



Sussex Housing & Care

## Care Home Fees, Arrears and Recovery: Policy

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<b>Cross references:</b>	<ul style="list-style-type: none"> <li>Care Home Arrears Procedure Notes (former and current tenants).</li> <li>Care Home Admissions Policy and Procedure</li> <li>Ending a Licence Procedure</li> <li>Proportionality Procedure.</li> </ul>

### Change control details:

Record any changes to this document in the table below to provide a documentation audit trail.

<b>Date</b>	<b>Version</b>	<b>Reason for changes</b>
	V1	<ul style="list-style-type: none"> <li>To replace Care Home Fees briefing provided to Care Home Managers</li> </ul>

		<ul style="list-style-type: none"> <li>• Includes areas set out in 2014 Care Home Pre-Admissions Policy e.g. Financial assessment</li> <li>• Linked to Care Home Arrears Procedure</li> </ul>

## Legislation

Including, but not limited to:

- Protection from Eviction Act 1977
- Human Rights Act 1988
- Mental Capacity Act 2005
- Equality Act 2010
- Care Act 2014 (including Sections 14, 17 and 69-70)

## Regulations

- The Care and Support (Charging and Assessment of Resources) Regulations 2014
- The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014

## Statutory guidance

### [Statutory guidance on Care and support](https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#charging-and-financial-assessment)

<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#charging-and-financial-assessment>

Annexe A – [Choice of accommodation and additional payments](#)

Annexe B – [Treatment of capital](#)

Annexe C – [Treatment of income](#)

Annexe D – [Recovery of debt](#). Although aimed at local authorities is very relevant for care homes seeking to recover debt, sometimes from local authorities.

### **Delay to cap on care costs to 2020**

<https://www.gov.uk/government/publications/delay-in-the-implementation-of-the-cap-on-care-costs>

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## Care Home Fees Recovery: Policy

### 1. Introduction

1.1 The mission of Sussex Housing & Care (SHC) is to help '*...people live their later lives to the full*'. SHC has four residential care homes and the monthly charge residents pay to live in them covers the costs of the following services:

- Care services
- Domestic services
- Meals and refreshments
- All utilities e.g. heating
- Laundry
- Redecoration, repairs and maintenance
- TV licence.

#### What kind of fees does this policy cover?

1.2 The care home arrears and recovery process described in this policy will cover the following services which can be charged for under The Care Act 2014:

- Respite care
- 24 hour care in a registered care home

The policy also covers the third party top ups for the local authority (LA) fees.

#### Who is responsible for this policy?

1.3 The Care Home Manager (CHM) will take the lead on recovering care home arrears from residents and following the stages outlined in the accompanying procedure.

1.4 The Care Home Administrator will undertake actions, as agreed with the CHM, such as writing to the resident or contacting the Finance Team.

1.5 The Income Recovery Officer (IRO) will support the CHM in the process of recovering care home arrears.

1.6 The Finance Team will work to resolve any anomalies on the fees account which are identified by the care home. The CHM will notify them when arrears have reached a particular level, as set out in the Care Home Fees Recovery Procedure. Finance will send out subsequent letters to the resident about their arrears.

## 2. Purpose of this policy

- 2.1 To ensure timely intervention to recover debt whilst recognising the vulnerability of residents.

## 3. How care can be funded

- 3.1 The Care Act 2014 sets out a '*...new legal duty for an adult's 'eligible needs' to be met by the local authority, subject to their financial circumstances.*'<sup>1</sup>
- 3.2 There are a range of ways that care can be funded. It is vital for the Care Home Manager (CHM) to discuss at the first meeting with the prospective resident and their relatives/representatives, all of these methods of funding and how they can be obtained.
- 3.3 The different types of funding for care are listed below with information on how they can be obtained and the process it involves:

### 1. Self funding

- **What this means:** The resident pays for the full cost of their care.
- **How to obtain:** Only an independent financial assessment (IFA) is required.

### 2. LA fully funded

- **What this means:** the LA have agreed to pay for the full cost of the care.
- **How to obtain:** Need confirmation in writing (email will suffice) of the agreement from the LA.

### 3. LA funded with third party top-up

- **What this means:** the LA will pay for the care at the agreed rate and the family/benevolent fund agree to pay for the top-up.
- **How to obtain:** there are two assessments that are carried out by the LA (needs and finance). The family will need to contact the LA for an assessment of needs of the resident, the potential resident will need to meet the eligibility criteria before funding is approved. The threshold for being financially eligible for LA funding is £23,250.00. If a person has this amount or below they can contact the LA for a financial assessment, which is the families' responsibility. If the funding is agreed, this will need to be communicated to the CHM by the LA in writing before a room can be offered or confirmed.

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<sup>1</sup> <https://www.gov.uk/government/publications/care-act-2014-part-1-factsheets/care-act-factsheets#factsheet-2-who-is-entitled-to-public-care-and-support>

#### 4. Annuity

- **What this means:** an annuity pays for part, or all, of the cost of the care.
- **How to obtain:** only an IFA is required. An annuity is usually to pay a proportion of the fees, the CHM to ask the prospective resident how they are going to pay for the remainder of the fees.

#### 5. Deferred payment loan from LA

- **How to obtain:** the LA agree to pay for the fees on a loan basis. If the person has assets, this will be repaid upon death or sale of property. The resident or relative(s) will need to apply to the LA for this loan.

#### 6. 12 week disregard

- **How to obtain:** the LA will pay for the fees for a period of twelve weeks whilst property is being sold. The resident or relative(s) will need to apply to the LA for this disregard.

#### 7. NHS Nursing extra care funding

- **How to obtain:** Occasionally this is awarded to a resident who is receiving palliative care. This is assessed via their GP.

#### 8. NHS continuing health care funding.

- **How to obtain:** A guide to this funding can be found at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/690426/National\\_Framework\\_for\\_CHC\\_and\\_FNC - October 2018 Revised.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690426/National_Framework_for_CHC_and_FNC_-_October_2018_Revised.pdf)

## 4. LA assessments of potential residents

- 4.1 This section of the policy provides more information on the financial and needs assessments that a potential resident may undergo.

### LA needs assessment

- 4.2 An LA will only fund care for adults if they meet the following criteria:

- Their need is due to a physical or mental impairment or illness
- The adult is unable to achieve two or more of the following outcomes:
  - normal activities of daily living
  - maintain family or other significant personal relationships
  - access and engage in work, training, education or volunteering
  - access facilities and services in the local community
  - carry out caring responsibilities
- By being unable to achieve one of the outcomes listed above there is likely to be a significant impact on the adult's wellbeing.

- 4.3 It is the responsibility of the resident or relative(s) to apply to the LA for the assessment.

### **LA financial assessment**

- 4.4 The LA will also carry out a financial assessment and look at the individual's income and capital to determine how much they will be required to contribute towards the cost of their care and residential services.
- 4.5 The [Care Act 2014 Guidance](#) sets out the process for looking at the individual's assets, including property, savings, stocks and shares, and some kinds of income.
- 4.6 The 'upper capital limit' is currently set at £23,250. Below this level, a person can seek means-tested support from the LA. The lower capital limit is currently £14,250, below this level a person will not need to contribute to the cost of their care and support from their capital. The regulations relating to capital can be found [here](#) and income [here](#).

## **5. SHC requires a financial assessment**

- 5.1 Prior to being housed by SHC, all prospective residents also need to have a SHC financial assessment. The purpose of this assessment is to identify the length of time that a prospective resident might be able to meet the fees charged at the SHC care home of their choice. It will also assess whether the prospective resident is likely to require top up funding from the LA. SHC will provide details of an independent financial advisor that could be used, or the prospective resident can choose their own

## **6. Third party top up charge**

- 6.1 If a person chooses a care home that charges more than a LA would usually pay for care: a friend, relative or charity will have to pay the difference in cost. This is called a 'third party top up' charge. The care home fees charged by SHC mean that residents will need to be able to, and agree to, another party paying a third party top up charge. This financial assessment will determine whether the person paying the third party top up charge (which cannot be the prospective resident) can meet the fees.
- 6.2 Statutory regulations state that the third party must sign an agreement with the LA.

## **7. SHC care home fees**

- 7.1 Once an assessment of dependency has been completed and the means of paying for care has been established, the prospective resident will then be eligible for housing in our care homes. This would either be for permanent

housing if this was necessary, or respite care when permanent residential care is not needed.

- 7.2 Each SHC care home maintains a schedule of fees. These vary according to the room rate, with standard and premium rooms available, and by the level of dependency of each resident. There are five levels of dependency, with clear criteria for each. Rooms used for respite are charged at 20% above the room rate.
- 7.3 The schedule of fees for room rates is updated annually, and forms part of the brochure which is made available to residents, their families and any funding agencies. Residents' dependency levels are also reviewed, and fees adjusted accordingly.

## **8. Obligations to pay fees and charges**

- 8.1 The SHC Care Home Licence agreement includes the following areas relevant to care home arrears and their recovery.

### **Independent financial assessment**

*'All prospective residents will undertake to provide an independent financial assessment prior to moving in.'*

### **How frequently are the fees due?**

*'The payment of the monthly charge is due in advance on the first day of each month, or the nearest following day if the first day of the month falls on a bank holiday or weekend. In the event of death, any fees outstanding will be charged to the estate of the Resident.'*

### **Change of circumstance**

- 8.2 The care home resident agrees:

*'To inform the Home Manager or the Regional Manager, in strict confidence, of any changes in financial circumstances that may affect the Resident's payment of the monthly charges.'*

### **Third Party Top up fees**

- 8.3 The person(s) responsible for these top-up fees agrees:-

*For the avoidance of doubt, any persons agreeing to pay 'top-up' fees shall be personally liable, both \_\_\_\_\_ jointly and severally with the Resident, for all such arrears howsoever arising, including the costs of any recovery and interest thereon at the Court Rate for the time being.*

*No forbearance or indulgence on behalf of the Association shall affect the Resident's or person paying top-up liability under this Licence*

## Ending the licence agreement

8.4 The first ground listed for ending the licence agreement with the resident is:

*'The non-payment of fees'*

## 9. Who owes the care home fees?

9.1 A key part of the initial process of recovering care home arrears is to make a distinction between those fees which are owed by either the:

- LA
- Resident(s) and/or
- Third party.

9.2 The **Care Home Fees, Arrears and Recovery Procedure** will set out in detail how SHC will seek to recover the arrears relating to care home fees from each of these groups.

## 10. Care home fees owed by the LA

10.1 Where a resident is funded by the LA there is a contract in place between all parties. The Care Home Manager is responsible for chasing fees owed by the LA and should complete this exercise at least every fortnight.

## 11. Recovering care home arrears from residents

11.1 This section of the policy covers what SHC will do when the care home fees are owed by residents. The recovery of debts from those who are receiving care and support is a sensitive issue given the potentially vulnerable nature of the client group.

11.2 The [principles outlined in regulation](#) accompanying the Care Act will underpin our approach to debt recovery in relation to care fees, namely that:

- Possible debts must be discussed with the person or their relative/representative
- SHC must act reasonably

- Arrangements for debt repayments should be agreed between the relevant parties
- Repayments must be affordable
- Legal action should only be considered after all other reasonable avenues have been exhausted
- SHC will undertake a proportionality assessment (see Section 12 below) before any legal remedy is considered. To end a licence SHC would serve a Notice to Quit.

11.3 It is important for SHC staff to recognise that there could be a variety of reasons why a care home resident has not paid the assessed charge, such as:

- Issues around diminishing capacity
- An administrative error
- The resident may have needed to enter hospital, meaning the resident may not have been able to notify their LA of the change in circumstances or are not easily able to arrange payments.

## 12. Proportionality Assessment

12.1 If a care home arrears case reaches the stage where a legal remedy may be considered, the CHM will carry out a Proportionality Assessment. This will be used to assess whether any legal action taken by SHC in a care home arrears case is proportionate. This assessment by SHC will include:

- What type of action is being considered?
- What informal and formal action is being taken in this matter so far? E.g. visits, mediation
- Is Respondent vulnerable? E.g. A learning disability? Victim of domestic abuse?
- Is the Respondent disabled within the meaning of the Equality Act 2010? If yes, please give details including whether it is believed that there is a link between this disability and the Respondent's rent arrears.
- Summarise why the proposed action is considered to be necessary and proportionate.

12.2 This assessment will also enable SHC to consider if its actions are proportionate in relation to the [Human Rights Act 1998 \(Article 8\)](#), which could be used by a Respondent as a defence.<sup>2</sup>

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<sup>2</sup>

[http://england.shelter.org.uk/legal/security\\_of\\_tenure/possession\\_proceedings/public\\_law\\_and\\_human\\_rights\\_defences](http://england.shelter.org.uk/legal/security_of_tenure/possession_proceedings/public_law_and_human_rights_defences)  
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- 12.3 This assessment will be documented using a standard form and then kept under review as the case progresses, to check if SHC are still acting proportionately.
- 12.4 Staff should refer to the **Proportionality Assessment Procedure** for the template form and guidance on how to complete this assessment.

### 13. Actions to be taken by the Care Home Manager

- 13.1 CHMs will keep the residents' ability to pay under review. If their funds are dwindling, it is the responsibility of the resident (and their relatives/representatives if appropriate) to discuss with the CHM whether they should transfer to a cheaper room and/or any options for funding their care. If the resident will be unable to meet the fees, and has no other resources to assist, SHC will help them to find an alternative care home.
- 13.2 Similarly, if family or others who are paying the third party top-up fees become unable or unwilling to continue this arrangement, SHC will help the resident to move to an alternative care home.
- 13.3 The **Care Home Arrears Procedure** provides the CHM, and other SHC staff, with the information needed on:
- How to run an arrears report
  - The preferred methods of payment for outstanding debts
  - Actions for SHC staff to take in response to the arrears of permanent and respite care home residents.

### 14. Vulnerable residents

- 14.1 The SHC care home arrears recovery process will take proper account of the potential vulnerability of our residents. Vulnerability will not mean that a resident will not be required to pay amounts they are legally obliged to pay. However, where a resident is recognised to be vulnerable SHC will give consideration to:
- Allowing them longer to pay
  - Postponing enforcement action
  - Referring the resident to sources of independent advice
  - Providing information in an accessible format
  - A temporary payment arrangement with lower repayment than would normally be agreed
  - Informing the relevant LA Adult Social Care Team of any concerns regarding the resident's safety or welfare.

## Mental Capacity

- 14.2 If the resident lacks capacity SHC will ensure that third parties are involved, such as representatives and interpreters, from the assessments of needs and finances to issues relating to care home arrears. All practical steps will be taken to enable a resident to be supported to arrive at their own decisions.

## Lasting Power of Attorney

- 14.3 As part of the pre-admissions process, when establishing how fees are going to be paid, SHC staff will encourage residents (and their relatives) to set up a Lasting Power of Attorney (LPA). They can appoint two different kinds, either a Property & Financial Affairs LPA or a Health & Welfare LPA or both.

## 15. Equalities and diversity

- 15.1 SHC's **Equality and Diversity Policy** states its commitment to aiming:

*'...to ensure equal treatment of all residents in the provision of services.'*

- 15.2 An Equalities Impact Assessment has been carried out to assess the impact of this policy and procedure.