There are two main kinds of service provided by Local Authorities – residential care, and care in the person’s own home. Unfortunately, these services are not always free.

**Residential Care**

Local Authorities are under a duty to charge for care provided in a residential home. If you are assessed as requiring residential care, you may be able to avoid paying fees if your primary need is related to healthcare, as this means that the National Health Services should pay for your care in full (decided in a court case called *R v North and East Devon Health Authority ex parte Grogan* in 1999). If you think that this may apply in your case, you should ask for a Continuing Health Care (“CHC”) assessment.

If you are not eligible for CHC, and your care is therefore provided by the Local Authority you will almost certainly be charged. The Local Authority’s power to charge for these services comes from section 22 of the National Assistance Act 1948, and the current rules governing assessing charges is set out in the National Assistance (Sums for Personal Requirements and Assessment of Resources) Amendment (England) Regulations 2010, and the Charging for Residential Accommodation Guide (CRAG).

When you are assessed as requiring Residential Care, the Local Authority must set out how they have assessed your contribution in writing.

**Assessment of Capital**

In assessing your capital, the Council can consider the value of any home which you own, as well as any savings and assets held in the UK or abroad. As of April 2010, residents with over £23,250 in capital are expected to meet the full cost of their care (“the standard rate”).

If you have between £14,250 and £23,250, the Local Authority will assess your “tariff income” – that is, each £250 over the limit will be considered to add £1 per week to your income when they assess how much you have to contribute to your care. If you have less than £14,250 in capital, this will not be calculated towards you care.

Certain elements of capital are not assessed at all for the purposes of assessment. These include the surrender value of life insurance policies or annuities and the value of funds held in trust or administered by a court, which derive from a payment for personal injury, including compensation for vaccine damage and criminal injuries, and personal possessions (as long as they were not bought with the intention of avoiding the charge). There are other more specific “disregards” set out in CRAG, which are less commonly found. Swain and Co are unable to give financial advice, so we recommend that you seek advice from a specialist if you have complex financial circumstances.

If you own property jointly, for example a joint bank account with your spouse or partner, you will be considered own half of its value.
**Assessment of income**

There are very specific rules on what income a Local Authority can take into account in considering how much you have to pay.

Generally, all income in your name will be looked at for the purposes of the means test, including all earnings and benefits. The local authority will usually assume for the purposes of calculation that you are claiming all benefits to which you are entitled, so it is important to ensure that you make sure you seek advice to make sure you are claiming all appropriate benefits. However, this is subject to a “personal expenses allowance” (£22.30 per week from 12 April 2010). Local Authorities have a discretion to allow a different amount in “special circumstances”, such as where the person has a dependent child, or where the person receives the majority of a couple’s income, and their partner is not a resident.

Once the personal expenses allowance has been excluded, other income will either be;

- Taken account in full;
- Partly disregarded;
- Fully disregarded.

Most income is taken fully into account when assessing your means. Income which is “partly disregarded” includes small amounts from personal private pensions or certain armed forces pensions, and a “savings credit” for people over the age of 65.

Certain benefits, such as the mobility component of Disability Living Allowance and payments out of the Independent Living Fund.

**Non-Residential Care**

Unlike residential care, there is no duty to charge for non-residential care. The power of local authorities to charge for non-residential community care services comes from s17 of the Health and Social Services and Social Security Adjudications Act 1983, which gives local authorities a power to make reasonable charges for services. This is governed by the *Fairer Charging Policies for Home Care and other non-residential Social Services* document.

Local Authorities have a wide discretion as to charging for services, but they are limited by certain rules. The basic rule is that they cannot put charges so high that a person has less than a minimum income – which is set at a sum equal to the level of income support plus 25%.

In assessing whether you can be charged, the local authority has to disregard certain parts of your income and capital. You should not be charged if you receive Income Support or Guarantee Pension Credit and your total income meets the minimum level. If you receive more than that, you can be assessed, but the Council has to disregard certain elements of your income.

The Council cannot take into account the mobility component of Disability Living Allowance, and any other disability related expenditure, such as specialist items required as a result of your disability. They should also disregard other expenditure such as housing costs and Council Tax.

The local authority can take into account your savings and other capital, although they cannot take into account your house if it is your main residence.

If you have a partner, their savings and income should not be taken into account.
If you are to be charged, the local authority should ensure that you are provided with appropriate bene-
fit advice.

The Council also has a duty to consult service users before a charging policy is brought in.

**Section 117 of the Mental Health Act 1983**

If you have been detained under certain provisions of the Mental Health Act 1983, the Local Authority
has a duty to provide “after-care” services in conjunction with the responsible NHS Primary Care Trust.
If you are eligible for services under this section, the courts have said that the Local Authority has no
power to charge you for them. However, only people who have actually been detained under mental
health legislation will qualify for this service.

**CONTACT OUR SPECIALIST COMMUNITY CARE TEAM TODAY:**

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