Sandwell
Metropolitan Borough Council

ADULT SOCIAL CARE

CONTRIBUTIONS POLICY 2023

ONE COUNCIL
ONE TEAM

ADULT SOCIAL CARE CONTRIBUTIONS POLICY 2023

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Whilst this document may be printed, the electronic version maintained on the SMBC intranet is the controlled copy. Any printed copies of this document are not controlled. It is the responsibility of every individual to ensure that they are working to the most current version of this document.

Why do we have this policy?

Much of what we as a council do is set out in national law and regulation, but in some areas of service, the law gives us power and discretion over what we will do. We must have a policy setting out how we apply our discretion in these cases.

One of these areas is financial contributions to residential and non-residential care; as Sandwell Metropolitan Borough Council (referred to below as SMBC), we have discretion whether we charge those who can afford it a contribution to the cost of their adult social care services, and like most councils, have chosen to charge. As with any council which chooses to charge contributions, we must follow current government regulations.

Where we have discretion, we are required to have a policy, and this document is our policy for Contributions. Like any policy, it only covers these areas of legal discretion, not national law and regulation. We produce separate documents which give practice guidance on all aspects of financial assessment and charging of contributions for staff, plus factsheets for users of services, carers and the public.

Anyone reading this document should understand that this policy has been created and approved by the council and can be amended or changed in accordance with the council's democratic procedures.

The law says that where we have discretion, we must consider each case separately; we cannot set rules that (for example) say that we will never fund certain costs. That would "fetter our discretion" – stop us applying our judgement in individual cases - which is not legal. Nothing in this policy is intended to "fetter the discretion" of SMBC, and any references in any of our adult social care

documents to “the policy” or “this policy” or similar should be treated as a reference to the relevant part of this document.

However, councils also have a duty to use public funds wisely and avoid funding (or making allowances for) care and support that could be considered extravagantly overgenerous or completely unreasonable by “the man in the street” - this is a recognised legal definition of “reasonableness” as defined in the “Wednesbury Principle” (a court case in 1948).

This policy aims to balance these two requirements and to be clear and transparent on how SMBC will charge people a contribution, and for which adult social care services, so that staff, users of services, carers and the public can understand the purpose of our local contribution policy and how we make decisions on the contributions we charge.

What is the law behind this policy?

This policy is based on the following statutory documents from the Department of Health and Social Care:

- The Care Act 2014 (which repealed all previous national charging policies and guidance such as Fairer Charging and Charging for Residential Accommodation)
- The “Charging Regulations”; the Care and Support (Charging and Assessment of Resources) Regulations 2014 (amended in 2021)
- The Care and Support Statutory (CASS) Guidance October 2014
- The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014
- The Mental Health Act 1983; mental health aftercare services commissioned under section 117 of this Act must be free from contribution,

but services relating to the physical needs of a person will be subject to normal contributions in accordance with this policy.

Responsibilities in this document

Planning for the future, including considering their present and future needs for care and support, can be a challenge for people. When they approach the council, we expect our staff to make it as easy as possible for them by providing them with clear information to help them understand their choices.

It is the responsibility of social care practitioners to:

- inform people that they may have to pay for their care;
- explain to them the process that will be followed;
- ensure that they have the information they need to understand how a financial assessment is carried out;
- advise people that if they are a "self-funder", they will have to meet the costs of their care in full. This is particularly important if they intend to ask us to arrange their care and support*;*
- strongly advise actual or potential self-funders to seek *independent financial advice* before making decisions on their future care and support arrangements;
- in residential care only, to advise people they may choose to pay top-ups if they chose care that is more than the sum we would normally fund*;*
- ensure a referral is made to financial assessors at the earliest appropriate time to allow a financial assessment to take place promptly.

When *reviewing a person's needs and/or care and support plan*, it is the responsibility of social care practitioners to;

- identify from financial assessors any issue that person has in paying their contributions, any debt that exists, or any suggestion that the person may cancel or reduce their care and support package because of the assessed contribution;
- provide informal or formal social care input to explore with the person the reasons for – and any resolution of – such issues and debts, or their failure to comply with financial agreements;
- as appropriate assessing their metal capacity to manage finances or raising any Safeguarding issues identified.

It is the responsibility of financial assessors to;

- apply this guidance in each case;
- ensure people understand how and why decisions were made as to their funds and the costs which were considered;
- ensuring that people understand their rights to ask for a more individual interpretation where the Council is exercising its discretion and apply that discretion in a way that is fair and equitable;
- ensure that the Council uses each decision to inform future policy and practice;
- ensure that where issues arise with a person paying their contributions, or where the person proposes cancelling their care and support services because of the contributions, the case is referred to the social care practitioner who is then responsible for investigating any care service or safeguarding issues arising.

What do we mean by residential and non-residential services?

This policy deals with contributions for residential services, which are;

- residential care homes

- nursing care homes

It also deals with non-residential services, which are those that allow people who require help to stay living in their own home in the community, such as:

- care and support services at home, such as personal care or help with the home
- Day Care and Outreach or other daytime activities we support people to do
- services purchased with Direct Payments
- Supported Living
- Supported People services
- Shared Lives services
- Extra Care services

Why we charge contributions for services

Unlike health, social care has always been a means-tested service, meaning that people are expected to contribute towards their care and support costs if they can afford to. We use a large part of the Council's budget to support vulnerable adults to stay in their own home, and have decided to charge contributions towards the cost of care because;

- income from contributions helps us deliver services to more people;
- it distributes the burden fairly between people who receive our services, based on an ability to pay.

The purpose of this policy is to ensure the amount anyone is asked to contribute will based on their personal circumstances; their costs and income and the cost of their care and support services. The policy is based on the following key principles that SMBC has adopted:

1) ensure a fair and equitable system where all contributions towards the cost of care are based on people's ability to pay;
2) ensure that contributions are based on the actual cost of the service to the Council;
3) ensure that we provide or arrange welfare benefit advice and assistance to claim any additional benefits, pensions or allowances;
4) ensure that we assess a person's needs for care and support separately from their ability to pay;
5) provide clear information as to how we calculate a person's contribution;
6) make sure we use public funds wisely by being clear about what we *generally* pay or allow for, but still consider exceptions to reflect an individual's circumstances;
7) ensure that our discretionary policy does not lead to two people with similar needs, available income and agreed expenses who receive similar types of care being asked to pay different contributions (unless there is some other good reason for the difference).

What have we decided not to charge contributions or fees for?

- Carers' Services; we have discretion as to whether to ask carers to contribute for services provided directly to them. We have decided that we will not do so, as we recognise the valuable contribution that carers make towards the care of the person they are looking after;
- Preventative Services; we are not permitted to charge a contribution for the first six weeks of some preventative services such as Reablement and Intermediate Care ("step-down" beds for people leaving hospital);

- Support services for Direct Payments, including managed accounts, payroll, liability insurance, employment advice and recruitment support.

What we charge fees for

There are also some services which the council provides for which we charge fees for and which are paid for by everyone, irrespective of income or needs. Such fees and charges are not contributions and are not covered by this document, and include costs such as;

- Community Alarms
- Meals on wheels
- Any meals provided in Day Centres or other care settings
- Home adaptations and equipment where the value is over £1,000 (below that, we are not permitted to charge)
- Administration fees for legal tasks such as Appointeeship / Deputyship and Deferred Payment Agreements

The Care Act states that fees cannot be more than the cost to the council of providing the service so will need to be reviewed annually and the level of fee agreed by the Director of Adult Social Care under delegated authority. The value of such fees is published each year as part of our **Fees costs and allowances** document **[insert link].**

What we charge contributions against

Other than those services shown in the two sections above, we will financially assess people for all the care and support services arranged to meet their eligible social care needs to see if they are required to pay a contribution. This covers all services, including any transport or travel associated with that service.

Where a person is a part of a couple, we can only take account of their share of any capital or income - each person must be treated individually.

How a financial assessment is carried out is covered in our guidance documents. If a person does not wish to be financially assessed, or refuses to provide the required information, they will be deemed either a full cost payer or "self-funder" and be required to contribute the full cost of their services.

How we decide how much capital we will count

Much of what we count as a person's capital (such as property and savings) is set out in law – particularly for non-residential care. SMBC has no discretion about what we count, so it is detailed in our practice guidance as it is not a policy issue, and the process is not detailed in this document.

However, we do have some discretion in *residential care,* where the Care Act sets out various situations where the value of a person's property (which was the person's only or main residence) can be disregarded in full or in part for a period of time. It also sets out areas where we as a council can choose whether to apply a disregard, although it states that "the local authority will need to balance this discretion with ensuring a person's assets are not maintained at public expense."

1) <u>Long-term disregard</u>

   A property is excluded by law from a financial assessment when a dependent relative has continuously occupied it since before the person went into a care home. The Care Act guidance gives a list of who qualifies as a dependent relative (Annexe B paras 40-41), people who are;

- aged 60 or over and/or
- is a child of the resident aged under 18 and/or
- is incapacitated.

The Care Act gives councils some discretion as to whether to apply a long-term disregard in cases where the dependent relative is not a partner and does not meet all the criteria above. In such cases, our policy is as follows;

- they are aged 18 to 59 – we will take the property into account in the financial assessment but not require it to be sold; an alert will be placed with the Land Registry to highlight the council's interest in the property;
- we will disregard the property whilst any person (not necessarily a relative) who can demonstrate that the house is their sole residence lives in it, providing they can show that they gave up their own home to care for the person who is now in a care home;

2) <u>Twelve-week disregard</u>

The Care Act requires us to disregard the value of a person's main or only home for 12 weeks in some situations, in order to allow them and/or their family and representatives time to consider their options at a time of crisis;

- when someone is entering permanent residential care for the first time;
- where a long-term disregard of a property ends unexpectedly due to the death of the qualifying relative living in it.

The Care Act gives councils some discretion as to whether to apply a twelve-week disregard in some situations. In such cases, our policy is as follows;

- we will consider allowing this this disregard where there is a sudden and unexpected change in a person's financial circumstances which force the person to approach us for assistance, e.g. the shares which they have been using to fund their care suddenly lose half of their value;
- where a person is already a "self-funder" in a care home, and approach us for assistance or a deferred payment agreement (DPA) because their savings or liquid assets are falling below the qualifying capital limit, SMBC will exercise their discretion and allow the twelve-week disregard. This allows the person time to make the necessary decisions and arrangements.

How we decide how much income we will count

Much of what we count as a person's income (such as earnings, benefits, and pensions) is set out in law. SMBC has no discretion about what we count, so it is detailed in our practice guidance as it is not a policy issue, and the process is not detailed in this document. However, we do have discretion in some areas, as set out below.

1) Residential – Personal Expenses Allowance

The Personal Expenses Allowance is the amount of their income the government says a person must have to meet anything they choose that is not provided by the care home. Where a person is part of a couple (marriage or civil partnership), and is paying half their occupational/personal pension or retirement annuity to their partner (who is not living in the same care home) we must disregard this sum when calculating their disposable income. It is our policy to do the same where the couple are unmarried. The current value of this allowance is published each year as part of our **Fees costs and allowances**

document **[insert link].**

2) Non-Residential - Minimum Income Guarantee

The amount a person is asked to contribute (if any) is based on the amount of their income above the Minimum Income Guarantee (the "MIG"), which is what the government says a person has to have to meet basic needs and everyday living costs such as food and drink, travel, household and utility costs, insurance, debts etc.

However, SMBC has chosen to add to the MIG further allowances and to ignore some forms of state benefits. This means that we leave people with more disposable income, and a person only pays a contribution to the cost of their services if they have disposable income over the total of these allowances. The calculation is:

Actual income

less some higher rate disability benefits

less allowable housing costs

less disability related expenditure (DRE)

less Minimum Income Guarantee

= Disposable income

In addition, whilst the law says we can use all this disposable income for contributions, SMBC has decided to allow people to keep **20% of this disposable income** for their own use, including the need to cover any costs arising from disability or illness. The remaining **80%** of disposable income is available to pay contributions to the care costs paid by SMBC.

As the council has discretion as to what it may allow for these disregards and allowances, they are explained in more detail below.

3) Non-Residential - Higher rate disability benefits

The Care Act does not say whether councils should count as income the highest rates of state disability allowances (these are; Attendance Allowance, Disability Living Allowance (Care component) and Promoting Independence Payment (Daily Living component).

As a Council, we have decided that, unless we are providing a person who gets one of these highest rates with care in both the day and the night, we will *ignore* it from our calculations. This means we ignore the difference between;

- the lower and higher rate of Attendance Allowance unless the person is getting night-time services from us;
- the middle and higher rate of DLA (care component) unless the person is getting night-time services from us;
- the enhanced and standard rate of PIP (daily living component) unless the person is getting night-time services from us.

4) Non-Residential - Allowable housing costs

If the person pays rent or has a mortgage, we may make an allowance for any of these costs not covered by any Housing Benefit or Income Support/Pension Credit. We may also allow for any Council Tax not covered by Council Tax Benefit, plus “Core Support” charges (24-hour emergency call services) for Extra Care placements.

We cannot allow any of these expenses more than once, and we cannot allow as an allowable housing cost anything which the government's Minimum Income Guarantee is intended to cover. Agreeing to include this additional allowance *may* reduce the contribution a person is expected to pay, but not everyone benefits as those with only basic income are unlikely to have to pay any contribution in the first place.

5) Non-Residential - Disability Related Expenditure (DRE)

The Care Act requires us to allow people to keep enough of their disability benefit to cover the costs of any disability-related needs that are not eligible for council care and support. This is called Disability Related Expenditure (DREs).

We automatically give every non-residential client who receives a DWP disability benefit (at the standard or higher rates) a lump sum banded DRE allowance to be offset against their income. (We do not give such an allowance if the person only receives Disability Living Allowance at the lowest rate). The current value of this allowance is published each year as part of our **Fees costs and allowances** document **[insert link].**

People receiving such benefits do not need to claim this lump sum, it is automatically added when we assess their income. It recognises that for smaller costs, it is not cost effective for people to have to detail what they spend and provide receipts and can be intrusive.

However, people may have higher expenses than this automatic allowance (or we may not have given then a lump sum because they do not have qualifying disability benefits). In such cases, they may still claim for such

costs, but will need to go through a more detailed DRE assessment process. If we agree the costs, an allowance can made for them against the person's income.

In accordance with para 39 of the Care Act guidance, the total amount we normally allow will not be more than the value of the person's disability benefit. The type and size of such costs that we allow are at our discretion, which we apply using national guidance.

We need to list and check these costs with the person during the financial assessment and decide what we can allow. The reason for this is simply because it is our duty to use public funds wisely – we need to ensure we only fund costs that **arise from disability** and that are **over and above** what people are expected to fund from their income or from their disability benefits.

The evidence (such as receipts or copy bills) for a DRE that reduces a person's charge will be reviewed regularly, and it is the responsibility of the person (or their representative) to tell us about any changes in the amount of DRE they are incurring.

Because of the above, it is important to set out what is a "reasonable additional cost" for us to provide or allow for, given a person's specific needs. This policy has been written to provide reasonable guidance without being too restrictive.

As every person is different, it is not possible to list all the costs that we might consider, nor can we rule out any completely. The costs that we can consider are any reasonable additional cost directly related to a person's

disability. Examples of expenses that may be considered are the additional costs of specialist dietary need due to illness or disability, or the costs of extra washing or clothing requirements.

In *general*, we would not normally consider a DRE for;

- any cost that reflects an expense that is a personal choice, (rather than being disability-related), such as branded clothes;
- any cost which we have already provided for as an allowable housing cost (see above);
- any cost which the government's Minimum Income Guarantee is meant to cover such as shopping, heating and lighting, insurance, clothing;
- a service we are providing through the person's Personal Budget such as personal care;
- the cost of a service which the person can meet from other available resources available, such as travel when they have a Motability vehicle or access to a community transport scheme,
- the cost of a service which the person could obtain without charge or cheaper from other sources, such as continence supplies (available from the NHS), disability equipment and home adaptations (available as a DFG grant from the Council), or support for carers (available from the Council as a Carers' grant).

Our financial assessment staff will consult with social workers to reach a joint decision as to whether an expense should be allowed. The expenses that can be allowed may be guided by, but are not limited to, the types of cost included in the person's care and support plan.

If we agree a to make an allowance for a specific sum for a DRE, it is offset against the person's income when we calculate a person's contribution. Agreeing to include this additional DRE allowance *may* reduce the contribution a person is expected to pay, but not everyone benefits as those with only basic income are unlikely to have to pay any contribution in the first place.

As with any decision, people have the right of appeal as specified at the end of this document.

When do we charge contributions from?

We have set a service standard for our financial assessments; we aim to collect all the information we require from a person within two weeks of being asked to complete a financial assessment and – if they supply this - to tell them what their contribution in (if any) within a third week.

For non-residential services, we will start billing a person for their contributions from the Monday following our notice to them of the contribution expected each week.

Because start dates for non-residential services are far less predictable than those for residential placements, we do not normally backdate contributions if the service has already started *unless* the assessment was delayed by the person unreasonably refusing to co-operate with the assessment process;

Where we agree a new allowance (such as for housing costs or DRE) after we have issued that notice, and this results in a reduction in the contribution the person is expected to pay, we will backdate this reduction to:

- the date when the original contribution started being charged where the evidence is provided within 4 weeks of the financial assessment;
- from the date of the person's claim if it is later.

If a person is awarded additional state benefits, their contribution will be re-assessed to backdate and include those additional benefits from the date they were paid.

For residential services, we will start billing a person for their contributions from the day service started. This may involve backdating if the financial assessment cannot be completed until after the person has moved into their permanent placement.

If a person is awarded additional state benefits, their contribution will be re-assessed to backdate and include those additional benefits from the date they were paid.

If a person has their residential care funded by us pending completion of a Deferred Payment Agreement (DPA) and they fail to complete the agreement within 12 weeks of care commencing without good reason, we may deem them a self-funder. They will be charged for the full costs of their care whilst social care staff refer the case to our Legal Services team for action to be taken to secure a charge against their property even though a DPA is not in place.

Applying and paying contributions

SMBC has decided that if the contribution a person is assessed to pay is £1.00 a week or less, we will not charge it.

The maximum contribution anyone is expected to pay is 100% of their Personal Budget allocation (i.e. the actual cost of their chargeable care and support), or their assessed disposable income, whichever is less.

People who receive a Direct Payment from us will be paid it after we have deducted any assessed contribution. They must pay their contribution (if any) directly into their Direct Payment bank account to ensure they have enough funds to meet the cost of their services.

Where a person refuses to pay their contribution, we will commence debt recovery processes which may include taking legal action to recover the debt.

We will re-assess a person's contributions annually or following any changes to a person's benefit entitlements and or care and support plan, and will automatically amend everyone's contributions for national changes, for example when state benefits are increased each April.

Where an individual receives no services in a week, no contribution will be charged. If any service is used during a week but the level of service changes, we would normally still charge the contribution for that week.

Where someone receives in their Direct Payment a lump sum payment from their annual Personal Budget allocation, the equivalent proportion of their annual assessed contribution will be deducted at source.

Where someone receives both a Direct Payment and services organised by us, their contribution will be deducted from the Direct Payment before other collection action is taken.

If there are any changes to the benefits or income of the person using services, it is their responsibility (or that of their representative if they have one) to notify us so that their contribution can be re- assessed. Contact details are on our website and current literature.

Short-term care (respite)

SMBC have discretion on how much short-term care ("respite") in a residential home we will provide a person, and how we calculate contributions for the cost of it.

SMBC policy is that we will generally fund a maximum of 28 days in any 12-month period. The contribution the person will pay for the short-term care (if any) will be based on the actual cost of the service and will be financially assessed using residential care regulations.

However, because the costs of short-term care can be significantly higher than for long-term care, the actual cost applied will be subject to a maximum of the Council's guideline rate for nursing care for older people. The current value of this maximum is published each year as part of our **Fees costs and allowances** document **[insert link].**

If the person is receiving non-residential care from us, and they then receive a period of short-term care from us, we will only charge for the short-term care (as they are not at home to receive the non-residential services).

Where an allowance for short-term care is built into a Direct Payment, the contribution for it (if any) will be deducted from the relevant week's Direct Payment.

Transitional Protection

With effect from our January 2023 policy revision, we offer transitional protection, which temporarily limits the immediate effects of major change by the council in its contributions policy.

Transitional protection will apply to existing clients only and will limit the changes in a person's contributions solely attributable to policy changes made by the council to a maximum of an additional £30 a week each year for up to three years. This will apply if a person faces a significant increase in the contributions they are assessed to pay.

Thus, for example;

- If a person faced a £25 per week increase in their contributions because of a policy change, they would have to pay that increase;

- If someone faced a £45 per week increase in contributions because of a policy change, they would only pay £30 a week extra in the first year, but the full £45 a week the year after;

- If someone faced a £100 per week increase in contributions because of policy change, in the first year they would pay £30 a week more. In the second and third years, they would pay another £30 a week in each year, until in the fourth year they were paying the full £100 a week extra.

To estimate the amount of transitional protection a person requires for a policy change, we will compare their last year's contribution plus inflation with their new contribution under the new policy. We do not adjust for any other reason (such as changes in a person's capital or income).

Reviews, appeals and complaints

Anyone who uses our services (or their representative) has the right to challenge our decision about;

- what they should contribute each week
- how we applied this policy to calculate their allowances or contribution
- how we decided on how our discretion was applied.

Such concerns are dealt with through our Review and Appeals procedures. The initial stage is a **Review** by the council - the person concerned (or their carer or any other representative with appropriate permission) can request a review of their assessed contribution if they believe it is incorrect (e.g. on the grounds that we have made a mistake, or not applied the law correctly) or the contribution is not affordable. The review will be conducted by a manager in our financial assessments team (CCBU), in consultation with social care staff

If the person concerned remains dissatisfied with the outcome of the review, they can request an **Appeal** to raise their concerns. An appeal will be considered by an informal panel led by a Service Manager. The person concerned will be invited to attend if they wish. The panel will decide whether the original decisions reached, and those by the review, were appropriate. The outcome is likely to be that either the panel agree with the person, and an adjustment is made to their financial contribution or Care and Support Plan or it is decided that the cost is not something that SMBC can fund.

Any decision by the panel that changes or reinterprets the Contributions Policy will be added to it and to staff guidance.

Where a person is still not satisfied with the outcome of the Appeals Panel hearing they will be advised of the right to contact their Councillor, MP or Local Government Ombudsman. There is however nothing more that can be done within the Council's procedure.

If the person who uses our services (or their representative) is unhappy about the way the financial assessment was conducted, our council-wide complaints procedure applies. This includes issues such as how staff behaved or their attitude, disagreement with the level or quality of service, or the time taken to undertake an assessment. Full details of these procedures can be found in our guidance and on our website.

Feedback

We welcome feedback from people who use services on the contribution policy and will use it to conduct future reviews. Contact details can be found in our guidance and on our website at **[add link].**