

## Disability related expenditure and pets care costs

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### Legal Entitlements & Problem-Solving (LEaP) Project

LEaP is an innovative problem-solving project that helps families of children with brain conditions cope with the legal barriers they face.

We listen to families and help them get the knowledge they need to access health, social care and other support services. We identify the common legal problems that prevent families getting access to services and we develop innovative ways of solving those problems. We aim to reach as many families as we can by sharing our solutions as widely as possible.

### School of Law & community engagement

Community engagement is fundamental to the ethos of the School of Law at Leeds University. Students are given every encouragement and support to use their legal skills to benefit of the local community. In doing this students develop these skills and deepen their understanding of the role of the law in the real world: the central role of the law in fostering social justice. In furtherance of this aim the School supports (among other initiatives) a number of law clinics and the Cerebra LEaP project.

# Cerebra Legal Entitlements and Problem-Solving (LEaP): Disability related expenditure and pets care costs

## Cerebra & the LEaP Project

In 2014 Cerebra, a unique charity set up to help improve the lives of children with neurological conditions, endowed a research Chair in Law to support disabled children and their families experiencing difficulties in accessing their statutory entitlements to care and support services. The project is now based at the School of Law, Leeds University and the research programme titled the [Legal Entitlements and Problem-Solving \(LEaP\) Project](#).

Details of the programme and past research outputs can be accessed at: <http://w3.cerebra.org.uk/research/university-of-leeds-cerebra-legal-entitlements-and-problem-solving-project/>

Both the School of Law and Cerebra receive requests from disabled people and their families for advice and support. Where these requests come within the terms of the Cerebra LEaP Project, they are assessed by the Cerebra in-house research unit and those cases which meet the LEaP eligibility criteria are referred to the Project Team for consideration. We listen to disabled people and their families and help them get the knowledge they need to access health, social care and other support services. We identify the common legal problems that prevent them from getting access to services and we develop innovative ways of solving those problems. A key approach to tackling a commonly occurring problem is to commission research which benefits from the School of Law's excellent student '*pro bono*' researchers. We aim to reach as many disabled people and their families as we can by sharing our solutions as widely as possible.

As well as helping individual disabled people and their families, the Project generates vital information for the wider programme. The research is aimed at improving our understanding of the difficulties faced by disabled people and their families in accessing support services and learning how these problems can be resolved effectively. The team uses the research data (which is held securely and anonymised) to study practical problem-solving techniques and identify which approaches work best, with a view to refining the way we provide advice and disseminate good practice findings for the wider public benefit.

## Background note

In 2017 the *pro bono* unit at the School of Law was contacted by a number of people expressing concern about the dilemmas faced by disabled people and their families regarding the impact of local authority charging policies. The problem concerned the difficulty they were experiencing in paying local authority care charges in addition to paying for their basic living costs and the costs of keeping a much loved pet. Since there appeared to be no relevant research or formal policy guidance on this issue it was decided that this topic should be investigated by student *pro bono* volunteers at the School.

Although the research will most likely have a greater impact on adults in need than on younger disabled people the findings are of relevance for all disabled people.

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## Executive Summary

1. This research appears to be the first concerning the impact of local authority social care charging on pet owning disabled people living in the community (para 2.03).
2. Notwithstanding references to pet ownership by those advocating the advantages of personal budgets (as an imaginative way of meeting the well-being outcomes of disabled people) no local authority had a written policy concerning the treatment of such expenditure (para 7.07).
3. Given the prevalence of pet ownership and the research evidence concerning the positive impact of pet ownership on well-being the lack of formal policies concerning this question is surprising (para 2.01).
4. 41 local authorities (89% of the sample [n=46]) indicated that pet care costs would not be taken into account 'in any circumstances'. Only five authorities (11%) indicated that such costs might be considered – although on analysis it appears that a total of nine (20%) would in fact be prepared to consider such costs 'on a case by case' basis. In addition three authorities indicated that they would consider such costs if they resulted in 'hardship' for the disabled person (para 7.07).
5. Local authority charges that ignore pet care costs will subject disabled people to severe hardship. After paying their council's social care charge, dog owning disabled adults under pension age may be left with no more than £75.25 per week<sup>1</sup> (and in some cases as little as £48.17pw)<sup>2</sup> from which they are expected to pay for (among other things) their food, gas, water, electricity, telephone bills, travel costs, clothing, house repairs, equipment purchase, insurance expenses and recreational activities (para 4.04).
6. Legally all social services authorities must consider pet care costs when assessing whether it is 'reasonably practicable' for a disabled person to pay their social care costs. This means that at least 80% of the respondent authorities had misunderstood their statutory obligations: a misunderstanding that is also highlighted by those authorities that considered that the relevant test for consideration to be 'hardship' rather than 'reasonable practicability' (para 8.03).
7. Since the charging rules for social care are not uncomplicated and given the research evidence concerning the general reluctance of disabled people to complain, it is important that charging policies contain explicit mention of pet care costs – rather than expecting individuals to raise this issue and to do so by way of a complaint (para 8.03).
8. Given the finding of widespread misunderstanding by local authorities of their legal obligations there is a strong case for pet care costs to be included as a specific item in the list that appears in the [Statutory Guidance](#) at Annex C para 40.

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<sup>1</sup> Calculated as a person over 24 whose MIG will be £91.40 (see para 5.06 below) from which is subtracted £16.15 - the lower estimate of the cost of owning a dog (see para 4.03 below).

<sup>2</sup> Calculated as an adult under 25 whose MIG will be £72.40 (see para 5.5.06 below) from which is subtracted £24.23 - the higher estimate of the cost of owning a dog (see para 4.03 below).

## 1. Introduction

- 1.01 Many disabled people are pet owners. For many their pet is of incalculable importance to their sense of well-being. Many disabled people experience severe isolation and for many their pet is their main companion. We outline in the next section some of the research concerning the benefits of pet ownership and the preponderance of evidence suggesting that pets can have profoundly beneficial impacts on key measures of well-being: physical, mental and emotional – as well as providing for many a sense of security.
- 1.02 Social services authorities in England are required to promote the welfare of disabled children<sup>3</sup> and the well-being of adults in need<sup>4</sup> – and in particular people whose needs arise from a physical or mental impairment or illness.<sup>5</sup> Local authorities are permitted to charge for any support provided in furtherance of these duties.<sup>6</sup> The present study considers the adult charging regime. The main reason for this focus is that the parameters of this regime are more clearly defined for adults – both by regulations and Government policy – and that all the approaches to the School of Law's *pro bono* programme by individuals adversely impacted by the charging rules, concerned adults.

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<sup>3</sup> Children Act 1989 section 17.

<sup>4</sup> Care Act 2014 section 1.

<sup>5</sup> The Care and Support (Eligibility Criteria) Regulations 2015 SI 313 reg 2.

<sup>6</sup> For disabled children, under The Children Act 1989 section 29 and for adults in need, under the The Care Act 2014 section 15.

## 2. Research concerning pets and well-being: an overview

2.01 There has been significant research that highlights the potential health and well-being benefits that household pets can have for disabled people. Much of this focuses on their ability to mitigate the adverse effects of loneliness and social isolation.<sup>7</sup> The evidence suggests that general health and social well-being improves with pet ownership,<sup>8</sup> both indirectly through increased socialisation and directly through physical activity, like dog walking.<sup>9</sup> Much of the research relates to the benefits experienced by older people<sup>10</sup> but it appears this group is not unique: studies have, for example, found evidence that family pets can improve the social skills of young people with Autistic Spectrum Disorders<sup>11</sup> and the sense of well-being of people living with mental health problems.<sup>12</sup>

2.02 A 2014 review of the research (focused on older people) by McNicholas listed the following implications for policy and practice as:<sup>13</sup>

- Greater recognition of the importance of a pet to older people;
- A pet may represent links with a deceased spouse, a valued source of companionship and emotional support as well as a lifestyle choice;
- Care facilities should be aware that enforced loss of a pet may induce feelings of distress and withdrawal which may not be communicated to carers;
- Pet ownership should be viewed as an important issue in any assessment prior to entry to any care facility;
- Wherever possible pet ownership should be retained as a factor that promotes quality of life and benefits to health.

2.03 Although there has been some research that considers the importance of pet ownership for older people in residential care<sup>14</sup> this pilot study appears to be the first

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<sup>7</sup> See for example D Perlman & L Peplau, 'Theoretical approaches to loneliness' in L Peplau & D Perlman (eds.), *Loneliness: A sourcebook of current theory, research and therapy* (John Wiley & Sons 1969) and T Seeman, 'Health promoting effects of friends and family on health outcomes in older adults' in *American Journal of Health Promotion*, (2000) 14, 362-370.

<sup>8</sup> June McNicholas, 'The role of pets in the lives of older people: a review' in *Working with Older People*, [2014] 18(3) 128-133; L Hart, 'The Role of Pets in Enhancing Human Well-being: Effects for Older People' in I Robinson (ed) *The Waltham Book of Human-Animal Interactions: Benefits and Responsibilities* (Waltham 1995).

<sup>9</sup> R Heuberger, 'Associations of Pet Ownership with Older Adults Eating Patterns and Health' in *Current Gerontology Geriatrics Research* 2017; 9417350 doi: [10.1155/2017/9417350](https://doi.org/10.1155/2017/9417350).

<sup>10</sup> See for example C A. Krause-Parello, 'The Mediating Effect of Pet Attachment Support Between Loneliness and General Health in Older Females Living in the Community' in the *Journal of Community Health Nursing* [2008] 25 1-14, 1, and J Pikhartova et al, 'Does owning a pet protect older people against loneliness?' in *BMC Geriatrics* [2014] 14 9.

<sup>11</sup> G Carlisle, 'The Social Skills and Attachment to Dogs of Children with Autism Spectrum Disorder' in the *Journal of Autism and Developmental Disorders*, (2015) v45 n5 p1137-1145; DOI: [10.1007/s10803-014-2267-7](https://doi.org/10.1007/s10803-014-2267-7).

<sup>12</sup> See for example H L Brooks et al, 'The power of support from companion animals for people living with mental health problems: a systematic review and narrative synthesis of the evidence' in *BMC Psychiatry* 2018 18:31; and see Mental Health Foundation *Pets and Mental Health* <https://www.mentalhealth.org.uk/a-to-z/p/pets-and-mental-health> accessed 3 April 2018.

<sup>13</sup> June McNicholas, 'The role of pets in the lives of older people: a review' in *Working with Older People*, [2014] 18(3) 128-133.

that examines the impact of local authority social care charging on pet owning disabled people living in the community. A 2008 study concerning older people in residential care expressed surprise at the lack of research on that issue, given the 'significant body of literature that documents the benefits of pets':<sup>15</sup> a comment that could equally well be made about this research study. Another similarity concerns the 2008 report's finding that few care homes had formal written policies on pets – mirrored by this study's finding that no local authority had a written policy relating to the treatment of pet care costs for social care charging purposes.

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<sup>14</sup> See for example, J McNicholas, & A Murray Pets and people in residential care Joseph Rowntree Foundation, Social Care Findings, No. 44. December 1993; J McNicholas Pets and older people in residential care (Society for Companion Animal Studies and the Pet Food Manufacturers' Association 8th December 2008); and ; R Smith, J Johnson & S Rolph, 'People, pets and care homes: a story of ambivalence' in *Quality in Ageing and Older Adults*, (2011) Vol. 12 Issue: 4, pp.217-228, <https://doi.org/10.1108/14717791111191144>.

<sup>15</sup> J McNicholas Pets and older people in residential care (Society for Companion Animal Studies and the Pet Food Manufacturers' Association 8th December 2008), p.2.

### 3. Local authority charges for adults receiving social care and support

- 3.01 We consider below the process by which charges are calculated and the requirement that individuals be left with a minimum, nationally set amount (known as the 'minimum income guarantee') to pay for their living costs. This 'minimum amount' is meagre: for young adults (under 25) it may be as little as £3,764.80 pa; for disabled people over 24 but below pension age the minimum amount is £4,752.80 pa and for someone above that age the minimum amount is £9,828.00 pa.<sup>16</sup> By way of contrast, it is estimated that with the minimum necessary net income for a single working-age person (excluding rent and council tax) is over £10,750.00 pa (see para 5.09 below).
- 3.02 This 'minimum income guarantee' does not take into account the fact that some disabled people have higher 'basic living costs' because they have significant 'disability related expenditure' (DRE) such as for the additional costs of special dietary needs, above average heating costs, extra laundry expenses, the costs of special clothing or footwear etc.<sup>17</sup> Where the disabled person is living in the community (i.e. is not in a care home) authorities are, in general, required to calculate how much their DRE is and then increase the amount that person can retain (i.e. their minimum income guarantee (MIG)) by this sum. The Department of Health and Social Care states that the purpose of this adjustment is to 'promote independence and social inclusion and ensure that [the adult has] sufficient funds to meet basic needs such as purchasing food, utility costs or insurance'.<sup>18</sup>
- 3.03 The illustrative list of permissible DRE items provided by the Department does not include essential pet care costs (i.e. feeding, veterinary costs etc).
- 3.04 As noted above, the *pro bono* unit at the School of Law was contacted by people expressing concern about the dilemmas faced by disabled people devoted to their pet<sup>19</sup> but whose social care charges were such that they were unable to both pay for their own basic living costs and the costs of keeping their pet. Although their local authority had been requested to increase their MIG to cover this cost, it had refused: in effect deciding that the pet was an unnecessary luxury. The disabled person then faced the choice of the loss of their pet (not infrequently their only or main 'companion') or experiencing something akin to destitution.
- 3.05 Given the nature of this problem and the impact it was having on disabled people, it was proposed that a study (using the School of Law's *pro bono* student researchers) be undertaken to ascertain the extent of this problem.

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<sup>16</sup> Department of Health Social Care, *Charging for Care and Support LAC* (DHSC) (2018) 1.

<sup>17</sup> An illustrative list is provided in Department of Health and Social Care, *Statutory Guidance to the Care Act 2014* Annex C para 40.

<sup>18</sup> Department of Health and Social Care, *Statutory Guidance to the Care Act 2014* Annex C para 49.

<sup>19</sup> In social care terminology – 'for whom their pet was vital to their well-being'.

## The legal and policy context for disabled adults

- 3.06 The Care Act 2014, section 1 requires local authorities to promote the well-being of elderly, ill and disabled people as well as their carers.<sup>20</sup> Regulations to the Act create 'eligibility criteria' which prioritise support that addresses the effects of loneliness and social isolation.<sup>21</sup>
- 3.07 The legislative focus on social isolation is based on substantial evidence that it is a prevalent and harmful experience for many disabled people. A 2017 Scope survey found that almost half of working age disabled people were chronically lonely (rising to 85% for young disabled adults)<sup>22</sup> and Age UK research indicates that over a million older people in the UK say they are always or often feel lonely.<sup>23</sup>
- 3.08 The evidence suggests that the subjective feeling of loneliness and social isolation increases the risk of premature death by over 26%<sup>24</sup> and that it is associated with a 30% increase in the risk of having a stroke or coronary artery disease.<sup>25</sup> Stanley (in a 2014 paper concerning the pet ownership and well-being<sup>26</sup>) reviewed some of the research concerning the adverse effects of loneliness including an increased incidence of heart disease,<sup>27</sup> Alzheimer's disease,<sup>28</sup> depression,<sup>29</sup> and suicide.<sup>30</sup>

## The personalisation agenda

- 3.09 In the last two decades social care policy in England has been dominated by the personalisation debate – and a key component of the Government's programme has been the introduction of 'personal budgets'.<sup>31</sup> One of the alleged advantages of personal budgets has been their flexibility and the potential for disabled people to use

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<sup>20</sup> In England in relation to 'adults in need' and adult carers in England, the Care Act 2014 section 1 – and for disabled children, parent carers and young carers, sections 17, 17ZA and 17ZD. In Wales in relation to all people 'in need of care and support' (including carers), the Social Services and Well-being (Wales) Act 2014 section 5.

<sup>21</sup> The Care and Support (Eligibility Criteria) Regulations 2015 reg 2(2)(g).

<sup>22</sup> Scope *Nearly half of disabled people chronically lonely* (Scope 2017) <https://www.scope.org.uk/press-releases/nearly-half-of-disabled-people-chronically-lonely> accessed 3<sup>rd</sup> April 2018.

<sup>23</sup> S Davidson and P Rossall *Evidence Review: Loneliness in Later Life* (Age UK 2015) p.2.

<sup>24</sup> J Holt-Lunstad et al, 'Loneliness and Social Isolation as Risk Factors for Mortality A Meta-Analytic Review' in *Perspectives on Psychological Science* March 2015 vol. 10 no. 2 227-237.

<sup>25</sup> N Valtorta et al 'Loneliness and social isolation as risk factors for coronary heart disease and stroke' in *Heart Online* April 18, 2016 10.1136/heartjnl-2015-308790.

<sup>26</sup> I Stanley, et al, 'Pet Ownership may Attenuate Loneliness Among Older Adult Primary Care Patients Who Live Alone' in *Aging & Mental Health* (2014) 18(3): 394–399.

<sup>27</sup> R Thurston and L Kubzansky, 'Women, Loneliness, and Incident Coronary Heart Disease' in *Psychosomatic Medicine* in (2009), 71, 836-842. <http://dx.doi.org/10.1097/PSY.0b013e3181b40efc>.

<sup>28</sup> R S Wilson et al, 'Loneliness and Risk of Alzheimer Disease' in *Archives of General Psychiatry* (2007) 64(2): 234-40.

<sup>29</sup> J Cacioppo et al, 'Loneliness as a specific risk factor for depressive symptoms: Cross-sectional and longitudinal analyses' in *Psychology and Aging* (2006) 21(1), 140-151. DOI: 10.1037/0882-7974.21.1.140.

<sup>30</sup> K Van Orden et al, 'The Senior Connection: Design and rationale of a randomized trial of peer companionship to reduce suicide risk in later life' in *Contemporary Clinical Trials* (2013) 35: 117–126.

<sup>31</sup> Made mandatory by the Care Act 2014 (section 25(1)(e)).

them to come up with innovative ways to achieve their chosen 'outcomes'. Not infrequently those advocating the benefits of personal budgets have referred to cases where a disabled person had used their budget to acquire and maintain a pet dog as such an imaginative solution.<sup>32</sup> These anecdotal cases have concerned not only older people<sup>33</sup> but also, for example, wheelchair users,<sup>34</sup> people with depression<sup>35</sup> and disabled younger people with autism.<sup>36</sup>

3.10 Notwithstanding this identification of the well-being value of pets to some disabled people the evidence provided by those who have contacted the Law School's *pro bono* unit suggested that many local authorities were adopting an inflexible approach to such expenditure. This perception is reinforced by the literature. A 2017 paper, for example, noted that local authorities were refusing to make allowances for a variety of activities including the cost of feeding a dog<sup>37</sup> and a 2016 Local Government Ombudsman report found maladministration where a council failed to consider the value of a pet to a disabled person and to explain why the associated pet care costs were not covered in their social care and support plan.<sup>38</sup>

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<sup>32</sup> House of Commons Committee of Public Accounts *Personal budgets in social care* Second Report of Session 2016–17 HC 74 Oral evidence: Personal budgets in social care, HC 911 p.6 and D Brindle *Department of Health does not know if personal budgets help service users, report finds* Guardian 3 March 2016.

<sup>33</sup> It appears that almost half of older people in the UK state that television or pets are their main form of company – see S Davidson and P Rossall *Evidence Review: Loneliness in Later Life* (Age UK 2015) p.2.

<sup>34</sup> Department of Health *Putting People First: Personal budgets for older people – making it happen* (2010) p.26.

<sup>35</sup> Robin Murray-Neill et al 'Direct Payments the Future Now' in *A life in the day* Volume 12 Issue (2008) Pavilion Journals p.22.

<sup>36</sup> See for example P Schreier, 'Who is "in control" now?' In Control Blog at <http://www.in-control.org.uk/blog/who-is-%27in-control%27-now.aspx> accessed 3<sup>rd</sup> April 2018 and S Duffy, P Stack & P Gay *The Flexibility of Self-Directed Support* (Centre for Welfare Reform 2016).

<sup>37</sup> C Abrahams, 'How 'personal' are personal budgets in 2017?' in *Community Care* 19 September 2017 accessed 3<sup>rd</sup> April 2018.

<sup>38</sup> Complaint no. 13 014 946 against Central Bedfordshire Council 15<sup>th</sup> January 2016 para 49.

## 4. Pet ownership and pet care costs

- 4.01 It is estimated that 25% of the UK population own a cat and that the same percentage own a dog.<sup>39</sup>
- 4.02 The Animal Welfare Act 2006 section 9 makes it a criminal offence for a person<sup>40</sup> to fail to take all reasonable steps to ensure that their pet has (among other things) a suitable diet and is protected from pain, suffering, injury and disease.
- 4.03 The cost of keeping a dog or cat depends on a number of factors including its age and (for dogs) its size. In 2017 that authoritative 'PAW Report' estimated that the average cost of keeping a cat amounted to £70 per month<sup>41</sup> and that the average cost of keeping a dog was between £70 and £105 per month<sup>42</sup> (ie £16.15pw - £24.23pw). For a person between 25 and retirement age this cost could amount therefore to over 25% of their 'minimum income guarantee' (MIG – see para 5.06 below) and for an adult under 25 this cost could be 33% of their MIG.
- 4.04 In practice this means, that after paying their council's social care charge, dog owning disabled adults under pension age may be left with no more than £75.25 per week<sup>43</sup> (and in some cases as little as £48.17pw<sup>44</sup>) from which they are expected to pay for (among other things) their food, gas, water, electricity, telephone bills, travel costs, clothing, house repairs, equipment purchase, insurance expenses and recreational activities.

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<sup>39</sup> The People's Dispensary for Sick Animals *The PAW PDSA Animal Wellbeing Report 2017* (PDSA 2017) p.4 – 10.3 million cats and 9.3 million dogs and that 51% of UK households own a pet.

<sup>40</sup> By section 3 of the 2006 Act the 'responsible person' is the person who has care of the pet or if that person is under the age of 16, then it is the person who has care and control of the young person.

<sup>41</sup> Footnote 39 page 27.

<sup>42</sup> Footnote 39 page 13.

<sup>43</sup> Calculated as a person over 24 whose MIG will be £91.40 (see para 5.06 below) from which is subtracted £16.15 - the lower estimate of the cost of owning a dog.

<sup>44</sup> Calculated as an adult under 25 whose MIG will be £72.40 (see para 5.06 below) from which is subtracted £24.23 - the higher estimate of the cost of owning a dog.

## 5. The Care Act 2014 charging process for home based support

- 5.01 This section provides a brief explanation as to the relevant charging rules for adult social care support in England. Relevant extracts from the Statutory Guidance are provided at Annex 2 below.<sup>45</sup>
- 5.02 Local authorities have a discretion (but are not obliged) to charge for almost all care and support they provide under the Care Act 2014.<sup>46</sup> It is understood that every English social services authority has decided to use this power to charge.
- 5.03 Where a local authority does charge it must do so in accordance with scheme set out in the Act, the relevant regulations (referred to as the '[2014 Charging Regulations](#)')<sup>47</sup> and the [Statutory Guidance](#) to the Act.<sup>48</sup> The [Guidance](#) (at para 8.45) provides a number of principles / objectives that should be found in a charging policy, of which the following appear to be of particular relevance. Local authorities should:
- ensure that people are not charged more than it is reasonably practicable for them to pay;
  - be clear and transparent, so people know what they will be charged;
  - promote well-being, social inclusion, and support the vision of personalisation, independence, choice and control;
  - be person-focused, reflecting the variety of care and caring journeys and the variety of options available to meet their needs.
- 5.04 The law permits local authorities to take into account most forms of unearned income but requires that individuals always be left with a minimum sum (known as the 'minimum income guarantee' – (MIG)) to pay for their living costs. In practice, therefore, the local authority undertakes a calculation which:
1. Identifies the person's total income for charging purposes;
  2. Deducts from that income their housing costs (such as rent and council tax, net of any welfare benefits eg housing benefit);
  3. Deducts (if the person is receiving a key disability related benefit)<sup>49</sup> a sum sufficient to pay for the individual's necessary disability related expenditure (DRE).<sup>50</sup>
- The [Statutory Guidance](#) states (para 39) that authorities should 'allow the person to keep enough benefit to pay for necessary disability-related

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<sup>45</sup> For a detailed review of the law – see L Clements *Community Care and the Law* 6<sup>th</sup> ed (LAG 2017) chapter 8.

<sup>46</sup> Section 14; the same is true of charging under the Children Act 1989 (section 29).

<sup>47</sup> The Care and Support (Charging and Assessment of Resources) Regulations 2014 SI 2672.

<sup>48</sup> An illustrative list is provided in Department of Health and Social Care, [Statutory Guidance to the Care Act 2014](#) Annex C para 40.

<sup>49</sup> eg disability living allowance (DLA) care component or a personal independence payment (PIP) daily living component - if the authority has included in the person's liable income his or her disability benefits (reg 4(1) of the 2014 Charging Regulations) – which it appears all English local authorities do.

<sup>50</sup> The [2014 Charging Regulations](#) (reg 4(2)) state that DRE 'includes payment for any community alarm system, costs of any privately arranged care services required including respite care, and the costs of any specialist items needed to meet the adult's disability' and the Statutory Guidance at Annex C provides further details as to what may comprise DRE.

expenditure to meet any needs which are not being met by the local authority' and then at para 40 provides a list of items, noting that this is not 'exhaustive and any reasonable additional costs directly related to a person's disability should be included'. The list (set out in full at page 20 below) includes a wide range of expenses but does not, as noted above, include essential pet care costs (i.e. feeding, veterinary costs etc).

- 5.05 The local authority is then able to levy a charge amounting to all of the remaining sum, less the person's statutory 'minimum income guarantee' (MIG).
- 5.06 The result of this process is that the disabled person may be (and generally is) only left with their MIG to live on. Where the person is not receiving a key related disability benefit, then this is £72.40pw (if under 25); £91.40 pw (if over 24 but less than pension age) and for those of pension age it is £189.00pw.<sup>51</sup>
- 5.07 The amount can be increased if the person is receiving a key disability related benefit: an additional £40.35 pw (or £60.05pw if receiving the high rate of Disability Living Allowance (DLA) or Personal Independence Payment (PIP)). This means that (ignoring disability related expenditure) at best a disabled person under 25 would be left with £132.45pw and if older but under pension age the figure would be £151.45.
- 5.08 A dog owning disabled person under retirement age would, at best (ie if in receipt of the highest allowance for their impairment) be entitled to retain £116.30pw<sup>52</sup> if under 25 years of age or £135.30pw if over 25.<sup>53</sup>
- 5.09 From this sum the adult would have to pay for their food, gas, water, electricity, telephone bills, travel costs, clothing, house repairs, equipment purchase, insurance expenses, recreational activities and so on. The Department of Health and Social Care considers that this process promotes 'independence and social inclusion' and ensures that the adult has sufficient funds to meet basic needs.<sup>54</sup> This departmental standpoint can be contrasted with the 'Minimum Income Standard' which (excluding rent and council tax) is estimated to be £207.13 for a single working-age person.<sup>55</sup>

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<sup>51</sup> Department of Health Social Care, *Charging for Care and Support LAC* (DHSC) (2018) 1.

<sup>52</sup> ie a MIG of £132.45 from which is subtracted £16.15 - the lower estimate of the cost of owning a dog (see para 4.03 above) – although if not receiving these higher benefits they would be left with (at best) £56.30 ie a MIG of £72.40 less £16.15 - the lower estimate of the cost of owning a dog see para 4.03 above).

<sup>53</sup> ie a MIG of £151.45 from which is subtracted £16.15 - the lower estimate of the cost of owning a dog (see para 4.03 above) – although if not receiving these higher benefits they would be left with £75.25 ie a MIG of £91.40 less £16.15 - the lower estimate of the cost of owning a dog see para 4.03 above).

<sup>54</sup> Department of Health and Social Care, *Statutory Guidance to the Care Act 2014* Annex C para 49.

<sup>55</sup> Matt Padley and Donald Hirsch *A Minimum Income Standard for the UK in 2017* Centre for Research in Social Policy, Loughborough University (Joseph Rowntree Foundation 2017).

## 6. Methodology

- 6.01 In October 2017 12 volunteer undergraduate and postgraduate law students were recruited to undertake the research.
- 6.02 The students were provided with an outline of the relevant law relating to local authority charging for community based social care support as well as training concerning the research methodology to be adopted – namely the making of ‘Freedom of Information Requests’ and the project objectives.
- 6.03 A total of 55 local authorities were identified to whom the Freedom of Information Requests were to be made, comprising a geographical mix of Unitary Authorities, County Councils, London Boroughs and Metropolitan District Councils.
- 6.04 The requests were sent out in December 2017. A total of 46 detailed responses were received by the cut-off date for the study (10 January 2018). In no cases did a response seek to rely on a statutory ground that permitted with-holding of the relevant information. Two authorities replied to say they held no information on this question and the remaining authorities failed to reply by the deadline.
- 6.05 The Freedom of Information Request contained the following three questions (the full text is at Annex 1 below):<sup>56</sup>
1. When assessing whether a charge for non-residential care and support provided under the Care Act 2014 is reasonably practicable for an adult to pay, does your council permit, in any circumstances, adults to retain enough of their income (i.e. in addition to the minimum income guaranteed in regulation 7 and in addition to any disability-related expenditure in paragraph 4 Part 1 Schedule 1 of the regulations) to pay for reasonable expenditure incurred in feeding and maintaining a household pet cat or dog (excluding a guide dog or assistance dog)?
  2. If the answer to 1 above is Yes:  
Does your council have a policy as to when it is appropriate to permit an adult to retain enough of their income to pay for reasonable expenditure incurred in feeding and maintaining such a pet?
  3. If the answer to 2 above is Yes:  
Please provide a copy of the policy or, if it is an unwritten policy, explain the basic criteria applied in deciding when it is reasonable to permit an adult to retain enough of their income to cover this expenditure?

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<sup>56</sup> (a copy of the full request can be found in Annex 1)

## 7. Responses to the Freedom of information requests

7.01 The Freedom of Information Request contained the following three questions (the full text is at Annex 1 below):

### Question 1.

#### In assessing a care charge does your council take account of pet care costs in any circumstances?

##### Full text of the request in question 1

When assessing whether a charge for non-residential care and support provided under the Care Act 2014 is reasonably practicable for an adult to pay, does your council permit, in any circumstances, adults to retain enough of their income (ie in addition to the minimum income guaranteed in regulation 7 and in addition to any disability-related expenditure (DRE) in paragraph 4 Part 1 Schedule 1 of the regulations) to pay for reasonable expenditure incurred in feeding and maintaining a household pet cat or dog (excluding a guide dog or assistance dog)?

7.02 Of the 46 respondents to this question, 41 (89%) replied 'no' – i.e. that their council did not in any circumstances, permit adults to retain enough of their income (i.e. in addition to the minimum income guarantee (MIG)) to pay for reasonable expenditure incurred in feeding and maintaining a household pet.

7.03 Only five councils answered 'yes' to this question and provided additional information. Statements included:

- 'Manager within Social Care can review the standard allowance within a financial assessment and agree a weekly disregard of up to £50.00.'
- [named authority] 'does not have a set policy but we consider each case individual on an individual basis.'
- 'The policy is not prescriptive: each financial assessment looks at the individual's needs, support and care plan and well-being.'
- [named authority] 'has a charging policy and within this they allow for disability related expenditure. All costs are considered based on need against their Care Act Assessment and support plan in discussion with their Care Manager.'
- 'The MIG allowance should enable a person to retain a level of income to cover living costs, including maintaining a household pet. However, if a person requested an appeal / waiver of charges of the grounds of financial hardship, these costs would be taken into consideration when establishing available household income and If, in the social work assessor's opinion, the pet improves or maintains their well- being, the costs would be allowed as Disability related expenditure. Examples include a Service User with ASD<sup>57</sup> who is unable to interact with strangers without their pet being next to them, and a Service User whose volatility is tempered by looking after their pets.'

<sup>57</sup> i.e. Autistic Spectrum Disorder.

## Question 2.

### 7.04 Does your council have a policy concerning the allowance of pet related expenses?

#### Full text of the request in question 2

If the answer to 1 above is Yes:

Does your council have a policy as to when it is appropriate to permit an adult to retain enough of their income to pay for reasonable expenditure incurred in feeding and maintaining such a pet?

7.05 The five local authorities who answered 'yes' to the first question also answered 'yes' to this second question – namely that they did have a policy concerning the treatment of pet care costs for charging purposes.

## Question 3.

### 7.06 Please provide a copy of your policy, or if unwritten please detail the basic criteria

#### Full text of the request in question 3

If the answer to 2 above is Yes:

Please provide a copy of the policy or, if it is an unwritten policy, explain the basic criteria applied in deciding when it is reasonable to permit an adult to retain enough of their income to cover this expenditure?

7.07 All five authorities who answered 'yes' to the second question responded to this question by stating that their policy was 'unwritten'. Seven authorities who answered 'no' to all three questions (i.e. they had no policy, written or unwritten) made comments regarding circumstances upon which pet costs might be considered. One referred to instances of severe hardship, two mentioned that only assistance or guide dog costs could be taken into account<sup>58</sup> and the remainder suggested it would be considered on a case by case basis.

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<sup>58</sup> Despite this having been excluded by the terms of the question.

## 8. Analysis and conclusions

- 8.01 The FoI responses suggest that none of the councils had specific policies relating to pet care costs. The five councils who considered that they had an unwritten policy on this issue merely confirmed the legal position – namely that such costs could be taken into account during the charging calculation, as ‘disability related expenditure’.
- 8.02 Although 41 of the responding councils (89%) stated that they did not permit ‘in any circumstances’ adults to retain enough of their income (i.e. in addition to their MIG) to pay for pet care expenses five indicated that these would in fact be considered on a case by case basis or in the case of ‘severe hardship’ (and the two mentioned assistance or guide dog costs – which had already been excluded by the terms of the question).
- 8.03 Of the five councils who indicated that they had unwritten policies on this issue – four merely acknowledged that they had discretion in this field. The response of the fifth authority statement was both promising and problematical. It was positive in the sense that it envisaged specific instances where pet care costs would be allowed and this was grounded on ‘the social work assessor’s opinion’ ie on the basis of a personalised assessment. The statement was however troubling in two respects. The first concerned the suggestion that the MIG allowance ‘should enable a person to retain a level of income to cover living costs, including maintaining a household pet’. Given the evidence noted above (para 4.03) that pet care costs may amount to 33% of a non-pensioner adult’s ‘minimum income guarantee’, this assertion must be questionable. The second problematical element concerns the suggestion that social care charges that fail to take into account pet care costs could be challenged on ‘the grounds of financial hardship’. This indicates both a misunderstanding of the statutory charging policy and also the existence of a reactive as opposed to a proactive approach – which may mean that the policy is not effective for many disabled people. The [Statutory Guidance](#) to the Care Act makes clear that ‘councils must ‘ensure that people are not charged more than it is reasonably practicable for them to pay’ (para 8.2). The Local Government Ombudsman has held it to be maladministration for an authority to adopt a charging policy which only permits exceptions if users provide ‘proof of hardship’<sup>59</sup> since this is a materially more severe criterion than ‘not reasonably practicable’. In addition a local authority requirement that the disabled person use the complaints’ procedure to challenge charges (as opposed to having a local policy to consider such expenses during the assessment of what is ‘reasonably practicable’) is likely to deter many disabled people – given the

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<sup>59</sup> Complaint nos 99/C/02509 and 02624 against Gateshead, 28 February 2001 and see also *R v Calderdale DC ex p Houghton* (1999) 2 CCLR 119.

evidence of the reluctance of people to complain about their social care arrangements.<sup>60</sup>

### Conclusions

- 8.04 Of the 46 responses to the FoI questions, no respondent authority had a written policy concerning the treatment pet care costs when assessing the charge to be levied on a disabled adult. Only 5 councils (11%) indicated that such costs would be taken into account 'in any circumstances' – although on analysis it appears that 9 (19%) would in fact be prepared to consider them 'on a case by case' basis. In addition three authorities indicated that they would consider such costs if they resulted in 'hardship' for the disabled person.
- 8.05 Given the prevalence pet ownership, the research evidence concerning their positive impact on well-being and the social policy references to pet ownership as a potentially innovative mechanism for addressing eligible outcomes, the lack of formal policies regarding this question is surprising.
- 8.06 Legally all social services authorities must consider pet care costs when assessing whether it is 'reasonably practicable' for a disabled person to pay their social care costs – which means that at least 80% of the respondents to the FoI requests had misunderstood their obligations. This legal failure is also highlighted by those authorities that considered that the test was 'hardship' rather than 'reasonable practicability'.
- 8.07 Since the charging rules for social care are not uncomplicated and given the research evidence concerning the general reluctance of disabled people to complain, it is important that local charging policies contain explicit mention of pet care charges – rather than expecting individuals to raise this issue and to do so by way of a complaint.

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<sup>60</sup> The Equality and Human Rights Commission, *Close to home: an inquiry into older people and human rights in home care*, 2011 report noted that almost a quarter of respondents said they would not have the confidence to complain, citing 'not wanting to upset care staff'; 'unwillingness to make a fuss'; 'fear of retribution' including being put into residential care or losing their care; thinking complaining would not improve care, and previous negative experience of complaints (pp82–83).

## The Freedom of Information Request

### Freedom of Information request

Dear [name of authority]

#### **The assessment of an adult's available income for the purposes of charging for care and support under the Care Act 2014**

I'd be most grateful if you could supply answers to the following questions. The aim of the questions is to ascertain whether your authority, when determining how much an adult must pay for their care and support provided with under the Care Act 2014, permit the adult to retain enough of their income (in addition to the minimum income guaranteed by the relevant regulations) to pay for reasonable expenditure incurred in feeding and maintaining a household pet cat or dog.

If your authority considers that complying with this request in its entirety will exceed the statutory cost of compliance limit (specified in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004) then I ask that you respond to the following questions in the order they appear until that limit is reached.

The regulations referred to in the following questions are The Care and Support (Charging and Assessment of Resources) Regulations 2014.

The questions that comprise this Freedom of Information request are as follows:

1. When assessing whether a charge for non-residential care and support provided under the Care Act 2014 is reasonably practicable for an adult to pay, does your council permit, in any circumstances, adults to retain enough of their income (ie in addition to the minimum income guaranteed in regulation 7 and in addition to any disability-related expenditure in paragraph 4 Part 1 Schedule 1 of the regulations) to pay for reasonable expenditure incurred in feeding and maintaining a household pet cat or dog (excluding a guide dog or assistance dog)?
2. If the answer to 1 above is Yes:  
Does your council have a policy as to when it is appropriate to permit an adult to retain enough of their income to pay for reasonable expenditure incurred in feeding and maintaining such a pet?
3. If the answer to 2 above is Yes:  
Please provide a copy of the policy or, if it is an unwritten policy, explain the basic criteria applied in deciding when it is reasonable to permit an adult to retain enough of their income to cover this expenditure?

May I thank you in advance for providing the above requested information. If possible could you please send all future correspondence to this email address and to the address copied into this email. Could we also request that the information you provide be provided in electronic pdf format.

Kind Regards [ ]

### Statutory Guidance to the Care Act 2014 (as at April 2018)

#### Home care charging ~ relevant extracts

8.4 Local authorities have a duty to arrange care and support for those with eligible needs, and a power to meet both eligible and non-eligible needs. In all cases, a local authority has the discretion to choose whether or not to charge under section 14 of the Care Act following a person's needs assessment. Where it decides to charge, it **must** follow the Care and Support (Charging and Assessment of Resources) regulations and have regard to the guidance. The detail of how to charge is different depending on whether someone is receiving care in a care home, or their own home, or another setting. However, they share some common elements, which are set out in the following section.

#### Charging for care and support in other care settings including a person's own home

8.38 This section should be read in conjunction with the regulations and Annex B on the treatment of capital and Annex C on the treatment of income in non-residential care.

8.39 These charging arrangements cover any setting for meeting care and support needs outside of a care home. For example, care and support received in a person's own home, and in other accommodation settings such as in extra care housing, supported living accommodation or shared lives arrangements.

8.40 The intent of the regulations and guidance is to support local authorities to assess what a person can afford to contribute towards their care costs. Local authorities should also consider how to use their discretion to support the principles of care and support charging.

8.41 This guidance does not make any presumption that local authorities will charge for care and support provided outside care homes, but enables them to continue to allow discretion.

8.42 Because a person who receives care and support outside a care home will need to pay their daily living costs such as rent, food and utilities, the charging rules must ensure they have enough money to meet these costs. After charging, a person must be left with the minimum income guarantee (MIG), as set out in the Care and Support (Charging and Assessment of Resources) Regulation 2014. In addition, where a person receives benefits to meet their disability needs that do not meet the eligibility criteria for local authority care and support, the charging arrangements should ensure that they keep enough money to cover the cost of meeting these disability-related costs.

8.43 Additionally, the financial assessment of their capital must exclude the value of the property which they occupy as their main or only home. Beyond this, the rules on what capital must be disregarded are the same for all types of care and support. However, local authorities have flexibility within this framework; for example, they may choose to disregard additional sources of income, set maximum charges, or charge a person a percentage of their disposable income. This will help support local authorities to take account of local circumstances and promote integration and innovation.

8.44 Although local authorities have this discretion, this should not lead to 2 people with similar needs, and receiving similar types of care and support, being charged differently.

8.45 Local authorities should develop and maintain a policy on how they wish to apply this discretion locally. In designing this policy local authorities should consider the objectives of care and support charging and how it can:

- ensure that people are not charged more than it is reasonably practicable for them to pay
- be comprehensive, to reduce variation in the way people are assessed and charged
- be clear and transparent, so people know what they will be charged
- promote well-being, social inclusion, and support the vision of personalisation, independence, choice and control

- support carers to look after their own health and well-being and to care effectively and safely
- be person-focused, reflecting the variety of care and caring journeys and the variety of options available to meet their needs
- apply the charging rules equally so those with similar needs or services are treated the same and minimise anomalies between different care settings
- encourage and enable those who wish to stay in or take up employment, education or training or plan for the future costs of meeting their needs to do so
- be sustainable for local authorities in the long-term
- administer a charging policy for people who lack capacity or are losing capacity in a way that considers what capacity remains and their rights

8.46 Local authorities should consult people with care and support needs when deciding how to exercise this discretion. In doing this, local authorities should consider how to protect a person's income. The government considers that it is inconsistent with promoting independent living to assume, without further consideration, that all of a person's income above the minimum income guarantee (MIG) is available to be taken in charges.

8.47 Local authorities should therefore consider whether it is appropriate to set a maximum percentage of disposable income (over and above the guaranteed minimum income) which may be taken into account in charges.

8.48 Local authorities should also consider whether it is appropriate to set a maximum charge, for example these might be set as a maximum percentage of care home charges in a local area. This could help ensure that people are encouraged to remain in their own homes, promoting individual well-being and independence.

## Annex C: Treatment of Income

### Disability-related expenditure

39) Where disability-related benefits are taken into account, the local authority should make an assessment and allow the person to keep enough benefit to pay for necessary disability-related expenditure to meet any needs which are not being met by the local authority.

40) In assessing disability-related expenditure, local authorities should include the following. However, it should also be noted that this list is not intended to be exhaustive and any reasonable additional costs directly related to a person's disability should be included:

- (a) payment for any community alarm system
- (b) costs of any privately arranged care services required, including respite care
- (c) costs of any specialist items needed to meet the person's disability needs, for example:
  - (i) Day or night care which is not being arranged by the local authority
  - (ii) specialist washing powders or laundry
  - (iii) additional costs of special dietary needs due to illness or disability (the person may be asked for permission to approach their GP in cases of doubt)
  - (iv) 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
  - (v) additional costs of bedding, for example, because of incontinence
  - (vi) any heating costs, or metered costs of water, above the average levels for the area and housing type
  - (vii) occasioned by age, medical condition or disability
  - (viii) reasonable costs of basic garden maintenance, cleaning, or domestic help, if necessitated by the individual's disability and not met by social services
  - (ix) 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

(x) personal assistance costs, including any household or other necessary costs arising for the person

(xi) internet access for example for blind and partially sighted people

(xii) other transport costs necessitated by illness or disability, including costs of transport to day centres, over and above the mobility component of DLA or PIP, if in payment and available for these costs. In some cases, it may be reasonable for a council not to take account of claimed transport costs – if, for example, a suitable, cheaper form of transport, for example, council-provided transport to day centres is available, but has not been used

(xiii) in other cases, it may be reasonable for a council not to allow for items where a reasonable alternative is available at lesser cost. For example, a council might adopt a policy not to allow for the private purchase cost of continence pads, where these are available from the NHS

41) The care plan may be a good starting point for considering what is necessary disability-related expenditure. However, flexibility is needed. What is disability-related expenditure should not be limited to what is necessary for care and support. For example, above average heating costs should be considered.