



## **Executive – supplementary Fairer charging appendices**

**Monday 11 February 2013 at 7.00 pm**

Committee Rooms 1, 2 and 3, Brent Town Hall, Forty Lane, Wembley, HA9 9HD

### **Membership:**

#### **Lead Member Councillors:**

#### **Portfolio**

Butt (Chair)	Leader/Lead Member for Corporate Strategy & Policy Co-ordination
R Moher (Vice-Chair)	Deputy Leader/Lead Member for Finance and Corporate Resources
Arnold	Lead Member for Children and Families
Beswick	Lead Member for Crime and Public Safety
Crane	Lead Member for Regeneration and Major Projects
Hirani	Lead Member for Adults and Health
Jones	Lead Member for Customers and Citizens
Long	Lead Member for Housing
J Moher	Lead Member for Highways and Transportation
Powney	Lead Member for Environment and Neighbourhoods

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**The press and public are welcome to attend this meeting**

# Agenda - appendices

Introductions, if appropriate.

Apologies for absence and clarification of alternate members.

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Local authorities have discretionary powers to charge adult recipients of non-residential services. The decision as to whether or not to charge and how to charge are matters for local choice subject to public law principles and should comply with the Department of Health's "Fairer Charging" and "Fairer Contributions" guidance. This guidance was updated and issued by the Department of Health on the 29<sup>th</sup> October 2012 to take effect immediately. Based on this revision, the department took the opportunity to review its current charging policy and related practice frameworks. Following on from this review, this report recommends that Members agree to adopt a revised policy, namely the Brent Council's Fairer Contributions Policy (the 'policy') and related practice frameworks to ensure that practice in Brent is in line with the Department of Health's Guidance and is consistently applied across all residents of Brent.

**Ward Affected:**  
All Wards

**Lead Member:** Councillor Hirani  
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**Date of the next meeting: Monday 11 March 2013**



- Please remember to **SWITCH OFF** your mobile phone during the meeting.
- The meeting room is accessible by lift and seats will be provided for members of the public.
  - Toilets are available on the second floor.
  - Catering facilities can be found on the first floor near The Paul Daisley Hall.
  - A public telephone is located in the foyer on the ground floor, opposite the Porters' Lodge

# London Borough of Brent

## Fairer Contributions Policy

Updated February 2013

(Non-residential care and housing related support)

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## **1. Background**

- 1.1 Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 (HASSASSA Act 1983) gives the local authority discretionary powers to charge adult recipients of non-residential services provided under Section 29 National Assistance Act, Section 45(1) NHS Act 2006, Section 2 Carer and Disabled Children Act 2000 and Section 74 (14) of the Social Security Contributions and Benefits Act 1992.
- 1.2 Section 17 of the HASSASSA Act 1983 provides that a local authority may recover such charges as they consider reasonable in respect of relevant services.
- 1.3 This policy was written to comply with the requirements set out in “Fairer Charging for Home Care and other non-residential Social Services” Guidance issued by the Department of Health in September 2003, revised in 2010 and the subsequent Fairer Contributions Guidance issued October 2012.
- 1.4 The policy has also taken into account the Audit Commission’s guidance on good practice in the design of charging policies to ensure that consideration has been given to the use of targeted public subsidy to promote the council’s broader social inclusion objectives.

## **2. Guiding principles**

- 2.1 Guiding principles - there are five principles that support this policy, namely to make sure that the Council:
  - a. Recovers contributions from service users for non-residential services based on the service user’s ability to pay. It is intended that no one would be put in a position of financial hardship as a result of this charging policy, as a maximum contribution will be set at either the full cost of the services provided or at a level that affords the service user a basic living allowance, whichever is the lowest.
  - b. Has a clear and transparent contributions policy which is easy to understand and is consistently applied to all service users, taking into account their individual circumstances and needs.
  - c. Provides an early notification to service users of their contribution to non-residential care costs.
  - d. Ensures that service users have an opportunity to maximise welfare benefits thus maximising their ability to contribute to their non-residential care costs. Any reference to Housing Benefit, Council tax Benefit or DWP welfare benefits includes any successor to those payments (e.g. universal credit).
  - e. Ensures administrative efficiency and convenience for service users

(including netting of service user contributions at the point of resource allocation for personal budget).

### **3. What support is covered (scope and exclusions)**

3.1 This policy applies to the following:

- a. Home and domiciliary care services (including extra care) provided under Section 29 National Assistance Act ['NAA'], Section s Chronically Sick and Disabled Persons Act 1970 ['CSDPA'], Section 45(1) NHS Act 2006, Section 8 Residential Homes Act 1980 and Section 2 Carer and Disabled Children Act 2000.
- b. Day services including transport, if provided.
- c. Any community based care packages through Personal Budgets or Direct Payments.
- d. Telecare/assistive technology.
- e. One-off community care services (for example, intensive house cleaning).
- f. Telephone line rental and TV licences. However, this would be charged at cost unless exceptional hardship could be demonstrated.
- g. Respite Care - if it is a sitting service within the person's home this will be provided under s29 NAA and s2 CSDPA, if it is a short break in residential care and the service user is in receipt of direct payments then residential placements for up to 4 week in any one year will be assessed in line with this policy. Where the service user is not in receipt of direct payments and the council commission residential care for temporary periods then contributions towards the cost of this provision will be assessed in line with this policy for the first 8 weeks in any one year. Thereafter the individual will be assessed in line with the statutory framework for services provided under s21 NAA.

3.2 This policy does not apply to the following:

- a. Meals on wheels will continue to be invoiced separately at a flat rate on the basis that they are a substitute for ordinary expenditure.
- b. Funerals provided under the duty set out under the S46 Public Health (Control of Disease) Act 1984 as this will be charged in accordance with the relevant protocol set out at appendix F.
- c. The provision of day services or additional Adult Social Care services provided to those also accommodated by the Council in residential placements under Section 21 NAA as the charging regime for those care packages are calculated in accordance with the National Assistance (Assessment of Resources) Regulations 1992 and Charging for Residential Care Guidance ['CRAG'].

- d. Reasonable costs incurred by the Council for providing protection of property in line with the duty under s48 NAA.
- e. The costs incurred by the Council or any of its officers in connection with an application to the Court of Protection for deputyship or any expenses incurred in the exercise of his functions, save as where these are recoverable from an alternative source. These will be charged at full cost in line with s49 NAA.

#### **4. What support is not covered**

4.1 There are a number of circumstances in which service users will not be asked to contribute towards their care or support cost. These include those being provided with care or support:

- a. Under Section 117 of the Mental Health Act 1983 (after care services).
- b. Who have any form of Creutzfeldt Jacob Disease.
- c. Paid for in full by a Primary Care NHS trust.
- d. In an intermediate care setting, to enable re-ablement support for up to six weeks or as part of short-term rehabilitation or extended residential stay (for example, following a stay in hospital) up to a period of four weeks.
- e. Where the council is satisfied that any contribution would lead to exceptional hardship it reserves its discretion not to require a contribution (in full or in part).
- f. Services provided to relevant and former relevant children under the Children Act 1989 are not required to contribute towards the cost of any provision under this policy.
- g. Basic aids and adaptations equipment, where necessary, will be provided free of charge.
- h. It is currently permissible to require a contribution for services provided directly to carers (under Section 2 Carers and Disabled Children's Act 2000) to support them in their caring role. Where housing related support is offered to carers outside the social care system, different eligible and charging arrangements may apply.

4.2 Examples (not an exhaustive list) of exempt support are stated below.

- a. Provision of information, advice and guidance about the availability of service
- b. Provision of assessment, including assessment of community care needs.

## **5. Application of this policy**

5.1 This policy applies to all service users accessing the support listed in 3.1 above.

5.2 **Representatives** - Where the service user lacks capacity to manage their financial and / or property affairs, as assessed by an officer of the council or somebody duly appointed by them, the local authority will consult with their agent (i.e. a person lawfully authorised to act on their behalf under the following:

- Enduring Power of Attorney ['EPA']
- Lasting Power of Attorney ['LPA'] or
- Deputyship

5.3 Where the service user's only income is from the Department of Works and Pension and the service users has no other financial assets, then the local authority will work with an Appointee authorised by the DWP.

5.4 If there is no one willing to undertake the role of representative, the Council will appoint an officer to undertake the role of representative as described above to support the service user.

5.5 The local authority will, in the first instance pursue the service users for any unpaid liabilities owed to the Council, however it reserves the right to pursue the agent, either as Litigation Friend for the service user or, where it appears the agent may have acted in breach of their duties, personally.

## **6. Financial assessment**

6.1 The Council will positively seek to complete a financial assessment for all service users as soon as possible unless they -

- a) Are exempt as described under section 4 of this policy.
- b) Choose not to be financially assessed. Please note that service users who choose not to be financially assessed will be required to pay the full costs of support provided.

6.2 There are two routes into Adult Social Services, and a financial assessment will be undertaken at different times dependent on the route:

- a) Via Reablement: a financial assessment will be undertaken as close as possible to the three week review or earlier if deemed appropriate by the social worker / care manager
- b) Non Reablement Route: as soon as the supported self-assessment has been carried out, a financial assessment will be undertaken.

6.3 The Financial Assessment team will offer a face to face meeting to complete the financial assessment form and undertake a full benefits check, advice and practical support to apply for benefits they might be entitled to claim.

- 6.4 At the point of needs assessment, the practitioner or support worker will also advise that there may be a contribution to the costs of the support and how this will be calculated.
- 6.5 Where the service user opts for the direct payment element, all contribution to support costs will be deducted prior to any direct payment being made available.
- 6.4 This total contribution will not exceed the full cost of support or reduce the service user's income below the basic living allowance calculated as set out in paragraph 7.1 below.
- 6.5 Where a service user chooses to have social care support commissioned by the London Borough of Brent, this will result in an invoice being issued, the service user will receive one itemised invoice for support received in every four-week period.

## **7. How the contribution is calculated**

- 7.1 When the council assesses a service user's ability to pay a contribution towards the cost of their support, it ensures that each individual maintains a portion of their income that is at least the level of basic living allowance. This allowance is equal to the basic level of income support (IS) or pension guarantee credit (PGC) plus an additional 25% of this amount, as a buffer. The calculation of basic living allowance (Income Support Threshold) is as stated below.

$\text{Basic living allowance} = \text{IS or PGC} + (\text{IS or PGC} \times 25\%)$
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- 7.2 The capital threshold and the basic living allowance are updated annually and accord with the levels set within CRAG and by the Department of Works and Pensions respectively.
- 7.3 The maximum contribution per week is calculated using financial information received from service users and other information available to the council. The calculation will take account of relevant income and capital.
- 7.4 The income that will be taken into account includes all the benefits received by the service user (except those listed in paragraph 7.5 and 7.6 below), state pension and occupational pensions; any other income; and capital, including notional income and capital as defined by CRAG.
- 7.5 Savings between the lower threshold (as set out in CRAG) and the upper threshold will attract a surcharge of £1 per week for each £250 (or part of £250). For example, if a service user has savings of £17,250 the notional income would be £12 per week being £17,250 less £14,250 (= £3,000) divided by £250 (= £12). The lower and upper threshold are included at Appendix A
- 7.6 Capital includes any savings in bank or building society accounts; National Savings bank accounts; PEP, ISA or TESSA accounts; SAYE (Save as You Earn) schemes; cash; Premium Bonds or National Savings Certificates; stocks, shares, trust funds and investments; invested in

property, building and land (rental income will be included); and which someone else is holding on behalf of service user.

7.7 If there are joint savings with a spouse or partner, 50% of the total amount will be taken into account.

7.8 In calculating the maximum contribution, the value of the main residence occupied by the service user will be ignored (if the property is subsequently sold, such liquid capital that results for the service user will be subject to financial assessment). However, if the service user owns a second property, 100% of the value will be taken into account. The maximum contribution, subject to paragraph 7.10, will be the full cost of care.

7.9 Service users will be assessed in their own right, and the income of their carer, parent, partner or spouse will not be taken into account.

7.10 There are some incomes, which are partly or wholly disregarded in the calculation of the maximum charge. These include:

- The mobility part of Disability Living Allowance;
- £10 of a war pension or war widow's pension;
- All Guaranteed Income Payments (GIPs) made under the Armed Forces Compensation Scheme (AFCS).
- Payments from the Independent Living Fund (ILF) - the Department of Health issued a draft guidance document in 2000 in which it stated that service users receiving financial support from the ILF should have their contribution to the ILF considered as a disability related expense within the assessed charge for non-residential services.
- Child benefit and child tax credit
- The part of Attendance Allowance (AA), Disability Living Allowance (care component) (DLA), Constant Attendance Allowance (CAA) and Exceptional Severe Disability Allowance (ESDA) that covers care at night where the council purchases no element of night care.
- Working tax credit.
- Income support.
- The savings part of pension credit
- Ex gratia payments made to former Far Eastern prisoners of war.
- Payments made under the Vaccine Damage Payment.
- Compensation from personal injuries awards are disregarded for assessment purposes for a period of 52 weeks, with the

exception of any part of the award provided to meet care costs. There are specific circumstances under which these compensation payments are fully disregarded for assessment purposes and it will not always be possible to ask recipients of these awards to make a contribution. Where service users are in receipt of compensation for personal injuries, their contribution will be considered on a 'case by case' basis. But where an individual is unwilling to disclose the terms of any compensation payment then they will be assessed at full cost.

- 7.11 Housing costs, mortgage, rent or Council Tax (net of related benefits) will be deducted from the relevant income, as stated in paragraph 7.4 above, before calculating the maximum contribution.
- 7.12 Disability Related Expenses (DRE) – this will be considered when the extra cost is needed to meet a service user's specific need due to a condition or disability where the service user has little or no choice other than to incur the expenditure, in order to maintain independence or quality of life. Examples of types of examples which should be considered are included in Appendix C, however it is to be noted that this list is not exhaustive. The Council will disregard these costs from any income where it is satisfied that the cost has been incurred by the service user as a result of their disability, and it is not reasonable for a lower cost alternative item or service to be used. Receipts may be requested. DRE will be assessed on a case by case basis.
- 7.13 In addition to the above, if a service user's expenditure related to night care exceeds the level of the night care element of AA, DLA, CCA or ESDA, any such excess amount must be taken into account when assessing the service users DRE.
- 7.14 Non-disability related expenses – the calculation of the maximum contribution will take into account such expenses as referred to in the Department of Health Guidance. Some expenses – for example, household content insurances, water rates, etc. – are deemed to be afforded by the service user from their prescribed protected income. Brent Council will seek to allow additional costs, together with other essential expenses, such as service charges and ground rent that owner occupiers incur if they are not receiving related benefits to cover those costs. Essential expenses may include home maintenance (where this is not provided by a third party e.g. landlord or council and required for the health and safety of the service user (e.g. electrical, heating system repairs, home accessibility) and payments under court order (e.g. child maintenance).
- 7.15 Dependants - the calculation of the maximum contribution will take into account the financial implications for service users who have dependent children up to 18 years of age or for whom they provide maintenance payments, (and dependant adults in exceptional circumstances) e.g. those in full time education post 18 who remain resident at the service users home including those who may reside temporarily elsewhere during term-time, though in such circumstances the service user will be required to evidence financial support provided and that the dependant relative has utilised all alternative funding support.

7.16 The assessable income is worked out by:

Adding together all identified weekly income and then subtracting;

- a) any costs for housing;
- b) any income that must be disregarded under this policy;
- c) any disability-related expenditure; and
- d) the Basic Living Allowance.

7.17 The result is the assessable income. The maximum that a service user could be asked to contribute each week will be the lower of the assessable income and the full cost of the support being received. A breakdown of how the contribution has been calculated will be provided to the service user. Examples of how the council might work out the maximum contribution are shown below.

Example of how contribution is calculated (using 2012/13 thresholds)

**No financial information declared**

*= Full Cost*

\*

**Customer savings £23,250 or more**

*= Full Cost*

\*

**Customer savings under £23,250**

**Customer income**

**(Incl. Tariff Income on savings)**

*less*

**Basic income level  
(Basic IS / PCGC + 25% extra)**

*and*

**Customer expenses  
(housing + disability)**

*leaves*

**Assessable income**

**Chargeable income**

*charge lower of*

**a) Assessable income**

**b) Cost of service**

## **8. Financial assessment of couples**

- 8.1 In the event of shared capital, benefits or other forms of income, the financial assessment will seek to identify such shared sums and they will be apportioned between all relevant parties. Financial assessments will also consider disability related expenses of both parties, whether one or both are service users.
- 8.2 Whilst all circumstances will be taken into account when calculating the maximum charge, to ensure the outcome does not financially disadvantage either party – whether or not they are a service user – it is the responsibility of the service user or anyone acting on their behalf to notify the local authority of those circumstances. Financial assessment would be applied on the basis of joint assets if it were considered advisable that a couple could possibly benefit from being jointly financially assessed. A couple is defined as two people who are married or in civil partnership or are living together as if married or in civil partnership.

## **9. Earned income**

- 9.1 Where a service user has earned income this will be assessed in order to calculate contribution. This will be assessed in line with the National Assistance (Assessment of Resources) Regulations 1992 and CRAG so as to ensure a sustainable service and consistency between those in receipt of Domiciliary and Residential care.
- 9.2 Any income earned by the service user's spouse, partner or family member residing in the same address will be fully disregarded.
- 9.3 This will mean that the Services user's earnings will be assessed net of any Income Tax and National Insurance contributions and disregarding half of any contributions paid towards an occupational pension.
- 9.4 Where a service user, who is getting Income Support/Pension Credit, receives a payment of earnings which is not for a set period and is more than the weekly amount of benefit in payment the Council will apportion the payment over a number of weeks in line with the DWP calculations. Where Income Support/Pension Credit is not in payment and a service user receives a payment of earnings which is not for a fixed period, the payment should be taken into account over the number of weeks calculated by dividing the payment by the difference between the standard charge and the charge the service user was previously paying (or, if the service user was not liable to pay any charge, dividing by the standard charge). If this calculation results in a fraction of a week, the balance of the payment should be taken into account as income for that final week.
- 9.5 On calculation of the net earnings the Council will then compare to ensure that this is equal to or above the basic living allowance (i.e. basic level of income support (IS) or pension guarantee credit (PGC) or any successor plus an additional 25%). Contributions will only be required if it exceeds this amount.
- 9.6 Contributions from services users with earned income above this amount will be calculated net of housing costs and Council Tax. Housing costs and

Council Tax should be assessed net of any Housing Benefit or Council Tax Benefit payable so as to minimise disincentives arising from withdrawal of Housing Benefit or Council Tax Benefit when a user's income increases.

9.7 Any disability related expenditure will also be taken into consideration as set out above. This should eliminate any "poverty trap" effects or work disincentives.

## **10. Decline to provide financial details**

10.1 Service users have the right to choose not to provide their financial details to the council. In such cases, the council is unable to undertake a financial assessment, and the service user will be charged for the full cost of support they receive.

## **11. Delays in completing the financial assessment**

11.1 If a service user unreasonably delays completing the financial assessment they will be required to pay the full cost of the support provided, until a financial assessment is completed. If a financial assessment results in a lower charge any re-imbusement to the service user will be at the discretion of the council and will require the service user to demonstrate exceptional hardship. Where the service user or representative prefers to complete the financial circumstances statement by post, then it is expected that this will be returned to the council within two weeks.

11.2 If further information is required for the financial assessment then it is expected that the service user will provide this within two weeks of the date it was requested.

11.3 The council target is to complete financial assessment within 14 days of a request for assessment.

11.4 Where the financial assessment is likely to exceed the 14 days due to the complexity of the assessment then the Council will, by agreement with the service user or their representative, agree an interim level of contribution based on the information available at that time. Where, on completion of the assessment, the service user is assessed to pay a lower contribution than the interim figure the Council will reimburse the full amount owed. In the alternative, if the service user is assessed as requiring to pay a larger contribution than the interim figure the Council will invoice for the difference. Payment is expected within 21 days after which the debt recovery protocol will be enforced. Alternatively, if services are received by way of Direct Payment, the council may agree to recover the monies owed incrementally by reducing the weekly direct payment payments, provided that the council is satisfied that the service user is able to continue to meet their eligible needs.

## **12. Effective point of charging**

12.1 All service users will be informed of their assessed of their assessed maximum contribution within five working days of being financial assessed. The service users will be expected to contribute towards the cost of the services received from the date that the Council advises them of their assessed contribution. If this is done verbally, then this will be confirmed in

writing within seven days. No contribution will be payable prior to support being provided, nor will any contribution payment commence prior to the service user agreeing to accept the services on the basis that they will contribute to the assessed cost.

12.2 It is the responsibility of the service user or their representative to advise the council of any change in their financial circumstances as this may prompt a review of their contribution.

12.3 Any increase in contribution due to an award or increase in benefit entitlement will take effect from the date of the award.

12.4 Any increase in contributions due to an increase in other income or amount of capital held will take effect from the date of change in circumstances.

12.5 In the event of a reduction of income or benefit received, any amendment to the assessed contribution will take effect from the date of the change in circumstances, provided the council is advised of the change in circumstances within two weeks.

12.6 Billing for assessed contribution will cover a four-week period.

12.7 Where a client receiving extra care has been admitted to hospital they will not be charged for that period.

### **13. Deprivation of Capital**

13.1 Where the council believes that a service user has deprived themselves of a capital asset in order to reduce their contribution, the council will treat the service user as still possessing the asset.

13.2 The council would decide from available evidence whether the service user owned the capital.

13.3 It is up to the service user to prove that they no longer have a resource. Failure to do so will result in the council treating the service user as if they still possess the actual capital. Examples of acceptable evidence of the disposal of capital would include: a trust deed, deed of gift, receipts for expenditure, proof that debts had been repaid.

13.4 The timing of the disposal will be taken into account when considering the purpose of the disposal.

13.5 Where, for the purpose of avoiding or reducing the contribution, capital which would not have been disregarded has been used to acquire personal possessions, the current market value of those possessions should be taken into account as an actual resource. Their market value should not be disregarded.

13.6 If the service user, in depriving himself of an actual resource, converted that resource into another actual resource of lesser value, he should be treated as notionally possessing the difference between the value of the new resource and the one which it replaced e.g., if the value of personal

possessions acquired is less than the sum spent on them the difference should be treated as a notional resource.

13.11 If the council decides that the service user has disposed of capital in order to avoid paying a contribution or to reduce the contribution payable, the council will decide whether to treat the service user as having the capital (notional capital) and assess the contribution payable accordingly; and then whether:

- a) to recover the assessed contribution from the service user in full; or
- b) recover the assessed contribution by instalment; or
- c) defer payment until a later date; or
- d) place a charge on any property owned by the service user either with agreement or subsequent to court action; or
- e) take appropriate action as agreed by either policy or management.

#### **14. Appeal / review of financial circumstances**

14.1 Under Section 17(3) of HASSASSA 1983 and under the council's appeal procedure, all service users, or someone acting on their behalf have the right to ask the Council for a review of a charge for which they have been assessed if they consider that they cannot pay it or believe that:

- The charge is too high
- Information given may have been misrepresented
- Some information may have been missed
- A change in a service users circumstances
- A mistake may have been made in applying the charging policy, or
- If the service user is unhappy with how the charging policy has been applied.
- Calculation is inaccurate and unfair

14.2 The council will consider reviews or appeals within 3 months of the date of charge notification and only accept at its discretion those received outside this timescale.

14.3 The appeals procedure is included in appendix B

14.4 The Council's Fairer Contribution appeals process aims to protect the rights of all service users, by encouraging a fair and open resolution of individual issues.

14.5 This process provides a safeguard to those people who have been assessed to pay a contribution, however cannot reasonably afford to pay the assessed contribution (or part of it), or service users feel that the contribution has been incorrectly assessed or the financial assessment process has not been complied with.

14.6 If a service user's financial circumstance changes, they must advise the Client Affairs team as soon as possible, as this may affect their assessed contribution. Changes, which should be notified, include:

- a) Receipt of a new benefit or changes to benefits.
- b) Changes to income or allowable expenditure.
- c) If the service user's capital or savings crosses one of the capital thresholds (refer to paragraph 7.6 and Appendix A).
- d) Changes to living arrangements (e.g. the service user or their partner moves to a care home, the service user moves to another residence or the number of people in the service user's household changes).

14.7 After a service user has told the Client Affairs team about changes in their financial circumstances or a review visit is made, a new financial assessment will be completed using the new information that is provided. If the revised assessment results in an increase or a decrease in the weekly charge, the service user will be notified of the revised contribution and it will be backdated to when the service user's circumstances changed.

## **15. Service users who are in arrears (non payment of charges)**

15.1 Where a service user refuses to pay their assessed contribution the matter will be referred for further legal action in accordance with the debt collection protocol. A copy of this is attached at appendix D

15.2 In addition a review of their community care needs will be undertaken.

15.3 The council will take steps to recover any amounts owing, including legal action. The council may recover arrears from contributions through Debt Collection Agencies and or the courts where service users have the means to contribute towards the cost of their support but refuse to do so.

15.3 The council wants to make sure that any contributions made to service users are fair and reasonable. The council appreciates that sometimes; people who use its services may experience difficulties or exceptional circumstances, which the council would consider on an individual basis. The council also allows people to have their exceptional circumstances considered through the appeals procedure (appendix B).

## **16. Complaints**

16.1 The council welcomes feedback from service users, and has dedicated officers to manage complaints.

16.2 If service users are dissatisfied with the way that they have been treated during the financial assessment process, or the service that they receive, they have the right to make a complaint to the Complaints Officer. The council has a statutory complaints process to ensure that service user'

views and concerns are considered and dealt with appropriately and that council holds itself accountable to the highest standards.

16.3 The complaint's procedure is included in appendix E.

## **17. Use of financial information and privacy**

17.1 The information the council collects and keeps about service users is confidential and can only be seen by authorised staff. This information will only be shared with other relevant people and agencies in accordance with the Data Protection Act 1998 or with the written consent of the service user or their legally appointed representative. This Act also gives people the right to see information that the council keeps about them at any stage.

## **18. Equality Impact**

18.1 The council has considered the impact this policy will have of the diverse communities of Brent. The policy was the subject of a considerable community consultation, which engaged a broad range of people of different ethnic groups, abilities, ages, genders, social-economic backgrounds and geographical areas within the borough. Community views were carefully considered when making decisions about this policy, and deciding how the council can treat service users in a fair and consistent way. The council has assessed that this policy does not discriminate against groups of service users or present adverse impacts due to any characteristics protected under the Equality Act 2010.

## **19. Reviewing the contributions policy**

19.1 This policy document will be reviewed annually prior to the commencement of each new financial year. Annual review will ensure all rates and amounts are consistent with inflation or other relevant changes, which may occur. The council will consult the community on such changes through its annual budget consultation. The council however, will not consult on changes or increases resulting from changes in the Charging for Residential Accommodation Guidance (CRAG), which may affect this policy, or to mandatory changes in either the Fairer Charging Guidance or the Fairer Contributions Guidance, all of which are issued by the Department of Health. This will be approved by the executive committee

**Appendix A - Current threshold rates (2011/12 and 2012/13)**

	2011/12 £	2012/13 £
Lower	14,250	14,250
Upper	23,250	23,250

## **Appendix B- Review and appeals procedure**

### ***FRAMEWORK FOR APPEALS AGAINST FEES AND ASC CONTRIBUTIONS***

1. All service users of Adult Social Services who are required to contribute towards their care have a right to ask for a review of their contributions if they, or someone acting on their behalf believe that:
  - The contribution is too high
  - Information given may have been misrepresented
  - Some information may have been missed
  - A change in a service users circumstances
  - A mistake may have been made in applying the contributions policy, or
  - If the service user is unhappy with how the policy has been applied.
  - Calculation is inaccurate and unfair
2. The service user, or someone acting on their behalf, can ask for a review at any time.
3. The council will consider reviews or appeals within 3 months of the date of charge notification and only accept at its discretion those received outside this timescale

#### **4. The review process**

There are two stages to the review process.

##### **4.1. Stage 1 – Informal review**

The service user or person acting on their behalf should write to the department giving details of why they believe the charge may be incorrect.

An officer will review the previous calculation of the charge within 14 working days.

The officer then makes a decision.

If the decision is that the charge needs to be altered or remain the same, the service user will be advised of this outcome within 7 working days.

If the charge is found to be incorrect, this will be explained in writing, with reasons, also within 7 working days.

As part of this review, the officer investigating the case will ask their Manager to look at the original charge and their findings to ensure all facts have been considered.

Overall, this stage should take no longer than 28 days.

#### **4.2. Stage 2 – Contributions review panel**

If the service user or their representative remains unhappy after the charge has been reviewed under Stage 1, the service user or their representative should contact the Departmental Assistant Director of Finance who will convene a Charges Review Panel to review the process. All stakeholders will be invited to give their view.

This panel will be made up of the Assistant Director of Finance and two independent people from outside the finance section.

The panel will make recommendations and the service user will be informed of the outcome and the effect on their charge within 14 days.

If the service user remains unhappy about how the review has been dealt with then they will be invited to take the matter forward under the Council's Complaints Procedures.

## **Appendix C – Disability-related Expenditure**

In assessing disability-related expenditure, the authority should include the following:

- (i) Payment for any community alarm system (net of Housing Benefit or Supporting People Grant)
- (ii) Costs of any privately arranged care services provided it is agreed necessary to meet eligible social care needs, including respite care
- (iii) Costs of any speciality items occasioned by disability –e.g.:
  - Specialist washing powders or laundry
  - Additional costs of special dietary needs due to illness or disability (the user may be asked for permission to approach their GP in cases of doubt)
  - Special clothing or footwear, for example, where this needs to be specially made, or additional wear and tear to clothing and footwear caused by disability.
  - Additional cots of bedding, for example, because of incontinence
  - Any heating costs or metered costs of water, above the average levels for the area and housing type, occasioned by age, medical condition or disability.
  - Reasonable costs of basic garden maintenance, cleaning, or domestic help, if necessitated by the individuals disability and not met by social services.
  - Purchase, maintenance, and repair of disability-related equipment, including equipment or transport needed to enter or remain in work, this may include IT costs, where necessitated by the disability; reasonable hire costs of equipment may be included, if due to waiting for supply of equipment from the local council.
  - Personal assistance costs, including any household or other necessary costs arising for the user
  - Other transport costs necessitated by illness or disability, including costs of transport to day centres, over and above the mobility component of DLA, if in payment and available for these costs. In some cases, it may be reasonable for council not to take account of transport e.g. council-provided transport to day centres is available but has not been used.
  - In other cases, it may be reasonable for council not to allow for items where a reasonable alternative is available at lesser costs. For example, private purchases of incontinence pads, as these are available from the NHS.

# Income and Debt Collection Protocol

## Adult Social Services

February 2012

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## **INTRODUCTION**

**This protocol relates to Brent Council, the raising of income and the collection of debts within the Adult Social Services Department and the Corporate Debt Collection Team. It also sets out when matters should be referred to legal services for further action to be taken.**

**Within this protocol, consideration has been given to aspects surrounding the council's poverty strategy and how this will be tackled.**

### **Our Vision**

To optimise the availability of resources for the delivery of Council services.

### **Aim**

The aims of this protocol are:

- 1) To maximise income generation and collection.
- 2) To enhance the social and economic well being of the community the Council serves, whilst ensuring a fair price for all services reflecting the ability of the community to pay and the relative demand for the service.

### **Objectives**

- 1) To achieve departmental income targets by:
  - Establishing simple, accessible and cost effective payment options and processes for customers such as setting up standing orders
  - Timely, accurate billing
  - Promoting pre-payment.
- 2) To reduce debt by developing, implementing and monitoring effective debt collection processes.

### **Aspirations**

#### Income

- To achieve sustainable income levels across all chargeable areas of the department.

#### Debt

- To achieve a level of debt for each income stream that is demonstrably well-managed and comparable with top quartile performance in that area.
- To reach the position where all customers pay or make arrangements to pay all their income liability within 30 days of notification.
- To reach the position where all customers have firm arrangements in place to minimise all property related liability and to ensure any debts are secured against an appropriate asset so that payment is received in a timely manner.

## **BACKGROUND**

### **Income**

This protocol looks at the methods of collecting income due for the following service areas:

- Older People Services
- Services for those with Learning Disabilities
- Services for those with Physical Disabilities
- Mental Health
- Supporting People
- Day Services

In addition it seeks to address debt collection activities relating to the provision of Adult Social Care Services either under the Charging for Residential Accommodation Guidelines (CRAG) and/or s17 HASSASSA.

### **What is a debt?**

A debt is an amount which is due or overdue for payment to the Council – such as invoices / statements and contractual arrangements for services provided.

### **Why do we need a protocol?**

A protocol is required in order maintain control over the collection of debt by the department and to cross-reference this with budget monitoring and control systems. There are also certain corporate 'rules' underpinning the raising of income and the collection of debt which will need to be adhered to.

**In line with the council's poverty strategy, the option for paying by instalments or making a payment arrangement should be considered where appropriate and in accordance with corporate guidelines.**

**This protocol must consider the best methods of recovering monies owed to the council for each type of income stream.**

Adult Social Services have three income streams:

- Residential Debt
- Non Residential Debt
- Sundry Debt

### **ASC Service Users**

This protocol is tailored to those service user's in receipt of residential and non-residential social care services and has been devised to ensure that specific consideration is given throughout the process to the additional vulnerabilities of this specific client. For the purpose of this document the debtor could be one of the following:

- a service user
- a financial representative (including holders of a Power of Attorney or Deputyship Order, or a person acting as DWP Appointee).

- In certain circumstances, e.g. where deprivation of assets, fraud or undue influence has been proven, a third party.

Our 'non-client' customers (Sundry Debtors) are organisations, for instance Primary Care Trusts, and are not treated with the same approach as our service users. Sundry Debtor debts are not covered by this protocol.

### **BRENT COUNCIL'S FINANCIAL FRAMEWORK**

The Council's Constitution and the Financial Standing Orders within it designate the Finance Director as the officer appointed in accordance with Section 151 to be responsible for the proper administration of the Council's financial affairs. They set out the framework for the financial management of all Council affairs.

To fulfil their statutory duties, the Finance Director sets the appropriate financial standards through Financial Standing Orders, Contract Standing Orders, Financial Regulations and other instructions about financial management.

The Finance Director manages the Council's financial affairs through delegating authority to Strategic Directors to carry out the functions as set out in the Scheme of Delegation for Financial Authority and Accountability in accordance with the above financial standards.

Under the Scheme of Delegation, Strategic Directors are required to maintain proper financial systems, procedures (of which this protocol is one) and controls to manage the resources of their department effectively and to ensure that roles and responsibilities for debt collection are clearly defined, that debts are monitored, that appropriate recovery actions are taken and that debts are written off in accordance with the council's constitution and with the Scheme of Delegation.

### **ADULT SOCIAL SERVICES PROTOCOL AND PROCEDURE**

#### **RESIDENTIAL DEBT**

##### **Netting Down**

Some of the residential debt is collected by 'netting' down payments to residential homes. This means that we pay the residential home care costs net of client contribution i.e. the difference between their weekly fees and the client's charge. For example, if the cost of the care is £500 per week and the client's contribution is £50 per week, we only pay the balance to the care home of £450. The home has responsibility to collect the £50 contribution from the client in the first instance.

If a care home is unable to collect the income from the client over a period of three months, the home will invoice us for the uncollected income and should be requested to provide evidence to substantiate the debt collection process they have undertaken to clear the debt.

Once the debt has been transferred to the council the 'Collection of Debt' procedure is to be followed, as outlined below.

### **Raising of Debt**

- 1) Charges or contributions are calculated on Framework-I (the council's client information system) on a daily basis in line with CRAG rules.
- 2) Invoices are raised on Abacus periodically on a monthly basis. A schedule for 2012/13 is attached in [Appendix A](#).
- 3) Every quarter, a standing order form is to be attached to each invoice.
- 4) Invoices are posted to the clients or to their financial representative (including holders of a Power of Attorney or Deputyship Order, or a person acting as DWP Appointee) where it is noted that they do not have capacity to manage their own financial affairs.

### **Collection of Debt**

On the last Friday of every month, statements are to be produced and sent to the client or to their representative by the Corporate Debt Recovery Officer.

The statements are to be reviewed by the Corporate Debt Recovery Officer prior to posting and a reminder letter (as per Appendix B) will be attached to each statement where the outstanding debt is older than 30 days.

Every quarter, a standing order form is to be attached to each statement where the client does not already pay by standing order to ensure that they are aware of this option and to give them the opportunity to use it.

When the reminder letter stage is initiated, the Corporate Debt Recovery Officer is to attempt to contact the client by telephone to ascertain whether there is a reason for non-payment, including any dispute, the nature of the dispute and to seek a resolution.

If no payments or positive responses are received within a further 10 working days, the Corporate Debt Recovery Officer is to refer the debt to the relevant Heads of Service for advice on whether to pursue the debt or hold for further investigations.

The Heads of Service are to respond within 20 working days with a recommendation on how best to address the debt. Where it appears to the Head of Service necessary to review the service user's ASC needs or capacity to manage their financial affairs, it will be expected that this review will be undertaken as a priority.

If after the Head of Service's appraisal it appears no justification for further intervention or provision, the debt remains outstanding and the debtor is unwilling to agree a repayment plan the Corporate Debt Recovery Officer is to refer the debt to Legal Services for advice. The referral must include full details of the debt and all attempts to resolve the outstanding issues, including copies of all letters sent and received. On receipt of an instruction, Legal Services will provide initial advice to the Debt Recovery officer on the most appropriate action to take.

Following Legal advice, an instruction to issue proceedings can be made by the relevant Head of Service or Assistant Director of Finance.

Please note that where a client's representative is waiting to be appointed (with either a Power of Attorney, Deputyship Order, or as DWP Appointee), or a

client's estate is in probate, they will have no immediate access to the client's funds and this will need to be taken into account during the debt collection process. These cases will be given an exception status and no action will be taken to recover debt until those appointed have appropriate authority to act. Service users and their representatives should note however that where there is authority to charge interest this will likely continue to accrue; though any payments towards the arrears will be taken into account.

### **Property Debt**

Where a service user is in receipt of residential care and owes a property or is assessed as if they did own a property, then liability to contribute towards the cost of their residential care will be assessed in line with CRAG. In line with CRAG the Council will disregard the value of the service user's primary home for 12 weeks at the start of any permanent residential placement provided under s21 National Assistance Act 1948. Service users or their representatives should be advised of their options, namely to dispose of the asset in that time or to consider entering into a deferred payment agreement with the Council. The Council operate a deferred payment scheme that can be offered to assist those who do not wish to sell or are having difficulty selling their home within the first 12 weeks of their placement (which could be due to severe disrepair, rented to tenants, joint ownership, or no-one holding appropriate authority to make the sale).

Where a client, or their representative, has entered into a deferred payment agreement with the Council, the outstanding debt will be secured by way of a Land Registry charge against the property in line with the power provided by s55 of the Health and Social Care Act 2001 ['HSCA'].

No debt collection will be undertaken where there is a deferred payment agreement until the agreement comes to an end. However clients should note that in accordance with legislation, interest at 4% above the Bank of England base rate is charged from 56 days after the service user has died.

Where a service user owes a property but has not entered into a deferred payment agreement and arrears have arisen in respect of residential care provision, the Council will seek to register a charge with the Land Registry against the property in line with the power provided by s22 Health and Social Services and Social Security Adjudications Act 1983. In addition, the protocol and procedure for recovery of debt set out above will be applied.

### **NON RESIDENTIAL DEBT**

This relates to charges for Adult social care, non-residential services provided in the community such as homecare, day care, supported living, meals on wheels, Brent line alarms etc.

### **Raising of Debt**

- 1) Charges are calculated on Framework-I on a daily basis in accordance with the Council's ASC Contributions Policy.
- 2) Invoices are raised on Abacus periodically on a monthly basis. A schedule for 2012/13 is attached in [Appendix A](#).
- 3) Every quarter, a standing order form is to be attached to each invoice.

- 4) Invoices are posted to the clients or to their financial representative (including holders of a Power of Attorney or Deputyship Order, or a person acting as DWP Appointee) where it is noted that they do not have capacity to manage their own financial affairs.

### **Collection of Debt**

On the last Friday of every month, statements are to be produced and sent to the client or to their representative by the Corporate Debt Recovery Officer.

The statements are to be reviewed by the Corporate Debt Recovery Officer prior to posting and a reminder letter (as per Appendix B) will be attached to each statement where an outstanding debt is older than 30 days.

Every quarter, a standing order form is to be attached to each statement where the client does not already pay by standing order to ensure that they are aware of this option and to give them the opportunity to use it.

When the reminder letter stage is initiated, the Corporate Debt Recovery Officer is to refer the debt to the relevant Heads of Service for advice on whether to pursue the debt or hold for further investigations.

The Heads of Service are to respond within 20 working days with a recommendation on how best to address the debt. Where it appears to the Head of Service necessary to review the service user's ASC needs or capacity to manage their financial affairs, it will be expected that this review will be undertaken as a priority.

If, after the Head of Service's appraisal of the case, there appears no justification for further intervention or provision, the debt remains outstanding and the debtor is unwilling to agree a repayment plan. the Corporate Debt Recovery Officer is to attempt to contact the client by telephone to ascertain the nature of the dispute and to seek a resolution.

If no payments or positive responses are received within a further 10 working days, the Corporate Debt Recovery Officer is to refer the debt to Legal Services. They must include full details of the debt and all attempts to resolve the outstanding issues for further action, including copies of all letters sent and received.

The minimum value of total debt for a client to be sent to Legal Services is £500.00.

Please note that where a client's representative is waiting to be appointed (with either a Power of Attorney, Deputyship Order, or as DWP Appointee), or a service user's estate is in probate, they will have no immediate access to the individual's funds and this will need to be taken into account during the debt collection process. These cases will be give an exception status and no action will be taken to recover debt until those appointed have appropriate authority to act. Service User's and their representatives should note however that where there is authority to charge interest this will likely continue to accrue; though any payments towards the arrears will be taken into account.

## **Appeals for Non-Residential Charges**

The appeals procedure is publicised on the council's website:

Every client has a right to appeal if they find their non-residential charges unrealistic or unaffordable (note, this does not include Meals on Wheels, which are a set charge per meal).

Once an appeal is logged, the Client Affairs Team contacts the client to encourage them to pay an agreed amount whilst the appeal is being considered.

The charging officer puts on a note on both Framework I and Abacus to ensure that no inappropriate debt recovery action is taken.

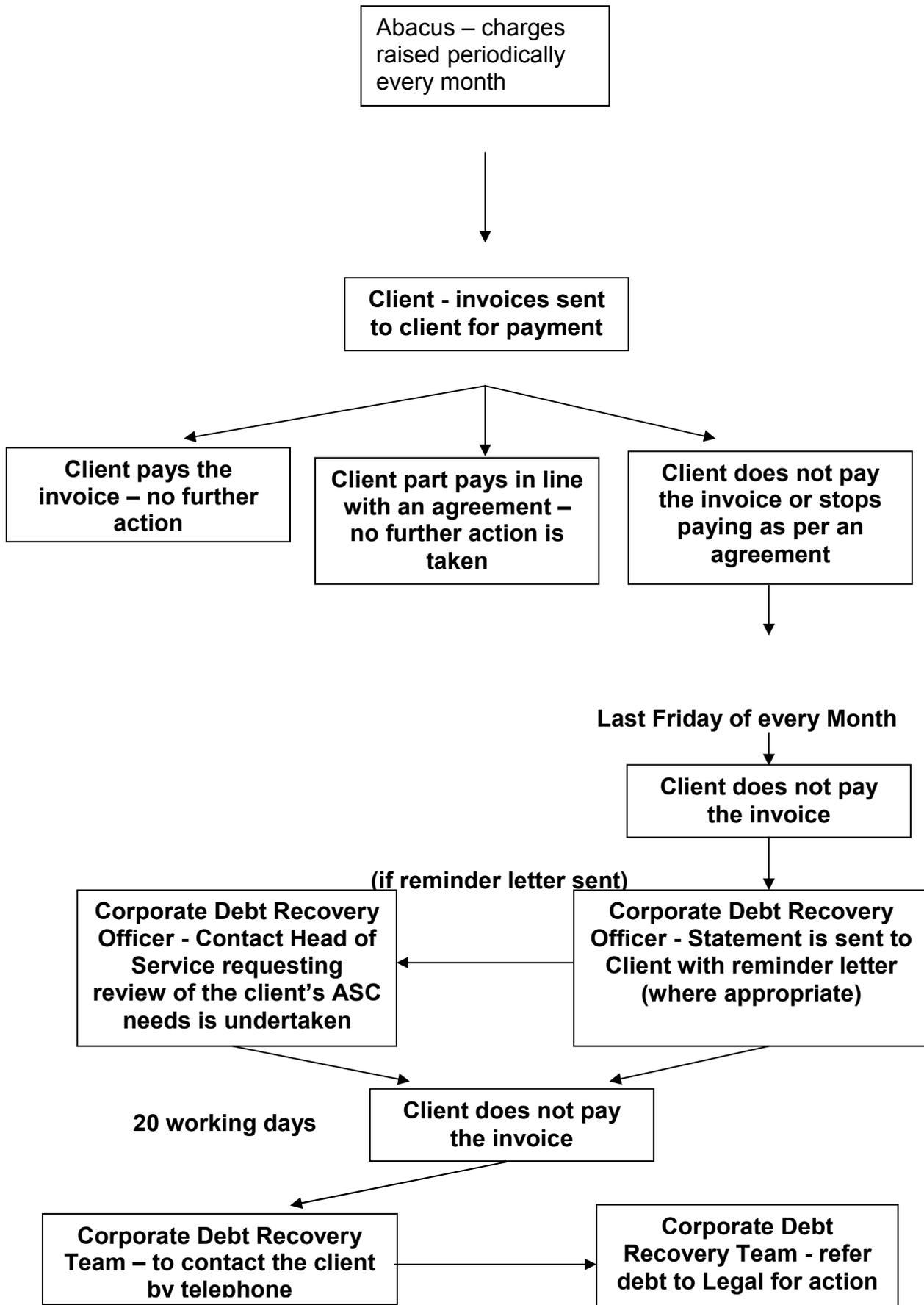
When the outcome of an appeal is decided, retrospective adjustments are made to the client accounts on Abacus and Framework I (where relevant) and notes are updated. Any outstanding debt then reverts to Corporate Debt Recovery Team for debt recovery action as set out above.

All sections of the protocol must be satisfied unless exemption permission is granted from the Assistant Director of Finance, Adult Social Services, to depart from one or more of the above.

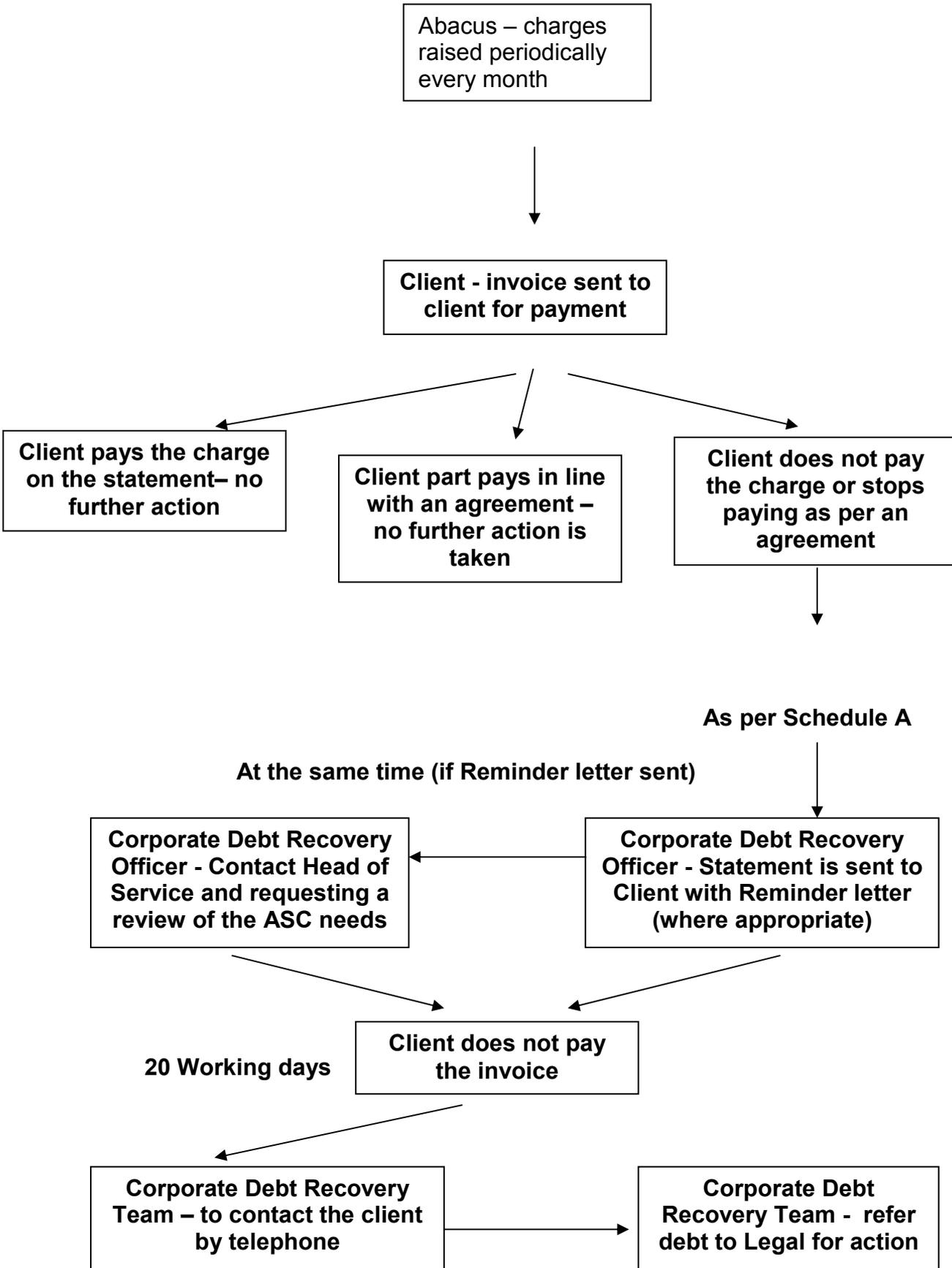
**Please note before any recommendations to write off a debt is acted on the officer responsible must follow the council's write off policy which can be found on the intranet.**

PROCEDURAL FLOW DIAGRAM

The Journey – Residential Debt



The Journey – Non Residential Debt



**APPENDIX A**

***Invoice Run Schedule (Residential & Non Residential)***

Run	Date - Residential	Date - Non Residential
Run 1	11/06/12	13/06/12
Run 2	12/06/12	18/06/12
Run 3	09/07/12	11/07/12
Run 4	06/08/12	08/08/12
Run 5	10/09/12	12/09/12
Run 6	08/10/12	10/10/12
Run 7	12/11/12	14/11/12
Run 8	10/12/12	12/12/12
Run 9	07/01/13	09/01/13
Run 10	11/02/13	13/02/13
Run 11	11/03/13	13/03/13
Run 12	08/04/13	10/04/13

## **APPENDIX B**

### **Reminder Letter**

Dear

Community Care Charges - your Ref:

I note from the enclosed statement that your account is in arrears. We have no record of you successfully appealing against your charges, nor contacting this department to discuss any difficulties you may have with paying for the service you received.

You should pay the full amount due within the next 14 days. You can do this by one of the following methods:

- By telephone / internet banking using the following details, quoting the invoice number you are paying:  
London Borough of Brent Social Services Main Account  
Sort Code: 60-23-09  
Account Number: 95723889
- By sending in a cheque payable to "Brent Council", to the London Borough of Brent, PO Box 1023, Wembley, HA9 1GR, quoting the invoice number.
- By Debit or Credit Card using the 24 hour automated debit /credit card payment line on 020 8937 1830 or over the internet at [www.brent.gov.uk](http://www.brent.gov.uk) and click on pay online.
- In person at the post office or a Pay Point outlet. To find you nearest Pay Point outlet, go to [paypoint.co.uk](http://paypoint.co.uk) and enter your postcode.

If you are unable to pay the full amount within the next 14 days, please contact us on the above number by return with your reasons for being unable to make such a payment and with your proposals for settling the debt by payment by instalments. We consider any such proposals.

To avoid any doubt, if we are to accept payments by instalments, these must be done with a standing order. A form to set up standing orders is attached to this letter. This must be completed and returned to the address listed on the form.

If we do not receive a payment or positive response from yourselves within the next 20 days, then the matter will be referred to the Council's legal department which may result in legal action being brought against you, the Council will also seek to recover interest on the debt owed and any associated legal costs.

We may also consider an urgent social work review of your case if we feel it is appropriate.

Yours faithfully  
for and on behalf of  
London Borough of Brent

Elizabeth Jones  
Assistant Director of Finance  
Adult Social Services

**Support  
advice, help**

You may want a friend or member of your family to help you to make your complaint. You may need an independent advocate to help you. You might want to contact a local or national organisation for advice or help. Contact us if you need help getting in touch with one of these organisations.

**General Services**

Brent Carers Centre (The Princess Royal Trust)	020 8795 6240
Brent Community Law Centre Advice Line	020 8451 1122
Brent Irish Advisory Service	020 8459 6655
Citizen's Advice Bureaux Call Centre	08450 505250
Jewish Care	020 8922 2222
WISE Project (West Indian Self Effort)	020 8830 3337
Brent Indian Community Centre	020 8459 1107

**Older People's Services**

Age Concern, Brent	020 8965 7711
Counsel & Care (for older people)	0845 300 7585
Help the Aged (Senior-line)	0808 800 6565
The Relatives & Residents Association (for older people in care homes)	020 7359 8136
Elders Voice	020 8968 8170

**Disability Services**

Asian People with Disabilities Alliance	0208 902 2113
Association of Muslims with Disabilities (UK)	020 8830 3821
Brent Advocacy Concerns	020 8459 1493
Brent Association of Disabled People	020 8451 3822
Royal Association for Deaf People	020 8749 8857
Fax 0208 749 7053 Textphone 0208 746 1864 Email <a href="mailto:bdpg@royaldeaf.org">bdpg@royaldeaf.org</a>	
Brent MENCAP	020 8451 5278
Disability Law Service	020 7791 9800
Black Disabled Peoples Association	020 8452 7122

**Mental Health Services**

Loud and Clear	020 8900 2221
Black Women's Mental Health Project	020 8214 1585
African Caribbean Mental Health Association	020 7737 3603
B.U.G. (Brent Mental Health User Group)	020 7402 5602
Brent MIND	020 8451 3200



**Adult Social Care  
Services  
Statutory Complaints  
Procedure**

**From 1<sup>st</sup> April 2009**

**We want to know how you feel about  
the services we provide or arrange.**

**We welcome comments,  
suggestions, concerns, compliments  
and complaints.**

**If you are not happy with the service  
please tell us so we can try to sort  
things out.**

## Firstly

You should speak to the worker, team or manager responsible for the service or issue that you are unhappy with. They may be able to put things right if something has gone wrong.

When you raise a concern or complaint verbally we will try to resolve it to your satisfaction by the end of the following working day.

## Secondly

If your verbal complaint is not sorted out by the end of the following working day you can make a formal complaint. Written complaints will also be dealt with as formal complaints.

We will talk to you about your complaint to identify the problem, what is needed to try to sort it out and how long it should take.

We will write to you to confirm the detail of your complaint, what you want to happen, how we intend to deal with it and when we expect to reply to you. We aim to deal with complaints speedily and efficiently.

Our initial reply will tell you about our decision and any action that has been taken or is to be taken. We will seek and consider your comments, review matters and take any further action that is required. A senior manager will send you our final response.

## Thirdly

If you are still not happy you can contact the Local Government Ombudsman. The Ombudsman is an independent person who investigates many types of complaints about local councils. The Ombudsman will usually only consider a complaint after we have considered it under our complaints procedure or if we have taken too long to deal with a complaint.

## Who can make a complaint?

- ♦ a person who receives or has received services
- ♦ a person who is affected, or likely to be affected by our action, omission or decision
- ♦ a person acting on behalf of a person described above who:
  - ❖ is unable to make the complaint themselves because of a lack of physical or mental capacity
  - ❖ has asked that person to act on their behalf
  - ❖ is a child
  - ❖ has died.

A complaint will only be considered if the council believes the person making the complaint on behalf of a person lacking capacity is acting in the best interest of the person they are representing.

## Who should I contact if I wish to make a complaint?

Speak or write to the manager of the service or to the complaints team.

020 8937 4240 or 020 8937 4205

Complaints' Manager, Community Care, 6 Floor, Mahatma Gandhi House, 34 Wembley Hill Road, Wembley, Middx. HA9 8AD

[customer.relation@brent.gov.uk](mailto:customer.relation@brent.gov.uk)

Fax: 020 8937 4194

## How do I contact the Local Government Ombudsman?

0300 061 0614 or 0845 602 1983.

You can also text 'call back' to 0762 480 4323

PO Box 4771, Coventry CV4 0EH Fax: 024 7682 0001

### Document Control Sheet

<b>Title</b>	Framework in respect of financial assistance and / or arrangement of Funerals
<b>Procedure Description:</b>	Framework in respect of the responsibility owed by the local authority to provide financial assistance and / or arrangement of Funerals
<b>Target Audience:</b>	Service users and / or their representatives and staff within Adult Social Services.
<b>Authorisation:</b>	Adult Social Services Department Management Team (DMT)
<b>Policy Author:</b>	Elizabeth Jones Fiona Bateman
<b>Policy Supersedes:</b>	N/A
<b>Operational Date:</b>	February 2013
<b>Remarks:</b>	
<b>Launch Date:</b>	

## **FRAMEWORK IN RESPECT FINANCIAL ASSISTANCE AND / OR ARRANGEMENT OF FUNERALS**

1. Under S46 Public Health (Control of Disease) Act 1984 the council is under a duty to bury or cremate the body of any person who has died or been found dead in their area, where it appears to the local authority that no suitable arrangements for the disposal of the body have been or are being made otherwise than by the authority.
2. However, S46(5-6) states that where the council has incurred expenses then it may recover these from the estate of the deceased person as a civil debt by proceedings brought within three years after the sum becomes due.
3. Under this provision the Council is permitted, before determining that no other suitable arrangements are in place, to make reasonable enquires. The Council will fully investigate very carefully whether any individual or other body is under a duty to make suitable arrangements.

### **Who may have such responsibility**

4. **Executor** – the duty at common law to arrange for a proper disposal of a dead body falls primarily upon the executors of the deceased. A similar duty falls upon the administrators of the estate, where there is no executor to undertake this role. Therefore it is necessary to ascertain whether the deceased has left a will and from that identify who the executors or administrators of the estate are. If an executor refuses to make suitable arrangements for disposal, they should be informed that the council, may seek to recover all costs incurred and may also pursue a civil debt claim against them personally for any expense incurred by the Council in relation to the funeral costs.
5. **Parental Duties** – The council has a power under S20 Children's Act 1989 to arrange for the funeral of a child who was in its care immediately prior to their death, but it is expected to obtain consent (wherever possible) of those who have parental responsibility. Where a child dies whilst in the care of a non-parent who has parental responsibility by virtue of a residence order, the power to arrange for the child's burial would lie with the parents. However, if the parent did not wish to exercise that power or could not be found then the power would lie with the person with the residence order.
6. **Householder or hospital where the body dies** – where the death occurs in a hospital, the hospital authority is liable, as the person on whose premises the body is situated, to arrange for the burial or cremation of the deceased patient. The same applies to a householder.

### **Financial Assistance towards the cost of Funerals**

7. Where a family member, householder or executor / administrator has insufficient funds to pay for the funeral they may be entitled to apply for payment under S138 of the Social Security (Contributions and Benefits) Act

1992. Funeral payments from the Social Fund are available to a claimant who is responsible for the cost of the funeral. The Social Fund funeral payment is awarded by the Department of Work and Pensions. However, the person who has died must have been an ordinary resident in the UK at the time of the death and the funeral must take place in the UK. More details of what will be taken into consideration by the adjudicating officer as to whether a funeral payment is awarded is provided at the end of this document.

### **Recovering Costs**

8. There is no restriction on the Council requesting that the estate release the cost of the funeral from the estate. However, it should be noted that the Council are equally required to recover the monies as a civil debt within the three years. Since funeral expenses are a first charge on an estate, the deceased's bank or building society will normally be willing to release funds directly to the undertaker for payment of the funeral account. But where this is not possible, the Council should notify the next of kin or anyone appointed to act on behalf of the deceased (e.g. Power of Attorney, deputy or financial representative) of the debt and refer this immediately to legal services so that consideration can be given to initiating civil debt recovery proceedings either against the estate or an executor personally if appropriate.

### **Where Parties are unable to arrange the funeral but have the funds to pay for the funeral**

9. Where other parties have funding to pay for a funeral but are unable, the council will agree to make arrangements provided there is prior agreement raise an invoice for the below amounts and collect payment in advance of the funeral being arranged.

- Cremation: £1,400.00
- Burial (Shared Grave): £1,700.00
- Burial (Private Grave): £3,325.00

## Appendix A – DWP – Social Fund Funeral Payment Criteria

Funeral payments from the Social Fund are available to a claimant who is responsible for the cost of a funeral. In deciding whether to award a funeral payment from the Social Fund, the following matters are taken into consideration by the adjudication officer:

- (a) At the date of the claim the claimant or his partner must be in receipt of one of the qualifying benefits: income support, income-based job seeker's allowance, pension credit, working tax credit where a disability or severe disability element is included in the award, council tax benefit, child tax credit at a rate higher than the family element, or housing benefit.
- (b) Is it reasonable in the circumstances for the claimant to accept responsibility for the cost of the funeral? This is viewed on the responsible person test, which establishes who should accept responsibility for the cost of the funeral. Normally, the surviving partner, or otherwise a close relative, will be responsible for arranging the funeral. To establish whether it is reasonable for someone other than the deceased's partner to assume responsibility for funeral expenses, the officer must apply two tests:
  - (i) Where there are close relatives who could take responsibility for the costs, he must consider the nature and extent of the contact each of them had with the deceased,
  - (ii) If another close relative had equally close contact with the deceased as the claimant, is not in receipt of any qualifying benefits and has capital in excess of the capital disregard for funeral payment, the officer will decide that, in the circumstances, it is not reasonable for the claimant to accept responsibility for the funeral costs. For these purposes, a close relative comprises a parent, son or daughter aged 16 or over at the date of death.
- (c) What items of expenditure can be allowed or disallowed? An obituary notice in a newspaper or the cost of any floral tributes exceeding £25 will be disallowed.
- (d) What deduction should be made from the award in respect of any assets in the deceased's estate or lump sums payable under an insurance policy?

Any claim for a funeral payment made on or after 8 October 2001 no longer takes account of any capital resources of the claimant. Payments for funeral expenses will cover any necessary costs of a simple, respectful funeral within the UK (or in certain circumstances within the EEA states), which may include:

  - (a) For burials:
    - The necessary cost of a new burial plot with an exclusive right of burial or the cost of reopening an existing grave;
    - The necessary fees charged by the authority responsible for cemeteries in the area where the burial takes place.
  - (b) For cremations:
    - The necessary fees charged by the authority responsible for the cremation;

- The cost of any medical references or doctor's certificates;
  - The cost of any necessary removal of an active implanted medical device, e.g. a pacemaker.
- (c) Additionally in all cases:
- The cost of documentation needed for the immediate release of assets of the deceased;
  - When it is necessary to move the body over 50 miles within the UK to the funeral director's premises or place of rest, the reasonable cost of that part of the journey which is over 50 miles;
  - Where the return journey to the funeral is necessarily over 50 miles, the reasonable cost of that part of the return journey which is over 50 miles for the transport of the coffin and bearers, plus one additional vehicle;
  - The necessary cost of a return journey to arrange the funeral, or go to the funeral;
  - Up to £700 for any other funeral expenses. Claims for funeral expenses must be made within three months of the date of the funeral and the Department of Work and Pensions will recover any payments made in respect of funeral expenses from any monies in the deceased's estate. Payments may also be affected by any pre-paid funeral plan taken out by the deceased.

Appendix G – Protection of Property Framework

**Document Control Sheet**

<b>Title</b>	Framework in respect of the temporary protection of property and boarding of pets
<b>Procedure Description:</b>	Framework in respect of the responsibility owed by the local authority to provide temporary protection of property and boarding of pets for persons admitted to hospital or certain other residential establishments.
<b>Target Audience:</b>	Service users and / or their representatives and staff within Adult Social Services.
<b>Authorisation:</b>	Adult Social Services Department Management Team (DMT)
<b>Policy Author:</b>	Elizabeth Jones
<b>Policy Supersedes:</b>	N/A
<b>Operational Draft Date:</b>	February 2013
<b>Remarks:</b>	
<b>Launch Date:</b>	

## **FRAMEWORK IN RESPECT OF THE TEMPORARY PROTECTION OF PROPERTY**

10. Under S48 of the National Assistance Act 1948, the council is under a duty to provide temporary protection of property of persons admitted to hospital or certain other residential establishments.
11. The act states that where “it appears to the Council that there is danger of loss of, or damage to, any moveable property and that no other suitable arrangements have been or are being made for the purposes of this subsection, it shall be the duty of the Council to take reasonable steps to prevent or mitigate the loss or damage. For the purpose of discharging the said duty, the Council shall have power at all times to enter any premises which immediately before the person was admitted or removed as aforesaid were his place of residence, and to deal with any moveable property of his in any way which is reasonably necessary to prevent or mitigate loss thereof or damage thereto.”
12. However, this act also states that where the council has incurred expenses then it may recover these from the person.
13. The Council is permitted, before determining that no other suitable arrangements are in place, to make reasonable enquires. An officer should fully investigate very carefully whether any relative or relevant party would be willing to undertake this function.

### **Who may have such responsibility**

14. **Relative** – In most instances there is usually a relative willing to assume responsibility for a person’s personal effects and property and this should be fully investigated.
15. **Relevant Parties** – where a person has in the past made arrangements for a neighbour or friend to hold a key and where it is reasonable to assume that this would be the person’s wish it would seem proper that they continue to do so should they wish.
16. **Client Affairs Team** – If the service user is already supported by the Client Affairs Team or there is no relative or relevant party to undertake this function, then all matters appertaining to their property, should be dealt with by that team who are best placed within the Council to obtain the necessary authority to act as agents on the person’s behalf.
17. Where relatives or relevant parties undertake this function, they should be asked to sign a form indemnifying the council against any claims for loss or damage to a person’s property or effects.
18. Where there is evidence that it is no longer in the person’s best interest for the keys to a property to be held by a third person, all keys should be held

by the Client Affairs Team.

### **Client Affairs Team role**

19. The Client Affairs Officer must take all necessary action to protect a Service User's property and effects as soon as possible after admission to care or hospital.

20. The following action should be carried out with a witness i.e. another member of a different team.

- Take digital photographs room by room and draw up an inventory of the main items of furniture and effects. This must be signed by both parties undertaking the visit.
- Cash, valuables and important documents, i.e. "moveable property" should be removed and retained for safe keeping. These should be dealt with by the Client Affairs Officer who will record the items received on safe record and counter signed by the witness.
- A copy receipt should be given to the service user and the original held on case file.

21. The situation should be reviewed regularly to avoid unnecessary charges, however, the below should be undertaken at a minimum:

- Mains services – turn off gas, electric and water supplies if an inside stop tap is readily available.
- Check all doors and windows are securely fastened or take remedial action to ensure property's security, i.e. changing locks.
- Inform the Police that the premise is unoccupied and ask them to keep it under surveillance.
- Dispose of perishable foodstuffs.

22. If possible the Client Affairs Officer is to make arrangements for the continuation of the payment of mortgage or rent and keep the relevant parties (including any landlord) informed of the circumstances until the service user returns home or the tenancy is terminated or property sold.

### **Service User Remains Permanently in Care**

23. As soon as it is determined that the service user will remain permanently in residential care the Client Affairs officer should liaise with the service user to assist with the below:

- To dispose of furniture and effects. In these circumstances every effort should be made to ensure where possible and practicable that the person retains personal possessions which they wish to keep or it is thought might wish to keep if able to express their wishes.
- It is important also to establish the existence of a Will and the Council will make reasonable enquiries, this will not include advertising in relevant papers due to time limits. If any specific items of furniture or

possessions are bequeathed these should be safeguarded, i.e. kept pending a decision about their disposal by the service user.

- In circumstances where the service user is unable to express their wishes, such items bequeathed may be handed to the beneficiary subject to a signed undertaking that they remain the property of the service user during his/her lifetime and are therefore merely held in safekeeping.
- To liaise with Housing Benefit and Council Tax Sections to ensure that the person's entitlements are being claimed until the tenancy is terminated or the property disposed of.
- To arrange mains services, e.g. gas, electricity, water, final readings, and/or accounts.
- To arrange for post to be redirected.
- To assist in terminating the tenancy, where relevant.

24. When a service user has a property to be sold and is capable to giving and understanding instructions, the matter may be referred to Client Affairs Team who will assume responsibility thereafter to liaise between the service user and Solicitor to effect the sale.

### **Mental Incapacity**

25. In circumstances where a person is unable to give valid instructions because of mental incapacity the Client Affairs Team must seek directions from the Court of Protection for the appointment of the Assistant Director of Finance, Adult Social Services as Deputy, the keys to their property should be held by Client Affairs Team.

26. The property will then be dealt with according to the directions of the Court and the service user's needs.

27. The usual procedure for the safeguarding of the property and the protection of moveable property will be undertaken by Client Affairs Section.

### **Death or Discharge of a Service User**

28. On discharge or death of the service user the Client Affairs officer should retrieve the valuables and documents and should either return them to the Service User or the Executor of Estate.

29. Cash, especially large amounts should be banked as soon as possible either into the Service User's own bank account or into the teams Client Affairs Account.

### **Boarding of Animal**

30. Arrangements may need to be made for the care of pets, preferably by a relative or neighbour but where necessary the council has a duty to arrange boarding. Unless there are exceptional circumstances the Council will not

normally expect to make such arrangements for periods over 9 weeks.

31. Service users will be required to meet the full cost of this provision.
32. After 9 weeks the position will be reviewed and arrangements made for rehoming where possible.

### **Recovering Costs**

33. Where the council has incurred expenses in relation to the protection of property and boarding of pets, then it may recover these from the person.
34. There is no restriction on the Council requesting that the estate release the cost of the protection of property or boarding of pets.
35. The recovery of expenses must be done at the earliest opportunity.
36. The local authority is required to recover reasonable costs under S48 of the National Assistance Act, where the council is instructed to protect private property, the home owner will be required to cover the costs associated to this function. Presently, the reasonable costs have been calculated to be £300 per month, which will cover a minimum of monthly visits by two officers of the council. This will be subject to a review on an annual basis.

**Where a Service user of their representative is unable to arrange the protection of property and boarding of pets and require assistance under s48 NAA** the council will raise an invoice for the below amounts:

Protection of Property (not movable property) Attending the property on a monthly basis or more frequently if required.	£300.00 per month
Ad hoc direct expenses such as lock smiths etc	Full cost charged to the council.
Kennel Costs	Full cost charged to the Council.

The council reserves its discretion not to require the above payments (in full or in part) where it is satisfied that payment may cause the Service User exceptional hardship.

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## **Appendix 3**

# **LONDON BOROUGH OF BRENT**

## **DEFERRED PAYMENT AGREEMENT POLICY**

## **1. Background**

- 1.1. Under s. 55(1) of the Health and Social Care Act 2001 (“HSCA”) a local authority has a power to enter into a deferred payment agreement with a person who:
- a) is availing themselves of residential accommodation provided by the local authority, or is proposing to do so; and
  - b) is liable, or would be liable, to pay for the accommodation (whether at the full rate standard rate determined in accordance with section 22(2) or 26(2) of the National Assistance Act 1948 or at any lower rate).

Such persons will be referred to in this policy as “service users”.

- 1.2. Such regulations allow local authority’s to agree and operate deferred payments whereby the local authority agrees to defer a service user’s assessed contribution towards the cost of their residential accommodation in return for agreement that the local authority registers a legal charge on the service user’s property in which they have an interest. The aim of the regulation is to allow people with property, but without income and other assets sufficient to meet their full assessed contribution, to have a legal charge placed on their property to meet any shortfall. This enables service users to keep their homes upon admission to residential care for the duration of the deferred payment agreement.
- 1.3. Brent Council has a discretionary power to decide whether, and in what circumstances, to enter into deferred payment agreement with such service users.
- 1.4. This policy was written to provide service users and employees of Brent Council with guidance as to the circumstances the Local Authority will take into consideration when deciding whether to enter into a deferred payment agreement.
- 1.5. This policy has taken into account the Charging for Residential Accommodation Guide (CRAG) issued by the Department of Health, in particular paragraph’s 7.024 and 7.025 of that guide. Also taken into consideration is the Local Authority Circular issued by the Department of Health, numbered LAC (2001) 25.
- 1.6. In accordance with s. 55(2) of HSCA this policy should be read subject to any directions issued by a relevant authority which requires the local authority to enter into a deferred payment agreement.

## **2. Meaning of Deferred Payment Agreement**

- 2.1. A deferred payment agreement is to be given the meaning attributed to it by s. 55(3) of the HSCA, namely an agreement whereby –
- a) during the exempt period the resident will not be required to make payment to the authority of any relevant contributions in respect of periods (or parts of periods) falling within the exempt period, but
  - b) the total amount of the relevant contributions shall become payable to the authority on the day after the date on which the exempt period ends, and
  - c) the resident will grant the authority a charge in their favour in respect of any land specified in the agreement in which he has a beneficial interest (whether legal or equitable) for the purpose of securing the payment to the authority of the total amount payable to them as mentioned in paragraph (b).
- 2.2. The “exempt period” is the period beginning with the time when the agreement takes effect and ending 56 days after the date of the service user’s death, or with any earlier date which, in accordance with the agreement, the service user has specified in a notice given by the service user to the local authority as set out in paragraph 2.4 of this policy.
- 2.3. The terms and provisions of the deferred payment agreement shall be determined by the local authority, subject to any directions from a relevant authority and to the mandatory provision set out at paragraph 2.4 of this policy.
- 2.4. It shall be the term of any deferred payment agreement entered into by Brent Council that any charge may be terminated by notice given to the authority by the service user and on full payment of the full amount which the service user is liable to pay.

## **3. Guiding Principles**

- 3.1. There are four principles that support this policy, namely to ensure that:
- a) Service users are aware of their right to apply for a deferred payment agreement.
  - b) There is an easily understandable, clear and transparent policy regarding deferred payment agreements.
  - c) There is a deferred payment policy which is consistently applied to all service users, taking into account their individual circumstances and needs.

- d) The council will provide administrative efficiency and convenience for service users.

#### **4. Applying for a deferred payment agreement**

- 4.1. Should a service user wish to enter into a deferred payment agreement they shall communicate their request to the Council, preferably in writing, and set out the reasons they wish to enter into a deferred payment agreement.
- 4.2. Service users should assist the Council by providing any documentary evidence or information which the Council requires so as to determine whether to exercise its' discretion to enter into a deferred payment agreement with the service user. Service users have the right to choose not to provide requested information, however failure to provide relevant information requested by the Council may result in the Council being unable to exercise its' discretion.
- 4.3. Where a deferred payment agreement has been requested by a service user, the Council must give consideration as to whether or not to exercise its' discretion to offer a deferred payment agreement.

#### **5. Eligibility Criteria**

- 5.1. To be eligible for a deferred payment agreement the service user must meet the following criteria:
  - a) The service user must have been financially assessed under the National Assistance Act 1948 and accompanying guidance under CRAG.
  - b) The service user must have insufficient income and other assets, other than the value of their main or only home, to meet the cost of their care.
  - c) At the time at which the deferred payment agreement is entered into, the value of the service user's main or only home must exceed the upper capital limit set annually in CRAG.
  - d) The service user, for whatever reason, must not wish to sell their home or is unable to sell their home quickly enough to pay for their care home fees.
  - e) Deferred property agreement must not be entered into while mandatory property disregards apply.
  - f) The service user must be entering into, or have entered into, residential accommodation on a permanent basis.
  - g) The service user must have a legal or beneficial interest in the property.
  - h) The service user must have capacity to enter into a deferred payment agreement or have appointed a lawfully authorised agent to enter into the

deferred payment agreement on their behalf. Any such agent must evidence their lawful authority to do so.

## **6. Relevant Considerations**

- 6.1. When determining whether to exercise its' discretion to enter into a deferred payment agreement, the local authority will give consideration to all relevant factors including, but not limited to, to the following matters:
- a) Whether the size of the weekly deferred contribution is such that it may limit the Council's ability to enter into deferred payment agreements with other service users.
  - b) Whether entering into a deferred payment agreement would impact negatively upon the Local Authority's ability to meet its' statutory duties to other residents of the London Borough of Brent.
  - c) Whether any other person has a legal or equitable interest in the property.
  - d) Whether all persons who have a legal or equitable interest in the property have provided their written agreement to the local authority registering a charge over the property and agreed to the value of the service user's interest in the property.
  - e) Whether the property is subject to a legal or equitable mortgage and whether any such mortgage affects the service user's ability to meet their assessed contribution.
  - f) Whether the mortgagee consents to the local authority registering a charge over the property.
  - g) Whether the property is subject to a registered or equitable charge or caveat.
  - h) Whether the service user intends to leave the property unoccupied or intends to do, or omit to do, and other action which would negatively impact upon the value of the property.
  - i) Whether the service user intends to use the property to earn rental income and to use any such rental income as a means to off-set any unpaid contribution which the service user owes the Council or reduce the amount of the contribution which is to be deferred.
  - j) Whether the service user, or any other person, would suffer exceptional hardship if a deferred payment agreement was not entered into.
  - k) Any other relevant factors.

## **7. Terms of a Deferred Payment Agreement**

- 7.1. A copy of the Local Authority's standard draft Deferred Payment Agreement is attached to this policy.

7.2. The Deferred Payment Agreement referred to at paragraph 7.1 is subject to review and change. In exercising its' discretion whether to offer a deferred payment agreement, the Council may request that the deferred payment agreement include additional conditions and may edit or remove the terms of the standard draft Deferred Payment Agreement.

## **8. Who can authorise the offer of a deferred payment agreement**

8.1. An offer to enter into a deferred payment agreement must be authorised by the Assistant Director of Finance of Brent Council.

## **9. Communication of the Council's decision**

9.1. The Council must communicate its' decision as to whether or not it will offer a deferred payment to the service user who made the request (or the person who was lawfully authorised to make the request on the service user's behalf).

9.2. The decision must be communicated in writing and set out the reasons for the decision.

## **10. Complaints**

10.1. The Council welcomes feedback from service users, and has dedicated officers to manage complaints.

10.2. If service users are dissatisfied with the way they have been treated during the financial assessment process, or the service that they receive, they have the right to make a complaint to the Complaints Officer. The Council has a statutory complaints process to ensure that service user's views and concerns are considered and dealt with appropriately and that Council holds itself accountable to the highest standards.

## **11. Use of financial information and privacy**

11.1. The information the Council collects and keeps about service users is confidential and can only be seen by authorised staff. This information will only be shared with other relevant people and agencies in accordance with the Data Protection Act 1998 or with the written consent of the service user or their legally appointed representative. This Act also gives people the right to see information that the Council keeps about them at any stage.

## **12. Equality Impact**

12.1. The Council has considered the impact this policy will have upon the diverse communities of Brent. The Council has assessed that this policy does not discriminate against groups of service users or present adverse impacts due to their race, gender, disability, sexuality or age.

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## EQUALITY IMPACT ASSESSMENT

### Review of the Fairer Contributions Policy for Adult Social Services and related frameworks

#### 1. What is the service/policy/procedure/project to be assessed?

A review of the Fairer Contributions Policy in Adult Social Care to charge for non-residential services. This is an update of the 2011 policy following on from changes to the Department of Health's guidance dated 29<sup>th</sup> October 2012

#### 2. Describe the aim of the service/policy. What needs or duties is it designed to meet? How does it differ from any existing services/policies in this area?

The aim of this Policy change is ensure that policy and practice in Brent is in line with the Department of Health's Guidance and is consistently applied across all residents of Brent.

More specifically to ensure that:

- Customers contribute for services on the basis of their individual ability to pay for these services through financial assessment, this ensures that they are not left in financial hardship
- All services will now be subject to inclusion for contribution whereas in the past services such as respite did not form part of this group
- The Council is transparent with people about the level of social care funding (Personal Budget) they are entitled to in order to meet their community care needs
- Customers can take this Personal Budget as Direct Payments in order to fund their own services or have the Council buy these services for them
- Contribution for services is now based on the actual cost of services, whereas in the past this was a notional cost.
- Customers can then choose which combination of services to purchase to meet their needs; this is called Choice and Control
- The principles of a Reablement Service, that will benefit the majority of customers, remains free of contribution for the period of Reablement; up to 6 weeks
- The simplification of the contribution process is designed, as part of the Customer Journey, to streamline all of the processes in Adult Social Care for the Customer

This is set in the wider context of demographic changes which mean that the demand for all services will increase over time putting undue pressure on resources and possibly leading to the rationing of these resources in the future unless action is taken. The Transformation is aimed at improving the prevention work through information advice and signposting; improving the ability of people who need immediate support to remain independent for longer in their own homes; to improve the safeguarding of adults who might be at risk or are being abuse so that they can

remain as independent as possible and risk free; and focus the resources for people who require long term support on those with the most complex needs, through a Personal Budget and a Personal Support Plan.

### **3. Are the aims consistent with the council's Comprehensive Equality Policy?**

- Yes the aims are consistent in that this revised Policy does not set out to intentionally discriminate against any of the groups in the Equality Policy or against any individual person on those grounds. The extent to which people benefit from this policy, in the way they are assessed for their financial contribution to services, will be balanced against their ability to pay. It will therefore enhance the Councils ability to meet its duties under the Equality Act to enable people with protected characteristics to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- Some individual service users (including those from categories of protected characteristics under the Equality Act) might be financially worse off as a consequence of the implementation of this proposal. Others will financially benefit, however it is important to note that all service users will be individually assessed on their ability to pay and will not be left in financial hardship as a result of these changes.

### **4. Is there any evidence to suggest that this could affect some groups of people? Is there an adverse impact around race/gender/disability/faith/sexual orientation/health? What are the reasons for this adverse impact?**

The implementation of the revised policy will ensure greater clarity and fairness for all services users, including those with protected characteristics.

All service users will be assessed in the same way regardless of eligible needs in order to determine their contribution to their community care services. Their contribution will be based on their individual ability to pay.

This will also enhance the council's ability to meet its equality duties as the purpose behind this policy is to ensure fairness in the council's charging and to ensure that we act in compliance with community care legislation and relevant guidance as well as the Equality Act 2010.

How much they contribute will be determined following a very careful financial assessment which will take into account, among other things, any additional expenditure they have as a result of their disability

### **5. Please describe the evidence you have used to make your judgement. What existing data for example (qualitative or quantitative) have you used to form your judgement? Please supply us with the evidence you used to make you judgement separately (by race, gender and disability).**

The provision of adult social care is made available only to those who have a

requirement for such care and meet the Council's eligibility criteria. As a result most recipients will enjoy protection under the Equality Act either due to their age or a disability. The impact overall from the implementation of this policy is broadly thought to be neutral presently.

Under the current policy, income from the contributions of service users constitutes about 18% of the funding available for non-residential care services locally, the remaining 72% of care costs are being met from government grant and Council Tax. Service users' contribution to non residential care costs, in 2011/12, was £3.0m (12/13 forecast £3.0m). All contributions are subject to a means test (as set out within the policy) and as a result in 2011/12 34% (12/13 forecast 37%) of service users did not contribute to their care costs due to their low income, 5% (12/13 forecast 6%) contributed below £10 per week, 29% (12/13 forecast 27%) contributed between £10 and £49, 27% (12/13 forecast 23%) contributed between £50 and £99.99, 5% (12/13 forecast 6%) contributed between £100 and £199.99 and 1% (12/13 forecast 1%) at £200 or above per week. Only 18% (12/13 forecast 19%) paid the full cost of their care, with 82% of service users receiving a subsidy towards the cost of their care. The % are projected to fall with the implementations to the changes in benefits, with more people being financially assessed as being unable to contribute towards their care as their benefit levels drop.

Whilst there is the potential therefore for certain protected characteristics to be affected more than others, any adverse effect will be mitigated by the operation of the policy (because individuals will be assessed on a case by case basis according to their own circumstances and any adverse impact is proportionate as necessary for the operation of a sustainable and lawful practises.

**6. Are there any unmet needs/requirements that can be identified that affect specific groups? (Please refer to provisions of the Disability Discrimination Act and the regulations on sexual orientation and faith, Age regulations/legislation if applicable)**

Overall the impact of this policy will be positive as it will continue to ensure that the contributions policy remains linked to Personal Budgets. It is much more transparent, consistent and fair, and enables more choice and control to over the provision of non- residential services to service users.

It ensures that the aims set out within s149 Equality Act 2010 are more likely to be realised for the reasons given above.

**7. Have you consulted externally as part of your assessment? Who have you consulted with? What methods did you use? What have you done with the results i.e. how do you intend to use the information gathered as part of the**

**consultation?**

N/A – this is a revision to a policy in line with changes to the Department of Health’s Guidance. Consultation was undertaken in 2011 prior to implementation of the existing policy and the changes introduced by this revision are expected to have very limited effect for a very small number of individuals.

**8. Have you published the results of the consultation, if so where?**

N/A

**9. Is there a public concern (in the media) that this function or policy is being operated in a discriminatory manner?**

None .

**10. If in your judgement, the proposed service/policy does have an adverse impact, can that impact be justified? You need to think about whether the proposed service/policy will have a positive or negative effect on the promotion of equality of opportunity, if it will help eliminate discrimination in any way, or encourage or hinder community relations.**

N/A

**11. If the impact cannot be justified, how do you intend to deal with it?**

The Council also operates an “Exceptional Hardship Policy” so if a service user happens to experience exceptional hardship as a result of being required to contribute towards their care, their case can be considered under this policy by the Director of Adult Social Services

**12. What can be done to improve access to/take up of services?**

N/A

**13. What is the justification for taking these measures?**

The justification is based on the following:

- Need to have a policy that complies with the 2012 Department of Health Guidance on charging/contributions for non- residential services.

**14. Please provide us with separate evidence of how you intend to monitor in the future. Please give the name of the person who will be responsible for this on the front page.**

The monitoring of the impact of this policy change will be undertaken by the Senior Finance Analyst in Adult Social Care through closely monitoring the outcome of the individual financial assessment and comparing this with previous years, if this is

applicable.

**15. What are your recommendations based on the conclusions and comments of this assessment?**

To adopt the changes within the current policy

Should you:

- *Take any immediate action?* None
- *Develop equality objectives and targets based on the conclusions?* This will be done by the Senior Finance Analyst and reported to the Departmental Management Team via reports produced from the client information system Frameworki
- *Carry out further research?* This will need to be addressed again in February 2013. Every year a service user's financial contribution needs to be reviewed and re-assessed to ensure that their contribution is fair and proportionate to their ability to pay. This revision can then be screened to assess if there has been any further adverse impact on any other groups of services user by comparing the outcome of this with current practice. The Council also, each year, needs to take account of the true cost of the services it provides and balance the income to be received from service users against these costs. This ensures that the Council carries out its duties to ensure value for money for the council tax payers in Brent. The Council also has duties under the Equalities Act to ensure no one group with protected characteristics is treated more fairly or unfairly than another group thereby encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

**16. If equality objectives and targets need to be developed, please list them here.**

N/A

**17. What will your resource allocation for action comprise of?**

Reports are produced and owned by the Business Partner Team and will be presented to regular DMT meetings

The Senior Finance Analyst currently undertakes this pole

DMT will determine if further investigation is needed in certain reporting areas and where any further reports need to go

**Person Responsible for publishing the results of the Equality Impact Assessment:**

***Elizabeth Jones – Assistant Director of Finance***

**Person Responsible for monitoring the impact of these changes:**

***Minesh Patel – Senior Finance Analyst***