

# DISABILITIES RELATED EXPENDITURES

## PRACTICE GUIDANCE

### 1. PURPOSE OF THIS PRACTICE GUIDANCE

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The purpose of this Practice Guidance is to guide you in the application of Annex C of the Care and Support Statutory Guidance, 28 June 2017 (the Statutory Guidance). This Practice Guidance will refer throughout to Annex C, in assessing whether certain items of expenditure constitute disability related expenditure (DRE) and as such shall be disregarded when calculating what the adult can afford to contribute to the cost of their eligible care needs.

This Practice Guidance contains:

- case studies in Appendix A drawn from real life situations
- a list of what the Council does not consider to be DRE in Appendix B
- a flowchart to aid your assessment process in Appendix C

this material has been included for illustrative purposes to assist you with the assessment of DRE when carrying out the care and support assessment of the adult.

This Practice Guidance forms part of the Council's Overarching Charging and Provision of Services Policy dated March 2015 (and all subsequent versions), and shall be read in conjunction with it.

For the avoidance of doubt, this Practice Guidance is a compendium of all internal training material, advice and guidance in force prior to the date of this Practice Guidance and it is designed to further the Council's aim for a consistent, effective and legally compliant practice across the whole of the Council.

### 2. WHO DOES WHAT

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#### a) Role of the Practitioner

It is the role of the practitioner (social worker, OT, trusted Assessor, HIP) to identify the DRE as part of the care and support assessment process. Practitioners must follow Annex C in conjunction with this Practice Guidance, keep a full and accurate record of their decision making process on MOSAIC, and gather all the necessary evidence in support of their decision on whether to allow or disallow DRE.

It is not the role of the practitioner to identify how much, in financial terms, DRE allowance should be as this function sits with the FABAs assessors (see below).

## **b) The Role of the FABAs Assessors**

The FABAs assessors will, as part of the financial assessment process, quantify the DRE identified by the practitioner for the purpose of working out the financial contribution of the adult. It is not their role to identify DRE.

However, if during an assessment visit the FABAs feels that there are DRE that have not been identified by the practitioner, they will inform the practitioner so they can be considered as part of the care assessment process.

FABAs assessors will quantify the DRE identified by the practitioners on the basis of the evidence provided by the practitioners and gathered from the adult as part of the care and support assessment or annual/ad-hoc review.

Please be aware that only the FABAs assessors can communicate to the adult and their representative the outcome of their financial assessment once completed. Any communication between the FABAs Team and the practitioner to discuss the carrying out or the outcomes of the financial assessment shall be for internal use only.

## **3. IDENTIFYING DRE**

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### **a) Stage 1 - How do I know what is a DRE?**

Where the adult is in receipt of disability-related benefits, the Council should make an assessment and allow the person to keep enough benefit to pay for necessary DRE to meet any needs which are not being met by the Council (i.e beyond the care and support plan).

This means that DRE should not be allowed to meet eligible needs of the adult which ought to be met by the care and support plan. When you carry out a review and identify such a need, you should amend the adult's care and support plan accordingly.

Remember the DRE must reflect the extra cost to the individual of meeting a particular need as opposed to the cost that anyone without a disability would incur in the course of daily life.

You must also be mindful that it is reasonable for the Council not to allow for items where a reasonable alternative is available at lesser cost or no costs or should be provided by another agency (such as the NHS).

The Council is required by law to leave the adult with a Minimum Income Guarantee (MIG) before it makes charges for care and support. The MIG rates are set by the government. The MIG ensures that the adult will always be left with enough money to pay for basic household expenditure items and general living expenses. General living expenses are classed as every day costs which people are expected to pay for themselves or using their state benefits (DRE should not be allowed for the purpose to put the adult in a more advantageous position than any other person without a disability).

Please remember that the adult must live within their means. It is not a duty of the Council to manage the adult's finances.

## Stage 2 – Is it in the list set out in Annex C?

In general terms, if the expenditure is incurred to meet an eligible need which should be met by the Council, then it should be included in the adult's care and support plan as opposed to being allowed as DRE. The Statutory Guidance states that "*the care plan may be a good starting point for considering what is necessary disability-related expenditure*".

Once you have established that the adult is in receipt of disability-related benefit and that they have additional expenditures which are not met by the Council, you must consider the list set out in Annex C (and replicated below).

If the item of expenditure you are assessing is a) expressly included in the list below and b) not included or cannot be included in the care and support plan, and c) reasonable, then it should be allowed as DRE:

### *Annex C List*

- (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.

Even though the expenditure is included in the Annex C list, you must keep in mind that the expenditure should be reasonable and directly related to the disabilities for which the adult is in receipt of the disability related benefit (see Appendix A for the case studies).

If the item of expenditure you are assessing is not included in this list, or you are not sure if it is, then please refer to Stage 3 below.

### **b) Stage 3 – Does it meet the Test**

If an item of expenditure is not expressly included in the Annex C list, then you should consider whether it is reasonable and directly linked to the adult's disability and not already met by the Council as part of the adult's care and support plan.

The Statutory Guidance states that "*what is disability-related expenditure should not be limited to what is necessary for care and support*".

Therefore, even though certain costs are not included in the Annex C list, you need to consider whether the expenditures could be categorised as DRE by virtue of them

being directly related to the adult's disability to meet their needs beyond what is necessary for their care and support.

This means that, for example, electricity costs are not included in a care and support plan, but, if due to the adult's disability, the adult needs to pay a higher bill due to extra heating costs, then the extra costs over and above the average electricity costs should be DRE.

A helpful way of thinking about whether the test is met is to ask what need beyond the care and support plan would not be met if you did not allow this DRE?

The case studies in Appendix A of this Practice Guidance, which are based on real situations, illustrate how to identify DRE.

Appendix B sets out some examples of expenditures which the Council, on the basis of the principles set out in the Statutory Guidance, will not allow as DRE.

## 4. ESCALATION

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If you are not sure about whether to allow or disallow a DRE you shall proceed as follows:

- Discuss the matter with your line manager in the first instance, if unresolved
- Escalate the matter to your Service Manager, if unresolved
- Escalate the matter to the DRE Escalation Panel for determination

Please be aware that if a legal challenge is brought by the adult (or their representatives) against the Council as to what constitutes DREs and the effect of this on their financial assessment, the matter will need to be referred to the Council's Legal Department (ELS).

In the event that the adult brings a legal challenge against the Council in relation to their DREs, you should not discuss the challenged DREs and/or any related matter with the adult. All queries from the adult (or their representatives) related to the challenged DREs must be referred to ELS who will respond.

However if the adult contacts you to discuss their care and support needs, you may discuss this with them in the normal way.

## 5. SIGN OFF

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The care and support plan shall be signed off in accordance with the Council's Scheme of Delegation by your Team Manager, or Service Manager, or Director, depending on the value of the social care package for the adult.

You are reminded that no representations on behalf of the Council should be given to the adult and their representative when conducting a care and support assessment in relation to what will be allowed as DRE until the assessment process is completed and signed off in accordance with the Council's Scheme of Delegation.

## 6. REVIEW

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This Practice Guidance shall be reviewed annually, or as mandated by any changes in the law and statutory guidance, or as the Council may direct.

## 7. COMPLIANCE

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This Practice Guidance shall form part of the Council's internal processes to ensure its compliance with the Care Act 2014, Care and Support Regulations (Care and Support (Charging and Assessment of Resources) Regulations 2014 and the Statutory Guidance. These processes include:

- The DRE monthly Bulletins
- Internal DRE Training
- Internal Practice and Development DRE Road Shows
- DRE drop in sessions

For the avoidance of doubt, and in the interest of consistency and effectiveness of the Council's processes, this Practice Guidance shall replace the DRE Bulletins with effect from the date of this Practice Guidance.

## 8. STAKEHOLDERS

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This Practice Guidance has been reviewed by the following stakeholders:

- FABA Team
- Adult Social Care
- Essex Legal Services
- Senior Policy Advisor

This Practice Guidance has been approved by:

Date:

## APPENDIX A - CASE STUDIES

For the avoidance of doubt the case studies included in this Appendix are for illustrative purposes only. This Appendix should not be used to substitute your own assessment of the adult's individual circumstances and requirements.

<b>Day centre activities</b>	
<b>Details of disability/ case background</b>	<p>P has Downs Syndrome and as result requires constant support. P is also incontinent as result of her condition.</p> <p>P attends a day centre 3 times per week which is a managed service provided by the Council.</p>
<b>Disability Related Expenses sought</b>	<p>One of the activities provided through the day centre is a pottery class which P attends at an external venue. This gives her the opportunity to socialise with others. The cost of the pottery class is £8 per week.</p>
<b>Decision</b>	<p>Day care activities are not considered as disability related expenditure. If day care attendance and associated activities are assessed as an eligible need these should be included in the support plan and funding alternatives considered as part of this process. A review should therefore be completed to determine if this should be included as part of the support plan.</p>

<b>Petrol costs for shopping</b>	
<b>Details of disability/ case background</b>	<p>P has a diagnosis of dementia as result of which forgets to complete daily tasks such as personal care and is also unable to access the community alone.</p>
<b>Disability Related Expenses sought</b>	<p>P's neighbour takes him shopping once a week. P gives her £10 petrol money to do this.</p> <p>No mobility element included in the disability related benefit PIP/DLA</p>
<b>Decision</b>	<p>Transport costs can only be allowed if P is in receipt of the mobility element of DLA/PIP and they are over and above this element (see list xii)</p> <p>This is not the case here and as such this cost should not be allowed as DRE</p>

<b>Legal Costs</b>	
<b>Details of disability/case background</b>	P had a stroke 2 years ago which has affected her right side with extremely limited movements in her arm, leg and hand. It has also affected her short term memory.
<b>Disability Related Expenses sought</b>	P was married but advises that her stroke led to the breakdown of her marriage and subsequent divorce. P incurred a large bill for legal expenses and for which she is still paying by instalments of £150 each month.
<b>Decision</b>	This is not in the list and it does not meet the test in that it is not a necessary expenditure to meet needs (not met by the Council).  This should not be allowed as DRE

<b>Travel expenses</b>	
<b>Details of disability/case background</b>	P is in receipt of disability related benefit including a mobility element of £32 per week .
<b>Disability Related Expenses sought</b>	P likes go on long trips and drives over 6,000 miles per year. P claims that his travel expenses are £42 per week and therefore the excess should be allowed as DRE
<b>Decision</b>	Looking at the list of DRE in Annex C the following is listed as DRE: “ 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”. These costs are listed under the general heading: Costs of any specialist items needed to meet the person’s disability needs  As this is not the case here as P’s travelling is for leisure not necessitated by his disabilities, this additional cost should not be allowed as DRE.

<b>Additional food</b>	
<b>Details of disability/case background</b>	P has severe learning disabilities and other health issues, and they require weight management as well and compulsive behaviour.
<b>Disability Related Expenses sought</b>	P claims as DRE the costs of 4 litres of squash a day as it is a compulsion for them to drink this as well as the costs of 500 additional tea bags per month as it is

	another compulsion to make tea throughout the day.
<b>Decision</b>	<p>Looking at the list, additional costs of special dietary needs due to illness or disability are included. However the squash and tea bags do not fall under this category.</p> <p>By applying the test, are these costs necessary to meet P's disability needs and are they reasonable and directly related to P's disabilities? The answer is no.</p> <p>What need would not be met if we did not allow these costs? The answer is none.</p> <p>These costs are incurred as consequence of a compulsion not to meet a need. Therefore the care and support plan should be reviewed to make sure that P's compulsive behaviour is properly managed.</p> <p>These costs should not be allowed as DRE</p>

<b>Costs to replace broken items</b>	
<b>Details of disability/ case background</b>	P has severe learning disabilities and severe behavioural problems. P has also serious weight problems.
<b>Disability Related Expenses sought</b>	<p>P claims as DRE the additional costs incurred every week to replace pottery that P breaks due to his behavioural issues.</p> <p>P also claims as DRE the costs of replacing broken toilet seats due to their extra weight and dyspraxia.</p>
<b>Decision</b>	<p>Looking at the list, neither item is included.</p> <p>By applying the test, are these costs necessary to meet P's disability needs and are they reasonable and directly related to P's disabilities? The answer is no for both items.</p> <p>What need would not be met if we did not allow these costs? The answer is none for both items</p> <p>These costs of broken pottery are incurred as consequence of P's unmanaged behaviour not to meet a need. Therefore the care and support plan should be reviewed to make sure that P's behaviour is properly managed.</p>

	<p>The costs of the broken toilet suggest that an OT assessment should be conducted and the right type of toilet seat/other equipment should be commissioned for P as part of the care and support package.</p> <p>These costs should not be allowed as DRE</p>
<p><b>Costs of additional items</b></p>	
<p><b>Details of disability/ case background</b></p>	<p>P has severe learning disabilities and suffers with incontinence</p>
<p><b>Disability Related Expenses sought</b></p>	<p>P claims as DRE the additional costs incurred for new mattresses. P claims he needs a new mattress every six months.</p>
<p><b>Decision</b></p>	<p>Looking at the list, this is not included.</p> <p>By applying the test, are these costs necessary to meet P's disability needs and are they reasonable and directly related to P's disabilities? The answer is no.</p> <p>What need would not be met if we did not allow these costs? The answer is none</p> <p>The incontinence is the issue to be addressed here, think about management of the condition by:</p> <ul style="list-style-type: none"> <li>• Making more toilet trips</li> <li>• Providing water proof mattress cover</li> </ul> <p>Consider reviewing the care and support plan and referral to the NHS</p> <p>These costs should not be allowed as DRE</p>

## APPENDIX B – NOT DRE

The list below sets out certain items of expenditure that the Council would not consider as amounting to DRE on the basis of its interpretation of the Statutory Guidance and applicable legislation. Please note that this is not an exhaustive list.

**For the avoidance of doubt this Appendix is for illustrative purposes only. This Appendix should not be used to substitute your own assessment of the adult's individual circumstances and requirements.**

<b>Cost of private healthcare (eg BUPA subscription)</b>	NOT DRE
<b>Hairdressing (including styling, colouring, cutting, others)</b>	NOT DRE (hair washing only would be part of the Care and Support Plan)
<b>Cost of private dental care</b>	NOT DRE
<b>Standard cost of daily living (eg food, tv licence, cinema tickets, pub, phone line, gym, etc.)</b>	NOT DRE
<b>Funeral Plans</b>	NOT DRE
<b>Personal Trainer</b>	NOT DRE
<b>Dietary requirements which are not medically necessary (eg fizzy drinks and treats, eating disorders, etc.)</b>	NOT DRE
<b>Personal Care</b>	NOT DRE (To be included in the Care and Support Plan)
<b>Elective Private Respite Care / Holidays</b>	NOT DRE (To be included in the Care and Support Plan)
<b>Transfer from and to medical appointments</b>	NOT DRE
<b>Transfer from and to places identified to meet eligible needs (eg Day Centres)</b>	NOT DRE (To be included in the Care and Support Plan)
<b>Legal Costs incurred by adult to uphold any of their rights (eg divorce costs)</b>	NOT DRE
<b>Physiotherapy, Hydrotherapy, other alternative therapies</b>	NOT DRE (if these are health needs the NHS will need to fund these)
<b>Gardening (including landscaping, flower beds, etc.)</b>	NOT DRE (unless limited to reasonable costs of basic garden maintenance and if necessitated by the individual's disability – eg front and back entrance to ensure safe access or unless there is a specific requirement in the tenancy agreement)
<b>Medical / Dental Expenses not related to disability</b>	NOT DRE
<b>Mobile Rental</b>	NOT DRE
<b>Deputyship Costs (charged by Essex Deputyship Team or any other professional)</b>	NOT DRE
<b>Private Home Care / Cleaner</b>	NOT DRE

## APPENDIX C – DRE ASSESSMENT FLOW CHART

