



# **Residential Care Charging Policy**

**April 2024**

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## **1. Introduction and Purpose**

- 1.1 The Charging Policy has been designed to comply with the Care Act 2014, which provides a legal framework for charging for adult social care.
- 1.2 Section 14 of the Care Act provides local authorities with the power to ask adults to make a contribution to the cost of their social care.
- 1.3 Section 17 of the Care Act allows local authorities to carry out a financial assessment to determine the amount a customer can afford to contribute towards the care services they receive.
- 1.4 The policy takes account of the Equalities Act 2010 and other associated legislation relating to equality and diversity.
- 1.5 The policy has been designed in line with Care and Support Regulations (Statutory Instruments) and Care and Support Guidance and Annexes issued under the Care Act 2014.
- 1.6 Charges will commence from the start of the service
- 1.7 The policy will set procedures for claiming financial help with residential social care charges.
- 1.8 The policy will establish an appeals procedure for customers dissatisfied with the outcome of a financial assessment.
- 1.9 The policy will safeguard the interest of the local taxpayers by ensuring the financial assessment process will include a welfare benefits check to ensure full entitlement is claimed. This may include assistance with making claims.
- 1.10 This updated policy is effective from 01 April 2024.
- 1.11 The policy covers all adult social care services that are provided in a residential care setting. This includes permanent and temporary placements (including respite care) in residential or nursing care.

## **2. Exemptions to the Policy**

- 2.1 The policy will apply to all recipients of residential social care except where:
  - The support is provided as a Reablement Service, or as Intermediate Care and is for a period of up to 6 weeks
  - Community equipment (aids and minor adaptations)
  - Care and support provided to people with Creutzfeldt-Jakob Disease

- Aftercare services/support provided under Section 117 of the Mental Health Act 1983
- Any service or part of service which the NHS is under a duty to provide. This includes Continuing Healthcare and the NHS contribution to Registered Nursing Care. Where Health funding is paid only towards your registered nursing care you will still be required to pay for the residential social care element of your care costs, and these will be backdated to the date of admission.
- Any services which the Council is under a duty to provide through other legislation.

### **3. Care Needs Assessment**

- 3.1 Where a person has the appearance of a need for care and support, a needs assessment under the Care Act will be carried out by the Council in accordance with care management and care co-ordination policy and procedures, regardless of whether or not the Council thinks the individual has eligible needs or of their financial situation.
- 3.2 Referrals for care and support are taken by Social Care Direct and passed to the relevant social work or care co-ordination team. The team will assess eligibility for care and support and will consider how these needs could be met. If the person has eligible needs and 24-hour care is proposed and agreed to be the most appropriate service, the practitioner will arrange a placement in a suitable care home.
- 3.3 A care and support plan will be produced detailing what services will be provided, how they will meet the person's needs, when they will be provided and who will provide them. This will be produced with the relevant person and any person supporting them. It will be agreed to by all parties.
- 3.4 A personal budget will be set which is the maximum amount a person can get to meet their 'eligible' needs, to pay for all the services set out in their care and support plan.
- 3.5 At the time of the assessment the practitioner will give advice on the appropriate type of care and funding. This can include a light touch financial assessment to establish if the person is a self-funder (please see Section 5) if it is apparent that a person has significant financial resources.
- 3.6 Where a care needs assessment has been completed and a financial assessment is refused, the Council is entitled to treat the person as though a financial assessment has been conducted, and the person's resources exceed the capital limit and therefore not eligible for support.
- 3.7 If a person chooses not to have a needs assessment they are considered a private resident and enter into arrangements directly with their chosen care provider.

- 3.8 The Council can provide advice and support if requested by the individual or family to enable a person to make their own arrangements for care and support.

#### **4. Assistance with Funding Care Costs**

- 4.1 A financial assessment will determine whether a person is eligible for financial support to meet their eligible needs for residential care and, if they are entitled to financial support, the amount they will be liable to pay.
- 4.2 Where a person is deemed to have insufficient income or capital to contribute towards the cost of their service, the Council will meet the full cost of the care under these circumstances. A full benefit check will be completed to ensure that they are receiving their full entitlement to state benefits.
- 4.3 Where a person is not receiving their full entitlement to state benefits, they will either be assisted by the Council or referred to the relevant agency, to provide assistance with maximising their income.
- 4.4 This is further explained at Section 10.

#### **5. Self-funders**

- 5.1 A self-funder is the term given to someone who has undergone a needs assessment and pays the full cost for their own care and support requirements direct to the care provider. This is because they have over £23,250 (the current upper capital limit) in capital and/or assets. They will be advised that they can make their own arrangements with a care provider without a financial assessment being undertaken.
- 5.2 In some circumstances a person's home is excluded as an asset and disregarded from the financial assessment meaning they are not deemed to be a self-funder. This is explained in detail at section 13.
- 5.3 If a self-funder has capital under £23,250 but additional assets will take them over the £23,250 upper capital limit, they may want to consider applying for a Deferred Payment Agreement (DPA) (see section 6).
- 5.4 The Council is not obliged to meet the residential care needs of self-funders but can exercise its discretion do so in some circumstances using the powers defined in section 19 Care Act 2014. Set out below are examples of where this discretion may be exercised, this is not an exhaustive list and legal advice should be sought if there is any uncertainty about whether to use this power:
- When a person is subject to undue influence or coercion or control by another adult and there are safeguarding concerns
  - When a person has no relatives to assist or support and whilst they currently have capacity, there is evidence to suggest that they are likely to become incapable of making and sustaining their own arrangements

- When a person has a degenerative condition which, without support, will impact on their health and wellbeing
  - When a person is terminally ill
- 5.5 A Self-funding Panel (made up of senior social care and financial professionals and with advice from legal service where required) will meet to consider these requests and determine if the Council will exercise its powers.
- 5.6 When a person has been determined as a self-funder, information will be provided giving details on paying their own care home fees including the requirement to contact the Council 3 months prior to their funds reducing below the upper capital limit. At this stage a financial assessment will be undertaken”.
- 5.7 In other cases a financial assessment will be undertaken to establish whether or not a person is entitled to funding from the Council towards the cost of their care. This will also determine if they will be required to make a contribution towards this cost or if they will be self-funding.

## **6. Deferred Payment Agreement**

- 6.1 Under sections 34 to 36 of the Care Act 2014, the Council has a duty to offer a Deferred Payment Agreement (DPA), to prevent people from being forced to sell their home in their lifetime to pay for care costs (see Deferred Payment Agreement Policy).
- 6.2 A DPA will be offered to people who have a beneficial interest in a property and meet the following criteria:
- Anyone whose needs are to be met by the provision of care in a care home (as defined in the Care and Support (Deferred Payments) Regulations 2014
  - Anyone who has less than (or equal to) £23,250 in assets excluding the value of their home
  - Anyone who has not had their home disregarded from the financial assessment carried out under Section 17 of the Care Act

Additionally:

- The service user or their agent must agree to the terms and conditions of the deferred payment agreement
  - The council must be able to register a legal charge on the property at the Land Registry
- 6.3 By entering into a DPA, a person can defer paying some of the costs of their care and support until death or may choose to use the deferred payment to give them flexibility to decide when to sell their home. The deferred payment is repaid by the individual, or a third party on their behalf, at a later date. The amount of the deferred payment is secured by the Council taking out a legal charge on the property.

- 6.4 For more information and guidance please refer to the Council's DPA Policy and factsheet 'Information for people in residential care with property'.

## **7. Arrangements for People Who Lack Capacity**

- 7.1 Section 18 of the Care Act 2014 places a duty on the Council to make arrangements for people assessed as having an eligible need for residential care who lack the mental capacity to make arrangements for themselves, if there is no other person authorised to do so under the Mental Capacity Act 2005 (for example, through Deputyship or a relevant Lasting Power of Attorney). This applies regardless of a person's financial circumstances.
- 7.2 Where there is a family member or a close friend who is able to act as a financial deputy, they will be advised that they should apply to the Court of Protection to take on this role. If they are unwilling to take on this role, they will be advised to contact a private solicitor. The Deputy and Appointee Team are able to provide advice and guidance to family members on applying for deputyship.
- 7.3 The Council will not normally provide care management or care co-ordination for any person with a property and Financial Affairs Deputy (except for a Public Authority Property and Financial Affairs Deputy) unless there are exceptional circumstances such as (this list is not exhaustive):
- A person who is subject to safeguarding enquiry in respect of financial abuse
  - A person who has no relatives able to assist or support with welfare matters
  - A person who has a degenerative condition which, without support, will impact on their health and wellbeing
  - A person who is subject to undue influence or coercion or control by another
- 7.4 When there is no one else available to take on the role of Property and Financial Affairs Deputy the Council may apply to take on this role. Where the Council takes on this role it will continue to care manage and review the case in order to comply with the Office of the Public Guardian Deputy Standards.

## **8. Category of Care**

- 8.1 The Social Work or Care Co-ordination Team will notify the Financial Assessment Team immediately of the date, type of placement and category of resident or any change of circumstances in respect of category of resident; respite, temporary or permanent (once confirmed at the 6-week review).
- 8.2 Definitions of categories are detailed below:
- Respite resident - a person who is provided with accommodation in a care home for a period not exceeding 8 weeks

- Temporary resident - a resident whose stay is unlikely to exceed 52 weeks or in exceptional circumstances whose stay is unlikely to substantially exceed that period
- Permanent resident - a resident who is not a short term or temporary resident
- Prospective resident - a person whose financial circumstances are being assessed pre-admission

## **9. Review of Care and Support Plans**

- 9.1 Where an assessment of need has been undertaken and the person has eligible needs for residential care which are to be met by the Council, an initial review will be undertaken after 6 weeks and annually thereafter.

## **10. Financial Assessment**

- 10.1 A financial assessment is a 'means' test to assess a person's ability to pay the costs of their care, considering income, capital, allowable costs and allowances.
- 10.2 Where a financial assessment determines that a person does not qualify for financial support and/or has capital or assets more than the upper limit, they will be required to pay the full cost of their care at the contracted rate.
- 10.3 If a person does not wish to or refuses to disclose financial information, they will be required to enter into a private arrangement with the care home as a self-funder.
- 10.4 The financial assessment will be carried out, where possible, in advance of the provision of service or as soon as possible following completion of the needs assessment, usually by a pre-arranged telephone call.
- 10.5 If a person has declined a needs assessment they will be given information and advice but will be advised to make their own arrangements with a care provider. If a care provision is already in place, it will cease following 21 days' notice being given. Information will be given to the person as to how they should contact the Council three months before their funds fall below the capital limit and at that point, a needs assessment and a financial assessment will be required.
- 10.6 Any fees paid by the Council are recoverable from a person who has refused or not completed a financial assessment. Fees will be recovered in accordance with the Council's Debt Management Policy.
- 10.7 A person is entitled to a needs assessment and a financial assessment, no matter how much money they have.
- 10.8 A person considering entering residential care will be advised that they can be supported by a relative, friend or other representative, or by formal support from an advocate.



10.9 The financial assessment process will include a welfare benefit check to ensure full entitlement is being claimed. This will include guidance for making claims. A light touch financial assessment may be undertaken when:

- A person's income and capital can be verified using information from the Department for Work and Pensions
- It has been established they have significant financial resources and do not wish to undergo a full financial assessment for personal reasons but want to access advice and support from the Council in meeting their needs

10.10 A reassessment will be carried out each year to recalculate charges. If requested, savings/capital can be reassessed on an ad-hoc basis.

## **11. Treatment of Income**

11.1 Financial assessments take into account most forms of income, benefits, including:

- Attendance Allowance (may stop after 4 weeks)
- Disability Living Allowance (DLA) - Care Component (may stop after 4 weeks)
- Personal Independence Payment (PIP) - Daily Living Component (may stop after 4 weeks)
- Carers Allowance
  - Employment and Support Allowance
- Incapacity Benefit
  - Severe Disablement Allowance
  - Income Support
  - Job Seekers Allowance
  - Pension Credit
  - State Retirement Pension
  - Industrial Injuries Disablement Benefit
  - Occupational (works) Pensions
  - Working Tax Credit
  - Universal Credit
  - Tariff income– see 12.5

11.2 The following income types are fully disregarded (this list is not exhaustive):

- Earnings (person in receipt of service only)
- Child Tax Credit
- Child Benefit (except in circumstances where the child accompanies the adult for whom Child Benefit is paid, and accommodation is provided for that child under the Care Act)
- DLA - Mobility Component
  - PIP - Mobility Component
- Armed Forces Independence Payments & Mobility Supplement
  - War Widows & Widowers Special Payments

- Guaranteed Income Payments made under the Armed Forces Compensation Scheme to disabled ex-service personnel
- Charitable or Voluntary Payments (as detailed in Annex C of Care Act 2014)
- Guardians Allowance
- Payments made in relation to training for employment
- Any grants or loans paid for the purposes of education
- Personal Injury trust including those administered by a Court
- Pensioners Christmas Payments & Bonuses
- Social Fund Payments including Winter Fuel Payments

11.3 The following income types will attract a £10.00 disregard:

- Armed Forces Compensation Scheme Payments for Survivors (Widows) Guaranteed Income Payments
- War Widows and War Widowers pension

11.4 Up to £6.95 is disregarded for the Savings Credit element of Pension Credit for a single person & £10.40 for a couple.

## **12. Treatment of Capital, Savings and Assets**

12.1 Most forms of capital or savings are taken into account and are detailed as follows, this list is not exhaustive:

- Bank and Building Society accounts
- Stocks and Shares
- Premium Bonds
- National Savings Certificates
  - Income from any Trust Funds (except for any personal injury funds administered by the High Court, the County Court or the Court of Protection, which income is disregarded)
- The value of the customer's interest in a property that is not their main or only home

12.2 Capital less than £14,250 is fully disregarded for charging purposes and is known as the lower capital limit. The upper capital limit is currently £23,250.

12.3 A person whose capital exceeds the upper capital limit will be assessed as able to pay in full for the service provided and deemed to be a self-funder, as will a person who fails to provide full details of their income and capital.

12.4 If a provision is already in place and the person is subsequently identified as a self-funder, then both the care provider and the person will be given 21 days' notice that the care provision is to end. The person is expected to make arrangements direct with the care home. Any care fees paid by the Council are recoverable from the person, which will be in accordance with the Council's Debt Management Policy.

12.5 A person who has capital between the upper and lower capital limits will be assessed as having 'tariff income' of £1 per week for every £250 (or part thereof) they have between the upper and lower capital limits.

### **13. Treatment of Property**

13.1 The value of a person's interest in their main or only home must be disregarded where:

- They are in a care home but the stay is temporary and either they intend to return to their home or they are selling it in order to buy a more suitable home
- They are in a care home but their home is occupied wholly or in part by a 'qualifying relative' (defined in 13.2), as their main or only home provided they have been occupying it continuously since before the person went into the care home

13.2 A 'qualifying relative' is:

- The person's partner, former partner or civil partner, except where they are estranged
  - A lone parent who is the person's estranged or divorced partner
- A relative defined in 13.3 who is either aged 60 or over, or is a child or is incapacitated

13.3 A relative in relation to a customer is a:

- Parent
- Son
- Daughter
- Grandparent
- Grandchild
- Uncle
- Aunt
- Nephew
- Niece

13.4 The value of a person's interest in their main or only home must be disregarded for 12 weeks, starting from the date the customer enters residential care permanently. During these 12 weeks the person will pay what the financial assessment determines that they can afford from their income and savings, unless the property is sold within this period and then the capital will be taken into account immediately and a new financial assessment completed.

13.5 If a customer does not have liquid assets in excess of £23,250 but has a property with equity in excess of this amount, they will be offered the opportunity to apply for a DPA. This allows them to defer or delay their care costs and repay them when the property sells or upon their death (details can be found in the DPA Policy).

13.6 If the person does not want to apply for a DPA or does not complete an application in a timely manner (28 days from the date of financial assessment), they will be deemed a self-funder and will be instructed to make arrangements

directly with the care provider to pay their fees. This will be from the end of the 12-week property disregard period. The care provider will receive 21 days' notice of the change in funding arrangements.

- 13.7 Where there is shared ownership of a property, the value of which is included in the financial assessment, the share of the value will be based on each owner's share of the purchase with an allowance for any proven investment made in the property subsequently.

#### **14. Deprivation of Assets – Capital, Property and Income**

- 14.1 If someone intentionally reduces their assets (such as money, property or income) to exclude them from the financial assessment, it is known as 'deprivation of assets'. Deprivation is considered where the person ceases to possess assets that would have otherwise been taken into account for the purposes of the financial assessment or has turned the asset into one that is now disregarded
- 14.2 The Council will consider the following before deciding whether deprivation for the purpose of avoiding care and support charges has occurred:
- Whether avoiding the care and support charge was a significant motivation in the timing of the disposal of the asset. At the point the capital was disposed of could the person have a reasonable expectation of the need for care and support
  - Did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs
- 14.2 Where the Council is satisfied that a person has deprived themselves of capital, i.e. an asset, in order to avoid paying in full or in part for their care, they will be financially assessed as though they still own that asset, this is known as notional capital. This could result in the person being found to have capital or assets in excess of the upper limit.
- 14.3 The asset may be a property, savings, or any other form of capital that has been given or otherwise transferred to another person or placed into trust.
- 14.4 Where the Council is satisfied that a person has intentionally deprived themselves of income (this being income that would be available on application but has not been applied for) in order to avoid paying in full or in part for their care, they will be assessed as though they are in receipt of that income. It will be included as notional income in their financial assessment. This could result in them being found to have sufficient income to pay in full for their care.
- 14.5 The Council will inform the person of the amount of notional capital or income that was used in their financial assessment.
- 14.6 If the person is entitled to financial support and notional capital/income/equity has been used in their assessment this will be reviewed on an annual basis.

14.7 Where the person has transferred the asset to a third party to avoid the charge, the third party is liable to pay the Council the difference between what it would have charged and did charge the person receiving care. However, the third party is not liable to pay anything which exceeds the benefit they have received from the transfer.

14.8 If the person has transferred funds to more than one third party, each of those people is liable to pay the Council the difference between what it would have charged or did charge the person receiving care in proportion to the amount they received.

## **15. Respite / Temporary Care**

15.1 A full financial assessment will be carried out for respite/temporary care services. There may be additional sums allowed as part of the financial assessment for ongoing home expenses.

15.2 When one partner of a couple enters respite or temporary care, the Council will try to ensure that the spouse remaining at home will be left with sufficient funds to enable them to meet their day to day living expenses.

## **16. Allowable Expenditure**

16.1 For those people in residential care, the Council does not treat Personal Expenses Allowance (PEA) as income for the purpose of a financial assessment. Where a person enters into a DPA and wishes to increase their PEA, they can increase the amount to be deferred accordingly.

16.2 Some service charges may be disregarded, and this will be determined on a case to case basis.

16.3 For those in residential care, mortgage repayments, rent, ground rent, water rates, buildings insurance, Care Connect and Council Tax can be disregarded from their income for a maximum of 6 weeks while a decision is made as to whether they will remain in the home on a permanent basis.

## **17. Contribution Calculation**

17.1 Once the financial assessment has been completed, the Council will make a decision about how much the person must contribute towards their care and support.

17.2 Where a person has capital above the upper limit (see 12.2), they must pay in full for their care and support.

17.3 Where a person has capital below the upper limit (see 12.2), the Council will carry out this calculation:

- Total of all income, including 'tariff income' (See 12.5)
- Less any disregarded income
- Less their PEA (personal expenses allowance)
- Equals the assessed contribution

17.4 The maximum contribution a person will be assessed to pay is the full cost to the Council of their care and support (which does not include any contribution from the NHS).

17.5 The guidance on charges is legislated by the Department of Health, the Council has limited discretion for variation.

## **18. Notification of Contribution**

18.1 Once the financial assessment is complete, the person will be notified in writing by the Council's Financial Assessment Team of their decision.

18.2 If the person has been assessed as self-funding they will be notified and advised that they should make their own arrangements with the care provider. A copy of this letter will be sent to the provider and the social worker.

## **19. Top-up**

19.1 In some circumstances residential care costs may be more than the amount identified in a person's Personal Budget. There are many reasons why residential care may cost more, for example, superior standard care, a larger room or other additional services. The Council must ensure that there is a choice of residential care within the amount identified in a person's Personal Budget, but a person can choose to live somewhere that costs more. If they do, a third party such as family member, a friend or a charity must be prepared to pay the difference between the care provider fees and their Personal Budget for the likely duration of their stay. This is called a 'third party top-up'.

19.2 The Council must never force a person to pay a top-up fee and must always ensure that a choice is available for the amount set within their Personal Budget.

19.3 The following criteria must be met for a third-party top-up:

- The person cannot pay the third-party top-up themselves, as all of their income and savings are taken into account in their financial assessment to establish their weekly contribution towards the cost of their residential care
- The third-party top-up will always be the difference between the care provider fees and a person's Personal Budget
- The third party will need to sign a written agreement stating that they are willing and able to meet the difference in cost and will continue to do so throughout the person's stay. If this is not provided the Council will not permit the placement

19.4 The third party will be made aware that the top-up amount may vary as providers review their fee levels.

19.5 The person whose needs are to be met by the accommodation may themselves choose to make a 'top-up' payment only in the following circumstances:

- Where they are subject to a 12-week property disregard
- Where they have a DPA in place with the Council.

- Where they are receiving accommodation provided under Section 117 of the Care Act for mental health aftercare
- Where they are a private self-funder

19.6 The Council will recommend that the third party obtains independent financial information and advice when considering a third-party top-up.

19.7 If the third party is unable to continue to pay the difference the person may have to move to another room within the residential care home or to a different residential care home where fees are within the amount set in their Personal Budget.

## **20. Payment**

20.1 If assessed to pay a contribution towards care and support a person will be invoiced, usually by the Council but in some cases by the care provider. The Council's preferred method of payment is by Direct Debit. Alternatively, an account or invoice will be sent every four weeks, which can be paid in any of the following ways:

- At the Post Office/Pay Point using the bar code on the invoice
- By returning the payment slip with a cheque to the address supplied
- By debit or credit card (details will be provided on the invoice)
- Via the Council's website (details will be provided on the invoice)
- By telephone or online banking (details will be provided on the invoice)
- By PayPal

## **21. Appeals**

21.1 All persons paying assessed charges have the right to appeal. The appeal will examine whether this charging policy has been applied correctly and whether there are any exceptional circumstances that justify a reduction in charges.

21.2 The appeal must be in writing and clearly state why the person believes the financial assessment is incorrect.

21.3 The appeal will be carried out by a senior member of staff not previously involved in the financial assessment and the outcome notified to the person in writing within three weeks from receipt of the appeal.

21.4 A person will be advised of their right to access the Adult and Health Services Complaints Procedure. An appropriate leaflet is included with every care plan produced.

## **22. Information Sharing**

22.1 The Welfare Reform Act 2012 and the Social Security (information sharing in relation to welfare services, etc.) Regulations 2012 enable the Council to access Department for Work and Pensions (DWP) data directly.

22.2 The purpose of this access is to support the financial assessment process and to assist in some claims to social security benefits that the person may be entitled to.

### **23. Debt Recovery**

1.1 The Council takes a firm but fair approach to managing debt. Large amounts of debt can build up very quickly in respect of social care contributions. Not only does this make the debt very difficult to recover, it can also have a detrimental effect on the individual's wellbeing. If debt starts to build up, it is very important that the Council act as quickly as possible, so the debt does not become unmanageable.

1.2 If a person does not pay their contributions or builds up any debt in respect of their care contributions, the Council continue to meet their care and support needs in the most cost-effective way. However, this may mean that there will be a change to the way in which the Council meet need.

- Third Party Top Ups for residential care - If the top up fee is not paid by the third party, and the Council cannot offer a deferred payment agreement, the person may receive written notice to move to an alternative placement where the room is charged at the standard rate. In the above cases, the Council will always carry out a review of the Support Plan before making any decisions. In doing so, the Council will have regard to the client's wellbeing. If any changes are required to the Support Plan, the Council will give enough notice to enable the client to meet any contractual responsibilities for cancelling existing services and give them time to choose a suitable alternative service.

23.3 The point at which a debt becomes due to the Council is the due date stated on the Council's invoice.

23.4 In line with the Care Act Guidance the Council will consider the following principles when approaching the recovery of debt:

- possible debts will be discussed with the person, their representative and Social Worker
- the Council must act reasonably
- arrangements for debt repayments will be agreed between all relevant parties
- repayments must be affordable
- court action should only be considered after all other reasonable avenues have been exhausted

23.5 If a person dies and they owe money to the Council, the Council will write to the executors of the will or next of kin, informing of the monies owed.

23.6 The Council will actively pursue the recovery of debt accrued as a result of non-payment of accounts or invoices. Debt will be pursued in accordance with the Council's Debt Management Policy.