a freedom of information request, we are aware that **2,111 people who are/were in receipt of adult social care funding (excluding those in residential/care homes) have had an increase in their financially assessed charge/contribution to the cost of their care since December 2020.**

In responding to our enquiry the Council stated, *'it is the case that social care customers are normally financially re-assessed annually, and it is the case that customers with a charge will usually have an increase in their contribution due to an increase in income and benefits rates.'*

To give context we have included the recent Disability benefit allowance increases:

## Disability Living Allowance

Disability Living Allowance care component	Rates 2020 to 2021 (£)	Rates 2021 to 2022 (£)
Highest	89.15	89.60
Middle	59.70	60.00
Lowest	23.60	23.70

The council also told us that 213 (10%) of people have raised a complaint with them in relation to their financial assessed charge/contribution.

It has not been possible to ascertain how many of the 2,111 people have received a final reminder letter, the threat of legal action or a court order for non-payment of any charge since January 2021, however, we have been contacted by what in our experience is a large number of people who are distressed by such a threat. We remain concerned there is the potential for people to be at risk of not reporting on the unaffordability of their assessed charge due to anxiety and misunderstanding of the process.

The number of people that have had an increase equates to 39.9% of the total number of people (excluding those in residential/care homes) who received adult social care funding in West Sussex. The Council state, *“This proportion is in line with previous years and is based on the 5,287 customers in this cohort.”*

We have also mapped the Council’s current policy against national standards and the insight we hold to help us to understand the origins of concern and enable us to ask the Council further questions that may help shape future processes.

We will be using anonymised personal accounts to highlight the concerns we have raised at the West Sussex scrutiny committee that looks at adult social care on **15 September**.