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Charging for social care: Disability Related Expenses

A lawful financial assessment under s.17 Care Act must actually consider an individual's specific circumstances and needs and must not unlawfully fetter a council's discretion (that would be contrary to public law principles) and has clearly been ruled to be unlawful in relation to financial assessments in *R (Stephenson) v Stockton-on-Tees Borough Council [2004]* and *R (on the application of B) v Cornwall Council [2010]*.

In general the following rules apply:

Individuals must be left with enough money to meet THEIR:

- Daily living costs
- Disability-related costs (where disability benefits are counted as income)

(Care Act statutory Guidance 8.42)

This means their actual individual Disability related costs where these are necessary. There is case law on the issue of Disability Related Expenses (DREs) which will still apply under the Care Act since the fundamental rules have not substantially changed from the previous ones. In *R (Stephenson) v Stockton-on-Tees Borough Council [2004]* it was held that councils CAN have a general policy of not counting costs which a person **chooses** to incur BUT they must **not** apply this policy as a blanket rule for particular types of expenditure in all cases and must genuinely consider on the facts of an individual case whether particular costs should count as DREs for a particular person. And in *R (on the application of B) v Cornwall Council [2010]* it was held that the Care Plan should be a starting point in considering what expenses were necessary to meet an individual's needs.

So a crucial consideration is whether:

- the costs an individual is seeking to count as DREs are necessary to meet/contribute towards meeting needs/outcomes identified in their care plan e.g. paying to attend an activity in order (for example to develop and maintain social relationships to promote their social wellbeing (see Care Act eligibility criteria and s.1 definition of "wellbeing"))
- the cost the individual is funding is **necessary because of their disability** (even if they are the sorts of costs which, for a non-disabled person, might be a 'choice' see the example given in Care Act statutory guidance Annex C para 41 (link below))

The [Care Act statutory guidance Annex C](#) paras 39, 40 and 41 set out the broad principles which apply (based on the case law) and give a (non-exhaustive) list of costs which could potentially be disability-related expenses.

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Councils **are** allowed to count only the cost of a cheaper way of meeting the need, **if** there is a cheaper way of meeting the need **appropriately** (which may not be the way the person wants, but must be an evidence-based and reasonable professional judgement about what is appropriate).

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