**PROPOSALS FOR COMMUNITY CARE REFORMS 2022**

**1. INTRODUCTION**

1.1 Disability Law Service provides legal advice and representation under Legal Aid in the area of Community Care Law. In 2020 we helped 739 clients and in 2021 we helped 658 clients on Community Care matters. We therefore have a detailed understanding of the challenges faced by Disabled people.

1.2 On 7th March 2022, we held a forum of service users in London and identified the following recommendations for policy reform:

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| **Recommendations**   1. **Abolish non-residential care charges for Disabled adults in England** 2. **Introduce a legal requirement for needs assessments under the Care Act 2014 to conclude within 4-6 weeks** 3. **Increase the maximum limit (£30,000) for Disabled Facilities Grants (DFGs) in England in line with inflation each year and require councils to have policies on providing adaptations above the maximum limit** 4. **Local authorities should ensure they are properly providing after-care services under s 117 of the Mental Health Act 1983** |

**2. LACK OF CENTRAL GOVERNMENT FUNDING TO LOCAL AUTHORITIES**

2.1 Local authorities’ spending power – the amount of money they are able to spend from government grants, council tax and business rates – has fallen by 16% since 2010. This reduction in spending power is largely due to cuts in central government grants, which have been reduced by ‘37% in real-terms between 2009/10 and 2019/20, from £41.0bn to £26.0bn in 2019/20 prices’.[[1]](#footnote-1)

2.2 This shortage of central government funding to local authorities is a common thread running throughout each of our recommendations. The lack of funding for local authorities has a direct bearing on their ability to: abolish non-residential care charges for Disabled adults in England; exercise their power to discretionary assistance for DFGs; conduct needs assessments within a 4-6 week timeframe; and ensure that they properly provide after-care services under s 117 of the Mental Health Act 1983.

2.3 We therefore believe that, in order to implement our recommendations for Community Care reform, local authorities need to be provided with government grants that will increase their spending power and enable them to adequately support Disabled people in living full and independent lives.

**3.** **ABOLISH NON-RESIDENTIAL CARE CHARGES FOR DISABLED ADULTS IN ENGLAND**

3.1 All local authorities but one in England have exercised their power to charge adults for the care and support they receive at home under the Care Act 2014. Local authorities conduct a financial assessment to assess a Disabled adults’ income, including any benefits they receive, as well as their capital to determine what (if any) contributions the individual is required to make towards their care.

3.2 Local authorities have a power, rather than an obligation, to charge adults for non-residential care under section 14 of the Care Act. This means that local authorities are able to choose whether or not to charge adults for non-residential care. Despite this, in Disability Law Service’s experience local authorities appear to be operating section 14 as a duty rather than a power.

3.3 The London Borough of Hammersmith and Fulham (H&F) is the only local authority in England which does not charge for non-residential care. H&F took the decision to prioritise non-residential care and has facilitated this decision by making back-office cuts, such as to the council’s PR and administrative budgets.[[2]](#footnote-2)

3.4 A forum member, who does not currently contribute financially towards their care, stated that they could not imagine having to do so, and that they probably would have forgone a care package if they had to pay for it using their benefits.

3.5 Indeed, one of our findings from the forum was that some Disabled people refuse a care package if they have capital over the threshold of £23,250, as having capital above this amount allows local authorities to charge an individual for the full cost of their care.

3.6 The cost of living crisis is hitting Disabled people particularly hard. For example, the increase in energy prices means that Disabled people who require specialist equipment such as hoists, beds, powered chairs and monitors are having to bear an increase in the costs required to power essential equipment. Moreover, benefits such as Personal Independence Payment (PIP) are failing to rise in line with inflation.[[3]](#footnote-3)

3.7 Although Disabled people on disability benefits will be receiving a one-off payment of £150 in September 2022, and many Disabled people will receive a one-off payment of £650 due to receiving means-tested benefits, such as Income-related Employment and Support Allowance, Income Support and Universal Credit, we do not believe this will adequately off-set the cost of living crisis.[[4]](#footnote-4)

3.8 We do not believe that Disabled people should be forced to choose between having enough money for necessities such as food, accommodation and powering essential equipment, being able to spend money on promoting their wellbeing, and receiving the care they require and are entitled to. We believe that requiring individuals to pay for their own care is a tax on disability.

3.9 Moreover, many Disabled people are not proactively made aware of disability-related expenditure (DRE). DRE is an allowance that may be made in the financial assessment for any additional expenses an individual incurs as a result of an impairment or medical condition. Examples of DRE includes specialist clothing or footwear, additional heating costs, and purchase, maintenance and repair of disability-related equipment.

3.10 One of our findings from the forum was that local authorities should make more effort to inform people with social care needs of DRE. Our forum further found that local authorities should make independent advocates available to assist individuals with financial assessments – in particular DRE collation – as the matter can be very complex and difficult to navigate.

3.11 Whilst we acknowledge that local authorities have had their budgets reduced, we believe it is essential to the independence of Disabled people with social care needs that they are not charged for their care. To that end, local authorities should be provided with increased funding to enable them to fully cover the costs of social care without the need to charge Disabled people for the care they require and are entitled to.

3.12 We therefore believe that non-residential care charges should be abolished and we are currently campaigning on this issue. We further believe that Disabled individuals should be made aware of DRE and provided with independent advocates to support them with DRE collation.

**4. INTRODUCE A LEGAL REQUIREMENT FOR CARE ACT ASSESSMENTS TO CONCLUDE WITHIN 4-6 WEEKS**

4.1 Part 82 of the Working Together to Safeguard Children guidance 2018 states: ‘the maximum timeframe for the child in need assessment to conclude, such that it is possible to reach a decision on next steps, should be no longer than 45 working days from the point of referral. If, in discussion with a child and their family and other practitioners, an assessment exceeds 45 working days, the social worker should record the reasons for exceeding the time limit’.[[5]](#footnote-5)

4.2 In comparison, paragraph 6.29 of the Care and Support Statutory Guidance to the Care Act 2014 states: ‘An assessment should be carried out over an appropriate and reasonable timescale taking into account the urgency of needs and a consideration of any fluctuation in those needs. Local authorities should inform the individual of an indicative timescale over which their assessment will be conducted and keep the person informed throughout the assessment process’.[[6]](#footnote-6)

4.3 A factsheet published in December 2020 by the Local Government and Social Care Ombudsman deemed 4-6 weeks from the date of the initial request to be a reasonable timescale for a needs assessment to be carried out.[[7]](#footnote-7)

4.4 It is believed that many local authorities set one-month targets for needs assessments to be completed.[[8]](#footnote-8) Despite this, a survey conducted by the Association of Directors of Adult Social Services (ADASS) in May 2022 found that 64,772 people in England were waiting at least six months for an assessment, and that 506,131 people were waiting for an assessment, care package, direct payment or review.[[9]](#footnote-9)

4.5 We believe that the Care and Support Statutory Guidance leaves too much room for internal interpretation by local authorities. By stating that an assessment should be carried out over ‘an appropriate and reasonable timescale’, local authorities are not bound by any definite time period and are able to exercise discretion as to what is meant by ‘appropriate and reasonable’. This thereby places Disabled individuals in a postcode lottery.

4.6 Our forum found that the lack of a definite timeframe puts Disabled individuals, their family members and their advocates in the position whereby the onus is on them to have to chase up the local authority regarding an assessment where there are delays.

4.7 Moreover, the situations Disabled people find themselves in can deteriorate whilst they are waiting to be assessed. Some Disabled people may end up in hospital whilst waiting for their assessment to be completed, and the time spent waiting could cause their needs to become greater.

4.8 Our forum also found that, following the Covid-19, waiting times for care and carer’s assessments have increased even further, with some people waiting for over four months for an assessment to be conducted. Additionally, some people found that they were signposted to other services rather than provided with the care they needed from the local authority. This can cause Disabled people to become exhausted by the process and to feel overwhelmed and neglected.

4.9 Although we recognise that local authorities have a power to put in place interim care where the Disabled individual’s needs are urgent under section 19(3) of the Care Act, our forum found that local authorities do not make adults with social care needs aware of this power. This means that people with urgent needs do not always request interim care when they require it and are therefore left without care while waiting for an assessment to be conducted.

4.10 We therefore believe that local authorities should be placed under an obligation to make people aware of their power to provide interim care for Disabled adults with urgent needs.

4.11 Our forum found that it would not be sufficient to bring the timeframe for adult social care assessments in line with the 45 working days timeframe for child in need assessments, as this is too long an amount of time to expect Disabled adults to wait to be assessed. Rather, our forum determined that a more appropriate timeframe limit would be 4-6 weeks.

4.12 To that end, we support the introduction of a 4-6 week timeframe limit for needs assessments to be completed. Local authorities should also implement policies prioritising needs and putting preventative measures in place where there is an urgent need for care. We also believe that the timeframe limit of 45 working days for a child in need assessment to be conducted should similarly be reduced to 4-6 weeks.

**5. INCREASE THE MAXIMUM LIMIT FOR DISABLED FACILITIES GRANTS ALONGSIDE INFLATION AND REQUIRE COUNCILS TO HAVE POLICIES ON PROVIDING ADAPTATIONS ABOVE THE MAXIMUM LIMIT**

5.1 In an external review of DFGs in February 2018 conducted by the University of West England, an increase of the £30,000 maximum limit placed on DFGs in England in line with inflation was recommended. This review also recommended allowance for variations in building costs by locality.[[10]](#footnote-10) These recommendations have not been implemented.

5.2 The maximum allowance for a DFG in England was last increased in 2008 from £25,000 to £30,000. On an average rate of inflation of 2.1%, the Bank of England estimates £30,000 in 2008 to be worth £39,495 in 2021.[[11]](#footnote-11) As of May 2022, the rate of inflation has now reached 9%.[[12]](#footnote-12) The Bank of England expects inflation to rise further to around 10% this year.[[13]](#footnote-13)

5.3 The new Statutory Guidance relating to the delivery of DFGs, released in March 2022, does not address this significant issue, despite stating that the publication follows from the findings of the external review conducted by the University of West England in 2018.[[14]](#footnote-14)

5.4 Our forum found that it is unjustifiable that the maximum allowance has not increased since 2008, as building costs – alongside many other costs – have increased significantly since then. Moreover, there have also been increased costs since the beginning of the Covid-19 pandemic.

5.5 We have been unable to discover evidence to show that the government has considered the impact on Disabled people of failing to increase the maximum allowance for a DFG, which we believe may be a breach of the public sector equality duty (PSED) to remove or minimise disadvantages faced by Disabled people.

5.6 Article 3 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 enabled housing authorities to provide discretionary assistance, in any form, for adaptations. This may be by grant, loan or equity release. Assistance may be granted under Article 3 for a number of purposes, such as to provide top-up assistance to a DFG where the local authority takes the view that the amount of assistance available under the DFG is insufficient to meet the needs of the Disabled person and their family.[[15]](#footnote-15)

5.7 Every local authority should have its own policy for when discretionary assistance for adaptations can be provided. Despite this, in Disability Law Service’s experience, many local authorities do not have any such policies in place. Local authorities without such policies may be in breach of the PSED to remove or minimise disadvantages faced by Disabled people.

5.8 We believe the discretionary power to provide top-up assistance does not adequately function to enable Disabled people to receive the home adaptations they require. Moreover, our forum found that the fact that this power is discretionary means that policies vary between local authorities – again, creating a postcode lottery for Disabled individuals.

5.9 We believe that Disabled individuals may be missing out on the home adaptations they require due to variance in how local authorities exercise their discretionary power and due to the maximum limit not having been increased in 14 years. Our forum found that, if Disabled people are not having their adaptation needs met, then local authorities need to consider building more adaptable homes. Additionally, if an individual cannot get an adaptation, there should be alternative options put in place.

5.10 Our forum was supportive of the idea of the government setting the DFG maximum limit in line with inflation each year and including it in the annual circular in April which sets the minimum income guarantee amount. However, the forum also questioned the need for a maximum limit, suggesting that it may in fact be better for local authorities to provide the adaptations people need, regardless of cost, taking into account the PSED to remove or minimise disadvantages faced by Disabled people.

5.11 In conclusion, we believe that the maximum limit on DFGs should be increased in line with inflation. We additionally believe that local authorities should implement policies in relation to the provision of discretionary assistance under Article 3 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002.

**6. LOCAL AUTHORITIES SHOULD ENSURE THEY ARE PROPERLY PROVIDING AFTER-CARE SERVICES UNDER SECTION 117 OF THE MENTAL HEALTH ACT 1983**

6.1 Our forum and our experience on the matter has found that care packages are provided for people with mental health impairments less often than for those with physical impairments, and that the care packages in place for people with mental health impairments are not always sufficiently supportive.

6.2 Although the majority of care and support provided by local authorities are delivered under the Care Act 2014, a small number of people with mental health impairments are entitled to receive social care services under section 117 of the Mental Health Act 1983 (MHA 1983). Section 117 provides that people who have been detained in hospital under sections 3, 37, 45A or 48 of the MHA 1983 are entitled to ‘after-care’ services.

6.3 The Mental Health Code of Practice provides that after-care services can include healthcare, social care, employment services, support accommodation and services to meet the person’s wider social, cultural and spiritual needs.[[16]](#footnote-16)

6.4 In Disability Law Service’s experience, local authorities appear to lack implementation of section 117 where adults have physical health needs in addition to continuing mental health needs. This means that people who are entitled to after-care services do not receive the correct level of service provision under section 117 because they have been re-routed to service provision under the Care Act.

6.5 Moreover, it is unlawful for local authorities to charge for after-care services under section 117, as determined by the House of Lords in *R v Manchester City Council ex p Stennett and others*.[[17]](#footnote-17) Care services provided under the Care Act, however, are likely to incur costs to the individual, as local authorities have a power to charge for non-residential care. As such, a failure to properly implement after-care under section 117 means that some people with mental health impairments are having to contribute towards their care.

6.6 We believe, therefore, that local authorities should be ensuring that they consider the applicability of section 117 at the outset of cases and also undertake linked Care Act and section 117 assessments where a person qualifies for after-care services. The Care Act plans and the section 117 after-care plans should clearly state the breakdown of hours for each provision, which will ensure greater transparency in the process and will provide a more appropriate amount of support for people with mental health impairments.

1. [Local government funding in England | The Institute for Government](https://www.instituteforgovernment.org.uk/explainers/local-government-funding-england) [↑](#footnote-ref-1)
2. [Tax on disability to be abolished | LBHF](https://www.lbhf.gov.uk/articles/news/2014/12/tax-disability-be-abolished) [↑](#footnote-ref-2)
3. [Why disabled people are at the centre of the cost-of-living crisis | Disability charity Scope UK](https://www.scope.org.uk/news-and-stories/cost-of-living-disabled-people/) [↑](#footnote-ref-3)
4. [Cost of living support factsheet: 26 May 2022 - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/cost-of-living-support/cost-of-living-support-factsheet-26-may-2022) [↑](#footnote-ref-4)
5. [Working Together to Safeguard Children 2018 (publishing.service.gov.uk)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942454/Working_together_to_safeguard_children_inter_agency_guidance.pdf) [↑](#footnote-ref-5)
6. [Care and support statutory guidance - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance) [↑](#footnote-ref-6)
7. [Councils that conduct needs assessments - Local Government and Social Care Ombudsman](https://www.lgo.org.uk/make-a-complaint/fact-sheets/social-care/social-care-for-adults/councils-that-conduct-needs-assessments) [↑](#footnote-ref-7)
8. [7,000 waiting more than six months for social care assessments - Community Care](https://www.communitycare.co.uk/2021/07/16/7000-waiting-six-months-social-care-assessments/) [↑](#footnote-ref-8)
9. [65,000 adults waiting at least six months for assessment as unmet needs mount, warns ADASS - Community Care](https://www.communitycare.co.uk/2022/05/13/65000-adults-waiting-at-least-six-months-for-assessment-as-unmet-needs-mount-warns-adass/?utm_content=Top%20story&utm_campaign=CC%20Snapshot%2013-05-22&utm_source=Community%20Care&utm_medium=adestra_email&utm_term=https%3A%2F%2Fwww.communitycare.co.uk%2F2022%2F05%2F13%2F65000-adults-waiting-at-least-six-months-for-assessment-as-unmet-needs-mount-warns-adass%2F) [↑](#footnote-ref-9)
10. [Independent\_Review\_of\_the\_Disabled\_Facilities\_Grant.pdf (publishing.service.gov.uk)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/762920/Independent_Review_of_the_Disabled_Facilities_Grant.pdf) [↑](#footnote-ref-10)
11. [Inflation calculator 1949-2021 | Bank of England](https://www.bankofengland.co.uk/monetary-policy/inflation/inflation-calculator) [↑](#footnote-ref-11)
12. [UK inflation hits 40-year high of 9% as energy bills soar - BBC News](https://www.bbc.co.uk/news/business-61483175) [↑](#footnote-ref-12)
13. [Monetary Policy Report - May 2022 | Bank of England](https://www.bankofengland.co.uk/monetary-policy-report/2022/may-2022) [↑](#footnote-ref-13)
14. [Disabled Facilities Grant (DFG) delivery: Guidance for local authorities in England - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/disabled-facilities-grant-dfg-delivery-guidance-for-local-authorities-in-england/disabled-facilities-grant-dfg-delivery-guidance-for-local-authorities-in-england) [↑](#footnote-ref-14)
15. [Delivering Housing Adaptations for Disabled People: A Detailed Guidance to Related Legislation Guidance and Good Practice](https://www.housinglin.org.uk/_assets/Resources/Housing/OtherOrganisation/DFG-Good-Practice-Guide-30th-Sept-131.pdf), Paragraph 2.24 [↑](#footnote-ref-15)
16. [Mental Health Act 1983 (publishing.service.gov.uk)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF), 33.4 [↑](#footnote-ref-16)
17. [2002] UKHL 34, [2002] 3 WLR 584, (2002) 5 CCLR 500 [↑](#footnote-ref-17)