ASC - Capital Depletion Policy

Summary:

This policy outlines Portsmouth City Councils approach when establishing funding eligibility for individuals when formally self-funding and their finances have depleted or are close to depleting to below the upper capital threshold as defined by the Department of Health.

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Related Documents	Care Act 2014 - Charging and Assessment of Resources Care and Support Statutory Guidance ASC Choice Policy ASC Third Party Top up Policy. ASC Deferred Payment Policy
Applicability	Adult Social Care Income Team - Finance Adult Social Care Teams including Older Persons, Learning Disability, Adult Mental Health, and Physical Disability Teams
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1. PURPOSE

The aim is to outline Portsmouth City Council's (PCC) approach when establishing funding eligibility for individuals that were formally self-funding their own care and support services and their finances have depleted or are close to depleting below the upper capital threshold as defined by the Department of Health.

This policy is supported by Portsmouth's "information for self-funders" available for providers and residents of care in care home settings i.e. residential and nursing establishments.

2. BACKGROUND

Currently unlike NHS services, Adult Social care is not free. Individuals will be expected to contribute something towards the cost of services should they be assessed as being able to after a means tested financial assessment.

Some individuals will be expected to meet the total cost of services either due to their financial assessment exceeding the cost of services or because they would be considered as "self-funding".

Individuals that are "self-funding" their care will be considered as facing capital depletion when their available capital/assets are nearing the upper capital threshold as defined by the Department of Health - please note this threshold may be subject to change annually, for information pertaining to the current threshold please visit the Department of Health website.

Currently people with more than the upper capital threshold are considered self-funding for their care and support needs.

People with less than the upper capital threshold but more than the lower capital threshold will make an additional contribution towards their care from their capital known as "tariff" income, this is calculated as £1.00 for every £250.00, or part of capital held between the lower and upper capital thresholds. This "tariff" income is added onto the persons income/benefits/savings to establish their assessed maximum weekly charge towards services.

3. CONTEXT

Non-residential care

Portsmouth has a duty to meet the eligible, un-met care needs of individuals that require care not in a care setting, this is known as non-residential care and also includes services such as attendance at a day centre.

For self-funding individuals (as per the definition above) Portsmouth is permitted to charge an ongoing "self-funding" arrangement fee and one-off administration charge. These charges represent the cost(s) associated with procuring the care, managing the contract, negotiations surrounding price increases and managing any potential disputes or care quality issues.

Individuals requiring non-residential care that are self-funding can opt to source and arrange their own care and support privately should they choose to and therefore not incur any additional costs.

Care Homes - Residential / Nursing establishments.

Portsmouth City Council has a duty to meet the eligible care and support needs of individuals who are NOT considered self-funders. The only exception to this is if the individual has a property and is wanting to enter into a deferred payment scheme with the council, please refer to **ASC Deferred Payment Policy**.

Portsmouth City Council have a brokerage system for the commissioning of residential/nursing accommodation. This system will determine what is a reasonable price to meet a person's eligible need; considering the level of care and support required and the current market value. Once the commissioning price has been established this will be the basis for setting the individual's personal budget and Portsmouth City Council will not fund more than this value barring exceptional circumstances.

Portsmouth City Council will always strive to offer cost effective care, offering accommodation which meets the individuals needs at a cost which is sustainable to the Council.

This means, that if an alternative care solution can be sought that is less expensive than what an individual has been previously funding, then the individual may be required to move providers or alternatively a family member or other third party may be required to "top up" the difference, please refer to **ASC Third Party Top Up Policy**.

Portsmouth City Council will not automatically meet the cost incurred by self-funders and must work in a way that is cost effective to ensure service sustainability to vulnerable citizens of Portsmouth.

Individuals' circumstances, and health and wellbeing will be considered throughout any decision making concerning the suitability of providers in meeting their eligible care and support needs. The council has a duty to meet eligible needs and a requirement to do so in a cost-effective manner. Each case will be assessed on a case-by-case basis and decisions will be carefully considered.

4. ELIGIBILITY CRITERIA

Portsmouth City Council does not have a legal duty to meet needs that are not eligible under the Care Act (2014) and therefore does not have a legal duty to fund services, where there are no eligible needs.

Portsmouth City Council has a duty under the Care Act 2014 to undertake a needs assessment to identify whether the individual has eligible care and support needs which would require local authority funding.

When completing the needs assessment for an individual who has depleted their capital, the same strengths-based approach to meeting eligible needs applies. A strengths-based approach will focus on what a person is able to do, rather than what they cannot. This approach aims to empower people to find the best solutions to achieve their outcomes and ensure they are fully involved in the decisions surrounding how their care and support needs are met.

No eligible care and support needs

If, after the Care Act assessment it is deemed that the individual does not have eligible care and support needs, Portsmouth has no Duty to provide services or funding.

Eligible care and support needs - different level identified.

If the individual is assessed as having eligible care and support needs however at a different level than currently self-funding for example: currently self-funding a nursing placement, but the needs assessment has identified residential needs, then Portsmouth only has the duty to provide funding to meet the eligible need identified.

In these circumstances support will be given to help the individual seek an alternative care provider that meets the eligible needs at a cost which is in line with Portsmouth's financial requirements.

Alternatively, Individuals may choose for a third party to make a top up to pay the difference between what Portsmouth would fund and the cost of placement. Top ups cannot be made by the individual receiving the care support services and must be sustainable for a minimum of 2 years. Please refer to **ASC Third Party Top Up Policy**.

Individuals will be advised to seek independent financial and legal advice in these circumstances.

Eligible care and support needs - similar level identified.

If the individual is assessed as having eligible care and support needs at a similar level to what the individual is currently self- funding e.g. is in a nursing home self - funding and nursing needs have been identified, Portsmouth may still not fund the rate the individual is currently paying.

A rate will be identified by the Councils care purchasing system to find the most cost-effective solution to meet the individuals care and support needs. The Council are obliged to provide at least one offer they can procure in order to meet a persons care and support needs.

Where a more cost effective alternative can be sourced the practitioner may, after careful consideration of the individuals needs, propose moving the individual to another care provider. If there is an objection to the proposed move other options such as a third-party top will be discussed, and the individual will be encouraged to seek independent advice.

5. CAPITAL DEPLETION ASSESSMENT

For individuals living in a care home and self-funding their care and support, they must be able to evidence that their capital has depleted or is nearing the upper capital threshold.

Portsmouth recommends that self-funding individuals who find themselves in this position contact the Financial Assessments and Benefits (FAB) team when their capital reaches approximately £30,000.00 to ensure adequate time for the care needs assessment and financial assessment to be completed.

Where an individual has approached the LA for funding due to their capital depleting or nearing the upper capital threshold, the FAB team will complete one of two assessments depending on whether the individual's capital has depleted below the upper threshold or whether it is nearing the threshold.

Capital below the upper capital threshold when approaching the Local Authority

Portsmouth City Council will only accept responsibility for funding at the point in which it was approached by the individual or their legal representative, it is therefore imperative that contact is made with the Council in advance of reaching the upper capital threshold.

Where an individual's capital is already below the upper capital threshold at the point of approaching the Local Authority, the FAB team will request bank statements to evidence that the individual has been self-funding their care and support needs and ensure that the capital has depleted at a rate that is expected when considering the cost of placement and income received by the individual during their placement.

Portsmouth will generally request 12 months' worth of bank statements for this purpose but reserves the right to request statements dating back to the start date of placement should they feel warranted to do so.

Should the individual have been through the process of selling their property or was previously on a Deferred Payment Arrangement (DPA) with the Local Authority and the capital received from the property sale has since depleted, the FAB team will also request a copy of the property sale completion statement.
This will be reviewed to ascertain how much the property sold for and how much the individual received from the sale when ensuring that the capital has depleted at a rate that is expected considering the cost of placement and income received by the individual during their placement.

The FAB team will, once satisfied capital has depleted and is now eligible for funding, complete a means tested financial assessment in accordance with the **ASC Charging Policy** to determine what the clients ongoing weekly contribution will be towards the cost of care. This means test assessment will be applicable from the date in which the client informed the council that their funds were depleted and funding will only apply from this date forward.

Where the FAB team are not satisfied that capital has depleted proportionately or where there may be indication that the individual may have deliberately deprived themselves of capital / assets in order to obtain council funding, further investigation may be instigated which may impact on the funding availability or date in which funding applies, reference should be made to the **ASC Deprivation of Capital Policy**.

They will also ensure all welfare benefits are accurate and appropriate departments are informed that the individual is now subject to LA funded care e.g. once LA fund/part fund an individual's placements that individual loses any entitlement they had to Attendance Allowance or Personal Independence Payment (Health) which they would have had entitlement to being of self-funding status.

Capital nearing the upper capital threshold when approaching the Local Authority

When a client approaches the Local Authority for funding, but their capital has not yet fallen below the Upper Capital Threshold, the FAB team will request the same financial information and carry out the same checks as they would for a client whose capital is already under the threshold but in addition to this, they will also complete a "*Capital Reducing Assessment*".

Capital Reducing Assessment

This capital reducing assessment will calculate the date at which the individual is expected to fall below the upper capital threshold and therefore eligible for LA funding. This assessment will look at the amount of capital held at that date, the weekly income and expenditure of the individual and the current cost of the placement.
The assessment determines how many weeks/days funding the individual can afford before their capital depletes and therefore provides the date at which local authority funding would apply.

Completing the Assessment

The FAB team will request supporting evidence such as bank statements to show how much capital is being held as of the date of the capital reducing assessment.

Capital that is held in all bank accounts owned by the individual, (single and joint) will be included in the assessment.

All weekly income that the individual receives will also be added to the assessment, as any income received will reduce the amount of capital being spent on the care home placement.

Should the individual have been through the process of selling their property or was previously on a Deferred Payment Arrangement (DPA) with the Local Authority and the capital received from the property sale has since depleted, the FAB team will also request a copy of the property sale completion statement.
This will be reviewed to ascertain how much the property sold for and how much the individual received from the sale when completing the capital reducing assessment and calculating the date for local authority funding.

There will be allowance for some priority housing costs on the assessment, if the individual is liable for paying these costs out of their income and capital whilst they are self-funding their care home placement.
If a partner/spouse is also liable, only 50% of the cost will be allowed (except for Gas / Electric where the expectation will be for the occupier remaining in the property to pay for this expense from their income), they include:

- **Mortgage or rent payments**
- **Council Tax**
- **Water rates**
- **Gas / Electric (Standing charge only and only if the property is empty)**
- **Buildings insurance**

Supporting evidence will be requested by the FAB team that the costs are being incurred and that the individual is liable for them before the amounts will be considered on the assessment.

Only these listed housing costs are allowable for the purposes of the assessment.

Based on the information recorded on the assessment, a date will be determined that the individual is eligible for local authority funding.
The FAB officer will inform the ASC Social Worker of the funding date to ensure that PCC start funding from the correct date, protecting the individual's capital from any further unnecessary depletion.

If a capital-reducing assessment has been completed and a funding date has already been agreed, but the individual or their representative later informs the local authority that emergency expenditure has occurred, such as roof repairs, funeral expenses, urgent home repairs or repayment of a priority debt such as Council Tax and this has reduced the capital amount held and may affect the local authority funding date, the following process will apply.

- The client/representative must contact the Council before making the expenditure to discuss the situation.
- Three quotes must be provided to the FAB team in relations to any emergency proposed works or services required.
- An invoice/receipt/bank statement showing payment made will be required as evidence of the expenditure made.
- Failure to notify the Council prior to the spend may affect whether the expenditure is accepted in the assessment.

6. INDIVIDUALS WHO LACK MENTAL CAPACITY FOR THIS/THESE SPECIFIC DECISIONS

Where a decision is made in the best interest of the individual, whether made by a legal representative (Deputy/LPOA) or Portsmouth City Council, these will be made within the options identified to meet the eligible care needs that have been assessed.

Individuals lacking capacity do not attract more funding or eligibility than an individual that has capacity to make this/ these specific decisions.

Following the care needs assessment, if it is identified that the individual may not have mental capacity to make specific decisions about where they will live and/or what care they will receive, then a Mental Capacity Assessment must be completed in relation to those specific decisions.

- Where mental capacity has been determined under an active DoLS, a separate assessment of mental capacity with regards to their choice of accommodation will not be necessary. However, if the proposed change in accommodation will give rise to a new referral for DoLS authorisation, assessment of capacity will be undertaken under the DoLS statutory framework.
- If an individual is subject to an authorised detention under the Deprivation of Liberty Safeguards (DoLS) this does not restrict consideration of alternative care arrangements should the council be able to meet their eligible care and support needs in a more cost-effective way. DoLS will determine best interests based on the options available at the time.

- If an individual has a legally appointed representative with relevant authority, then they should make the required decision.
- If the individual does not have a legal representative relevant for the decision, then a Best Interests decision will be made, this process should involve the individual, family/representative and other professionals, including the appointment of an Independent Mental Capacity Advocate (IMCA), if appropriate.
- If the individual is objecting to a proposed arrangement or other interested parties are objecting to the best interest determination, and agreement cannot be reached, the matter should be referred to the Court of Protection

7. LEGAL CONTEXT AND REFERENCES

This policy has been written in compliance with the following legislation and government guidance:

- The Care Act 2014
- The Mental Capacity Act 2005
- Equality Act 2010
- Human Rights Act 1998

Portsmouth also recommends this policy is read and understood alongside the following:

- ASC Choice Policy
- ASC Third Party Top Up Policy
- ASC Charging Policy
- ASC Deferred Payment Policy