

Appendix 1: Legal powers to charge an arrangement fee for non-residential care and support provided to people with over the capital threshold.

1. **Section 14 of the Care Act 2014** gives local authorities the power to charge the arrangement fee. Specifically it states that:

(1) A local authority—

- (a) may make a charge for meeting needs under sections 18 to 20, and
- (b) where it is meeting needs because Condition 2 in section 18 or Condition 2 or 4 in section 20 is met, may make a charge (in addition to the charge it makes under paragraph (a)) **for putting in place the arrangements for meeting those needs.**

The relevant parts of Section 18 are as follows:

18 Duty to meet needs for care and support (extract)

(3) Condition 2 is met if—

- (a) the local authority is satisfied on the basis of the financial assessment it carried out that the adult's financial resources are above the financial limit, but
- (b) the adult nonetheless asks the authority to meet the adult's needs.

Please note

- Currently Section 18 (3) only applies to non-residential care and support.
- We have had legal clarification that, where the adult lacks capacity, the request can be made by someone else authorised to act on their behalf.
- Section 20 has not been included in this summary as it relates to carers who we do not currently charge.

2. **The Care and Support (Charging and Assessment of Resources) Regulations 2014** further clarifies this:

Regulation 5 states: Where a local authority is meeting needs because Condition 2 in section 18, or Condition 2 or 4 in section 20, of the Act is met, the charge the authority may make under section 14(1)(b) of the Act **may only cover the cost that the authority incurs in putting in place the arrangements for meeting those needs.**

3. **The Care and Support Statutory Guidance** (Chapter 8) contains the following on this subject:

Para 8.58. Arrangement fees charged by local **authorities must cover only the costs that the local authorities actually incur in arranging care. Arrangement fees should take account of the cost of negotiating and/or managing the contract with a provider and cover any administration costs incurred.** Where a local authority chooses to meet the needs of a person with resources above the financial limit who requires a care home placement, it must not charge an arrangement fee. This is because it would support that person under its power (rather than its duty) to meet needs, and the ability to charge the arrangement fee applies only to circumstances when the authority is required to meet needs.

Para 8.59. Local authorities must not charge people for a financial assessment, a needs assessment or the preparation of a care and support plan.

Para 8.60. It may be **appropriate for local authorities to charge a flat rate fee for arranging care**. This can help ensure people have clarity about the costs they will face if they ask the local authority to arrange their care. **However, such flat rate costs must be set at a level where they do not exceed the costs the local authority actually incurs.**

Circumstances under which a <u>non</u> -residential client is paying the full cost	Can an arrangement fee be charged?
Clients paying the full cost of their care because their available income (following the financial assessment) is more than the cost of their care. By definition they have below the capital threshold which is why a detailed financial assessment of their income has taken place.	NO
Clients with capacity who have over the “financial limit” but who nonetheless ask the LA to meet their needs (Section 18 (3) of the Care Act).	YES
Clients without capacity who have over the “financial limit” but where someone authorised to act on their behalf nonetheless asks the LA to meet their needs (Section 18 (3) of the Care Act).	YES
Clients who lack the capacity to arrange for their own care and who have no-one authorised to do so on their behalf, regardless of whether they have over the capital limit or not (Section 18 (4) of the Care Act).	NO