



**Choice, Control and  
Independent Living:  
Putting the Care Act into practice**

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**Merton CIL's review of the current position  
of adult social care in the London Borough of  
Merton, and the way forward**

Published October 2018



Image 1: Poster based on our member's view of what Independence means to them

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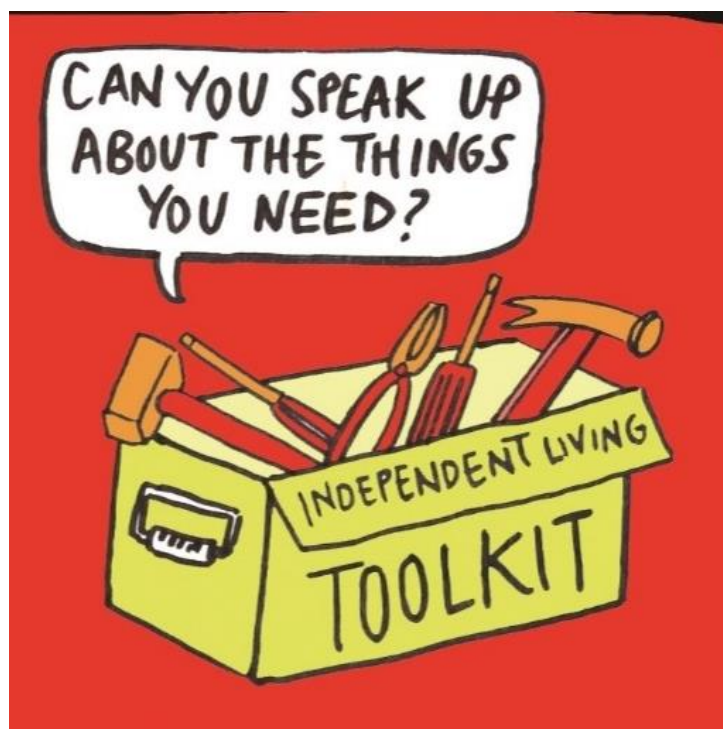


Image 2: Independent Living Toolkit 'Can you speak up about the things you need?'

# Executive Summary

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Merton CIL has produced this report to explore the experiences of social care users, and review the current picture of adult social care in Merton. The goal is to attempt to begin a conversation about genuinely co-productive approach to services in the borough.

The report looks at the overall situation of adult social care in Merton and at four specific areas of concern: assessments, charging, direct payments and safeguarding.

It identifies clear areas where Merton Council could improve adult social care in the borough, including actions needed to ensure that services meet the requirements of the Care Act 2014.

## Overview of key findings

We have found:

- an estimated 1,300 social care users in Merton feel they don't have enough control over their lives and the services that support them
- Disabled People in Merton have lower wellbeing than non-Disabled people
- Merton Council's policies and information about services on its website are not clear

And we have identified four specific areas of concern around:

- needs assessments are not always following the procedures set out by the Care Act and its guidance
- charging for adult social care services is having a major impact on the lives of service users and financial assessments for these charges are difficult for people to complete
- policies on direct payments, including the focus on pre-payment cards, and delivery of the support service, are limiting choice and control
- safeguarding in Merton could work more effectively to ensure people are not left at risk of neglect and abuse

Our overall conclusion is that there is a pattern to the challenges people are experiencing and these are not one-off incidences. Moreover, the impact on individuals is significant, and must be addressed.

## Recommendations

In the light of the evidence we have gathered for this report, Merton CIL recommends that the Council takes the following actions:

### Improving the evidence base for services

1. further investigate and address the reasons for poorer wellbeing among Disabled People in Merton with additional work around the residents' survey and specific work on wellbeing, using the Care Act definition
2. report more openly and regularly on complaints about adult social care, as recommended by the Local Government and Social Care Ombudsman (LGO)
3. there also needs to be greater clarity about the Council's policies about adult social care, which needs to carry through to the way information about policies and services are presented on the Council's website

### Assessments

1. monitor assessments for Care Act compliance including the provision of written assessments and support plans, and arranging advocacy where appropriate
2. monitor timescales for assessments, as recommended by Healthwatch England
3. explore whether the 48-hour contact target is resulting in inappropriate case closures due to pressures on staff
4. provide a training programme for all staff involved in assessments and support planning
5. review the Outcomes Forum with a view to facilitating the involvement of service users and bringing it into line with the Care Act and recommendations from the High Court

### Charging

1. work toward social care being provided on the same basis as NHS services on the basis of free at the point of use; we recognise this is a major change, and the following recommendations relate to current practice on charging and financial assessments
2. review the impact on service users of the increased target for income maximisation from charging, and in particular review whether increases in people's contributions without assessment is related to the drive to increase income from charging

3. collect data about charging including the numbers of people charged, their contributions and the numbers of people who decide not to have, or stop having services because of charges
4. make sure that everyone is having a welfare benefit check
5. revise the Fairer Contributions Policy, including the annexes, with user engagement. In particular, the approach to Disability Related Expenses (DREs), and including people's debts in calculations will be key to review
6. ensure that the Financial Assessments process is accessible to all service users with reasonable adjustments to the process where needed, including giving people more time to gather information and support with identifying DREs
7. develop stronger protocols and protections for Disabled People being pursued by debt recovery for social care debts, including the use of independent social workers
8. use high care debts as a trigger for a review of the financial assessment and possible additional support needed

### **Direct payments**

1. develop a proportionate approach to monitoring direct payments, in line with the Care Act
2. be clearer that pre-payment cards and bank accounts are both acceptable options for managing direct payments, and share that information with direct payments users
3. cover people's transaction fees when using pre-payment cards.
4. ensure that data on the pre-paid cards is held and managed in a way which is compliant with General Data Protection Regulations (GDPR)
5. ensure that any clawback of funds is done in a managed way rather than as a lump sum, as recommended by the LGO, and develop a protocol to ensure that this is properly discussed and managed with the direct payments user
6. urgently review progress on work to update the Direct Payments Agreement and related information, giving a clear timescale for this work to be completed with user involvement and a co-produced approach

### **Safeguarding**

1. ensure there is a clear process for and full transparency about when concerns should proceed to section 42 investigations
2. monitor the progression of safeguarding concerns to section 42



3. provide timely feedback to partner organisations about reports of safeguarding concerns
4. review practice in relation to safeguarding when there is a police investigation to ensure that the safety and wellbeing of service users is maintained
5. support the Safeguarding Adults Board to capture and share learning from Safeguarding Adults Reviews and Serious Incident Learning Processes more quickly

## Preface

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We at Merton Centre for Independent Living (Merton CIL) are pleased to be able to release the findings of this report. This is the culmination of substantial research which highlights a range of important issues affecting Deaf and Disabled people in Merton. I believe this report should be required reading for all those officers and members involved in making decisions in the provision of services, or the allocation of resources underpinning service delivery for adult social care.

The testimonies in this report are additional evidence of why we continue to do our part in engaging constructively with the Council and other stakeholders. I believe that in working more closely, being transparent and co-producing services with service users and user-led organisations like ours, many of these issues and challenges raised could be minimised or eradicated in the future.

Finally, in the spirit of fostering a more open and collaborative relationship, we have suggested a series of recommendations in this report that we hope can help address some of the challenges highlighted. We believe that working on these and other recommendations together in partnership, would help to improve the lives of Deaf and Disabled people living in Merton.



**Roy Benjamin**  
**Chair, Merton CIL**



# Introduction

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## About Merton CIL

Merton CIL is a pan-Disability user-led Deaf and Disabled People's Organisation which has been supporting Deaf and Disabled People in the borough for 10 years. We work with people with all types of impairment including physical impairments, sensory impairments, mental health service users, people with learning difficulties and people with chronic illness or long term ill-health. Many of our service users have more than one impairment, and many are also carers and/or parents. Deaf and Disabled People don't have to be members to use our services, however, we do have an ever-growing membership who shape our direction and focus as an organisation. At the time of writing we have 267 members.

Our advice and advocacy service worked with 332 people last year, providing 1,592 sessions of advice on a range of issues including social care, benefits, housing and hate crime. Many of the service users we support experience problems with a range of issues that are often interlinked. We reached 1,641 people through events and outreach, and 2,225 people followed us across our social media platforms.

While Merton CIL's main role is to provide advice and advocacy support for individuals, we believe it is helpful for Merton CIL to highlight the common issues that come out of the casework we do with Deaf and Disabled People.

## Reason for writing this report

As an evidence-based organisation, one of our approaches to achieving change is to gather and present evidence on key issues affecting local Deaf and Disabled People, and to seek solutions for these. For example, in 2016 we published a report on the scale of hate crime against Deaf and Disabled People in Merton<sup>1</sup> which led to a new Merton Hate Crime Strategy being developed across all protected characteristics, and an action plan led by local partners with Merton Council. We also wrote a policy paper for one of the local MPs on issues with Personal Independence Payments (PIP)<sup>2</sup> which led to an Adjournment Debate in Parliament, and support from Merton Council's Healthier Communities

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<sup>1</sup> <https://www.mertoncil.org.uk/assets/documents/making-it-stop-tackling-hate-2>

<sup>2</sup> A benefit to help with the extra costs of disability <https://www.gov.uk/pip>

and Older People Overview and Scrutiny Panel<sup>3</sup> which has called Department for Work and Pensions (DWP) to meetings to account for their actions. Indeed, we are fortunate that we receive funding which enables us to tackle wider policy and strategic issues<sup>4</sup>. By working in this way and applying this model to adult social care we believe we can work strategically and in partnership with everyone involved to improve the lives of Deaf and Disabled People.

Merton Centre for Independent Living has produced this report on adult social care in Merton as part of its role to provide advice and advocacy support to Deaf and Disabled People in the borough and to work as a strategic partner to Merton Council. Through our casework supporting local people access social care, and address issues with their social care over the past few years, we have identified a range of reoccurring challenges which undermine people's ability to fully access the support they need to live independently. While our casework attempts to address these issues on an individual basis, we also recognise the value of bringing people's experiences together and attempting to identify systemic issues which need to be addressed on more strategic level, thereby benefiting a greater number of people.

Merton CIL has attempted to bring these issues to the attention of different councillors and officers at Merton Council, however, some of the concerns we raised were not taken on board as we might have hoped. We recognised that as many of the issues arising are interlinked, we needed to undertake an overall deep dive into people's experiences of using adult social care in Merton.

## **What we hope to achieve**

Merton CIL's aim in producing this report is to give an evidenced-based analysis of common themes from our work supporting service users, which appear to need to be addressed at a strategic level.

We want to use this as the basis for work in partnership with Merton Council to address these issues and improve services so that they are Care Act compliant and meet the supporting guidance. We are seeing a growing number of people resorting to legal action against the Council to secure their services, which in some cases is leading to judicial reviews. Improving services and meeting the requirements of the Care

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<sup>3</sup><https://democracy.merton.gov.uk/ieListMeetings.aspx?CIId=151&Year=0>

<sup>4</sup> <https://www.mertoncil.org.uk/about-us/our-funders/>

Act will help avoid these costly and time-consuming cases, and the damage they do to the relationship between the Council, and service users.

As part of this, we want to work with the Council to develop a co-production approach to adult social care in Merton so that we have all stakeholders working together to achieve the best possible outcomes for service users.

We recognise that that discussions about financial resources will be part of the co-production of adult social care. We understand the pressures on finances and want to work with the Council to ensure that resources are used as effectively and efficiently as possible.

Co-production is fundamentally about working together as equals and recognising that everyone has something to contribute.

This means that service users, and Merton CIL as an organisation advocating for service users, should be able to raise problems and issues with confidence and without concerns about negative consequences.

Sadly, this is something we have seen happen to us as an organisation and to some of the individuals we work with. For example, some service users have reported to us that they feel targeted for cuts to their care because they have been vocal about their concerns.

It is essential for Merton Council, Merton CIL and service users to move away from this and build a positive, co-productive partnership.

## **Local and national context**

The Care Act 2014<sup>5</sup> and the Support Guidance issued by the Department of Health and Social Care<sup>6</sup> is the starting point for all adult social care provided by or through local authorities. This report aims to explore and contrast realities on the ground with Care Act Guidance. In particular we are mindful of the Care Act's guidance that:<sup>7</sup>

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<sup>5</sup><http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

<sup>6</sup><https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

<sup>7</sup><https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 2.20

'Local authorities should, where possible, actively promote participation in providing interventions that are co-produced with individuals, families, friends, carers and the community. 'Co-production' is when an individual influences the support and services received, or when groups of people get together to influence the way that services are designed, commissioned and delivered.'

The National Institute for Health and Care Excellence's (NICE) Guidance on Service User Experience also emphasises the importance of working with service users in strategic decision making about services and in checking the quality of services. It particularly highlights the importance of using people's views to improve services and for commissioners to gather views and experiences.<sup>8</sup>

In addition, in 2017 Healthwatch England launched the 'It Starts with You' campaign saying:<sup>9</sup>

'The more people share their ideas, experiences and concerns about NHS and social care, the more services can understand what works, what doesn't and what people want from care in the future.'

These are not new ideas for Merton Council. Its Adult Social Care Account says:<sup>10</sup>

'In order to understand quality, as defined by our customers, we have been working on implementing a quality assurance process that ensures that the views of our customers feed in to our process. 'We also need to ensure that the process allows for internal challenge of ourselves and the organisations we work with. This will ensure that we continually improve and deliver better outcomes for our customers.'

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<sup>8</sup><https://www.nice.org.uk/guidance/ng86/resources/peoples-experience-in-adult-social-care-services-improving-the-experience-of-care-and-support-for-people-using-adult-social-care-services-pdf-1837698053317>

<sup>9</sup> <https://www.healthwatch.co.uk/it-starts-you>

<sup>10</sup> <https://www2.merton.gov.uk/local-account-2013-17.pdf>

## Methodology

Most of the information in this report is gathered from a detailed review of 45 of Merton CIL's cases supporting Deaf and Disabled People to access services in the borough. We also undertook an additional eight in-depth interviews with Merton CIL's service users and members. We held four focus groups with users of adult social care and carers to add further detail to some of the issues identified. In addition to this we had the opportunity to speak to some former Merton social workers, and Union staff. We have assured everyone who we spoke that we will keep their details anonymous. We also spoke to four organisations around the borough to get a picture of the experiences of other local partners, as well as attending multiple forums and meetings.

In addition to regular and day-to-day interaction with the Council we raised specific concerns on direct payments, safeguarding and assessments with Merton Council in November 2017 and January 2018. We submitted an overview of the all concerns addressed in this report, among others, for consideration by Scrutiny in May 2018. We discussed the same concerns with senior Council staff in June and July. We have been requesting further meetings since August, but these have not yet taken place at the time of publication (October 2018). In line with our aim to have an open dialogue with the Council, we sent an extended version of the executive summary, our recommendations, and a series of clarification questions on 25 September. We sent a reminder on 02 October and engaged in further correspondence. At the time of publication, we have not received yet a response.

We sent a draft of the report to three external reviewers to give input and quality assurance.

As well as drawing on Merton CIL's own work, the report includes evidence from a range of sources including:

- Personal Social Services Adult Social Care Survey, England
- Merton Resident Satisfaction Surveys
- Merton's complaints reports
- A review of complaints about social care in Merton upheld by the Local Government and Social Care Ombudsman
- A review of research carried out about local services carried out by other organisations (including Healthwatch Kingston, Healthwatch Greenwich)
- BASW Social Worker Conditions Survey 2017

- Healthwatch England report, What people want from social care

The first section of the report gives an overview of adult social care in Merton and the second looks at the specific areas where Merton CIL sees a need for improvement in how Deaf and Disabled People are supported. These are:

- needs assessments are not always following the procedures set out by the Care Act and its guidance
- charging for adult social care services is having a major impact on the lives of service users and financial assessments for these charges are difficult for people to complete
- policies on direct payments, including the focus on pre-payment cards, and delivery of the support service, are limiting choice and control
- safeguarding in Merton could work more effectively to ensure people are not left at risk of neglect and abuse

Inevitably, Merton CIL is dealing with service users when services are not working as they should. We are not suggesting that all service users are experiencing these and other problems. There will be people who have positive experiences and are satisfied with the services they receive. Equally, there are also likely to be people who have experienced problems, who Merton CIL has not had contact with, and are either being supported by one of the other voluntary organisations in the borough, or are attempting to resolve issues directly with the Council.

Our overall findings are that there is a pattern to the challenges people are experiencing and these are not one-off incidences. Moreover, the impact on individuals is significant, and must be addressed.



# Section 1: The overall picture of adult social care in Merton

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## 1.1 National context: Disabled People experience multiple inequalities

Disabled People are facing disadvantage and inequality across key areas of our lives<sup>11</sup>, and are experiencing health inequalities as a consequence<sup>12</sup>.

In particular, Disabled People are disproportionately impacted by the policies of welfare reform, with social care users particularly affected by the cumulative impact of benefit cuts and social care cuts.<sup>13</sup> Barriers to employment, accessing the community, hardship and homelessness follow.<sup>14</sup>

Disabled people have poorer health and lower life expectancy,<sup>15</sup> and perceived discrimination is associated with increased likelihood of psychological distress.<sup>16</sup>

Laws and regulations already in place to support disabled people, such as the Equality Act 2010, and the United Nations Convention on the Rights of People with Disabilities (UNCRPD), are not being effectively adhered to<sup>17, 18</sup>.

In fact, Deaf and Disabled people are disadvantaged across multiple areas of our lives including:

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<sup>11</sup> The Equality Act 2010: The Impact on Disabled People, House of Lords Select Committee on the Equality Act 2010 and Disability, 2016

<sup>12</sup> Is Britain Fairer? Equalities and Human Rights Commission, 2015

<sup>13</sup> <https://www.equalityhumanrights.com/sites/default/files/cumulative-impact-assessment-report.pdf>

<sup>14</sup> Evidence of Breaches of Disabled People's Rights Under the UN Convention on the Rights of Persons with Disabilities, Inclusion London, 2015

<sup>15</sup> Is Britain Fairer? Equalities and Human Rights Commission, 2015

<sup>16</sup> Perceived Discrimination and Psychological Distress in Sweden, S Wamala, G Bostro, K Nyqvist, British Journal of Psychiatry, 2004

<sup>17</sup> The Equality Act 2010: The Impact on Disabled People, House of Lords Select Committee on the Equality Act 2010 and Disability, 2016

<sup>18</sup> Dignity and Opportunity for All: Securing the Rights of Disabled People in the Austerity Area, Just Fair, 2014

- **Education:** Higher numbers of Disabled People with no qualifications, low qualifications and restricted learning opportunities
- **Employment:** Disabled People face multiple barriers to employment
- **Transport:** One in five Disabled People have difficulty using transport<sup>19</sup> and cuts to concessionary fares and local public transport services are leaving some Disabled People isolated and unable to travel as and when they need.
- **Environment:** Lack of accessible buildings and changes to city street scenes such as shared surfaces impact Disabled People's ability to access goods, services, civic centres, justice and the wider community.
- **Information:** Disabled People are less likely to be accessing the internet and inaccessible information in other formats can impact people's access to information, healthcare, etc
- **Benefits:** The welfare benefit reforms that the government brought in through the Welfare Reform Act 2012 are having a significant and disproportionate negative impact on Disabled People<sup>20</sup>
- **Poverty:** Key poverty metrics for Disabled People are high and increasing<sup>21</sup>
- **Housing:** There has been a sharp rise in the number Disabled People who have been experiencing evictions and homelessness because of rent arrears either when housing benefit has been stopped due to sanctions, or housing benefit has not been granted because a Disabled Person has found 'fit for work' after a WCA<sup>22</sup>
- **Public attitudes and safety:** Disabled People are more likely to be victims of crime and Hate Crime has been identified as a serious issue affecting Disabled People. The benefits scrounger

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<sup>19</sup>Implementation of the Right of Disabled People to Independent Living, House of Lords House of Commons Joint Committee on Human Rights, Twenty-third Report of Session, 2010–12, p. 59

<sup>20</sup> Evidence of Breaches of Disabled People's Rights Under the UN Convention on the Rights of Persons with Disabilities, Inclusion London, 2015, p. 13

<sup>21</sup> Evidence of Breaches of Disabled People's Rights Under the UN Convention on the Rights of Persons with Disabilities, Inclusion London, 2015, p. 12

<sup>22</sup> Evidence of Breaches of Disabled People's Rights Under the UN Convention on the Rights of Persons with Disabilities, Inclusion London, 2015, p. 17

rhetoric perpetuated by the media and government has been identified as one of the drivers of this issue.<sup>23</sup>

- **Civic participation:** Disabled People, some ethnic minorities and people aged 75 and over were less likely than others to perceive that they could influence local decisions.<sup>24</sup>
- **Health:** In England, the proportion of Disabled People who reported bad or very bad health increased between 2008 and 2012, whereas there was a reduction for non-disabled people.<sup>25</sup> Disabled People have lower life expectancies<sup>26</sup> and are experiencing declining mental health because they had lost support services<sup>27</sup> and / or the stress caused by benefit assessment processes.<sup>28</sup>

The Government have defined independent living as “all disabled people having the same choice, control and freedom as any other citizen—at home, at work, and as members of the community. This does not necessarily mean disabled people 'doing everything for themselves', but it does mean that any practical assistance people need should be based on their own choices and aspirations”.<sup>29</sup>

However, there is a risk of retrogression of the UK's obligations under Article 19 as a result of the cumulative impact of spending cuts and reforms. Without adequate support many disabled people face isolation and poverty, unable to assume ordinary roles in society or to contribute socially and economically. Indeed, the UNCRPD found that the UK Government was responsible for the “grave and systematic” violation of Disabled People’s rights.<sup>30</sup>

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<sup>23</sup>Implementation of the Right of Disabled People to Independent Living, House of Lords House of Commons Joint Committee on Human Rights, Twenty-third Report of Session, 2010–12, p. 60

<sup>24</sup> Is Britain Fairer? Equalities and Human Rights Commission, 2015, p. 7

<sup>25</sup> Is Britain Fairer? Equalities and Human Rights Commission, 2015, p. 51

<sup>26</sup> Is Britain Fairer? Equalities and Human Rights Commission, 2015, p. 52

<sup>27</sup> Evidence of Breaches of Disabled People’s Rights Under the UN Convention on the Rights of Persons with Disabilities, Inclusion London, 2015, p. 8

<sup>28</sup> Evidence of Breaches of Disabled People’s Rights Under the UN Convention on the Rights of Persons with Disabilities, Inclusion London, 2015, P. 15

<sup>29</sup>Implementation of the Right of Disabled People to Independent Living, House of Lords House of Commons Joint Committee on Human Rights, Twenty-third Report of Session, 2010–12, p. 13

<sup>30</sup> <http://www.ohchr.org/Documents/HRBodies/CRPD/CRPD.C.15.R.2.Rev.1-ENG.docf>

Social care is one of the front-line prevention services of the welfare state. When people do not get this practical assistance, it can lead to death, health crisis, hospital admission, institutionalisation, fractured families and police action - all of which is more expensive and less effective than early support to stay strong and independent.<sup>31</sup>

## **1.2 The Merton picture: At least 12% of local residents are Deaf or Disabled People**

The London Borough of Merton has a population of 209,421 people<sup>32</sup>. According to the 2011 census, 25,232 residents felt their day to day activities were limited a little or a lot, about 12% of the population.

The Annual Population Survey<sup>33</sup> estimates that around 14,000 people in Merton have a physical impairment, while POPPI<sup>34</sup> data shows that nearly 5,000 people of 65 and over struggled with mobility.

Estimates for local residents with hearing loss is over 27,000, especially in older age groups, while figures for the numbers of Deaf and hard of hearing people is around 840 people in Merton.<sup>35</sup>

There are 700 adults who are blind or partially sighted in Merton and nearly 1,000 with moderate or severe visual impairment<sup>36</sup>. 700 people are registered with GPs as having a learning disability and the local authority believes this is an underestimate, as it is significantly lower than England, London and comparator boroughs with the exception of Kingston upon Thames. In fact, statistical estimates suggest there may be nearly 4000 adults in Merton with a learning disability<sup>37</sup>.

The NHS Digital Personal Social Services Adult Social Care Survey for England puts the number of people using a council funded long-term service in 2016-2017 at 2,680, up from 2,075 in 2015-2016.

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<sup>31</sup> A Fair Society? How the Cuts target Disabled People, Centre for Welfare Reform, 2010, p. 13

<sup>32</sup><https://data.merton.gov.uk/>

<sup>33</sup> Recorded in the categories "core Disabled" or "work-limited Disabled". Data from the Merton Disability profile.

<sup>34</sup> Projecting Older People Population Information System

<sup>35</sup> Merton Disability Profile / Department of Health 2014

<sup>36</sup> Merton Disability Profile

<sup>37</sup> Merton Disability Profile

Merton's Adult Social Care Account<sup>38</sup> put the number of people who had received help from adult social care services in 2015-2016 at almost 4,000, while latest figures for 2016-17 are 4,102 people receiving social care support, excluding mental health.<sup>39</sup> This is likely to include people who have had short-term assistance and carers, which could explain the difference between these figures and the figure from NHS Digital.

Merton CIL has previously recommended that more research is needed about the make-up and experiences of Deaf and Disabled people in the borough. In May 2015 we approached Merton Council to highlight the fact that Deaf and Disabled people need to be more visible in reports and information about London Borough of Merton, in particular the Joint Strategic Needs Assessment (JSNA). Merton CIL undertook a detailed literature review and worked closely with Council colleagues to gather further information. Initial Council plans, announced publicly in 2017, were that there would be a borough-wide Disability Strategy. Unfortunately, this didn't materialise, however, we are really pleased that a new Merton Disability Profile has been developed and will shortly be available.

The following section looks at research and general information about disability and adult social care in the borough. The overall picture from this indicates a mixed experience of social care in Merton.

### **1.2.1 1,300 social care users in Merton feel they don't have enough control**

Statistics from the Personal Social Services Adult Social Care Survey<sup>40</sup> for England shows satisfaction levels with services in the borough for 2016-17 are generally in line with national levels.

However, for the last two years, Merton's score for "extremely or very satisfied" is a statistically significantly lower figure than the England average. While this is balanced to some extent by the overall rating for satisfaction when people who are "quite satisfied" are included, it does indicate that there is room for improvement in the performance of adult social care in the borough, based on these statistics.

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<sup>38</sup> <https://www2.merton.gov.uk/local-account-2013-17.pdf>

<sup>39</sup> Merton Disability Profile

<sup>40</sup> <https://digital.nhs.uk/data-and-information/publications/statistical/personal-social-services-adult-social-care-survey>

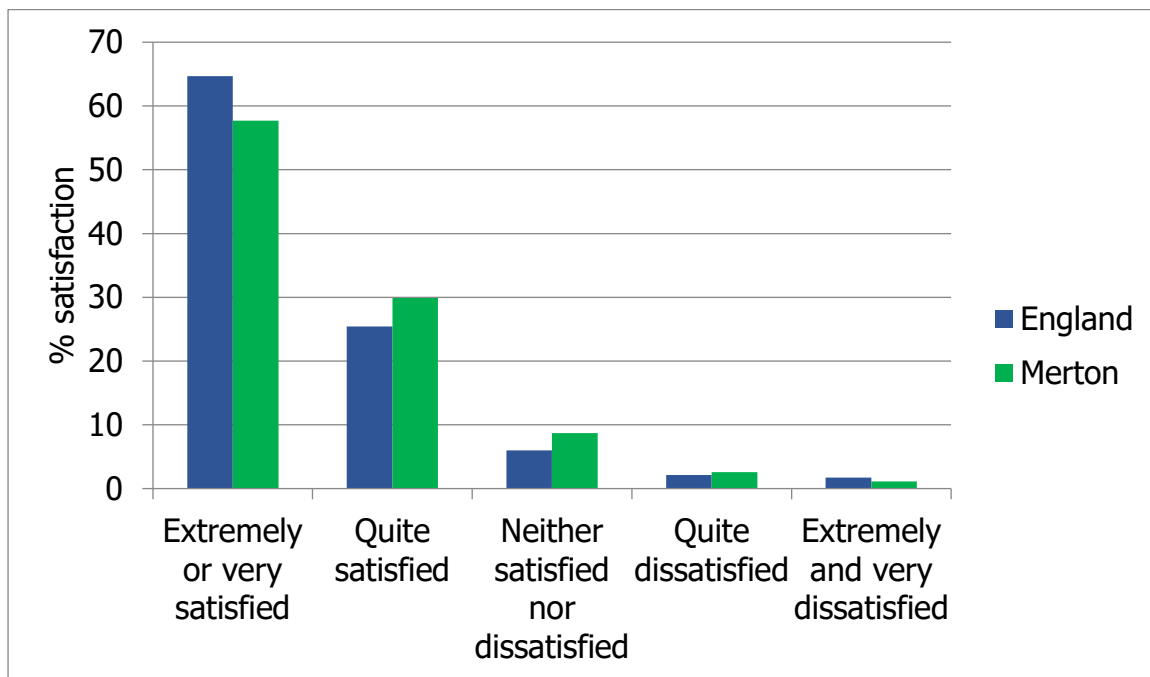


Chart 1: % satisfaction rates for adult social care services in Merton from Personal Social Services Adult Social Care Survey 2016-2017

The other questions about services and service users' lives show Merton performing in line with national averages in many areas but there are some areas where Merton is below average, at a level considered statistically significant.

On the questions in the survey about choice over care and support services, there are generally high levels of service users who say they do have enough choice. However, a high proportion say they do not have enough control over their services: 26.1 percent in England and more in Merton at 28.8 percent.

On the broader question of control over daily life, significantly fewer respondents in Merton felt they had as much control as they want over their daily life compared to the England average. Likewise, 32% of Merton respondents said they didn't have enough or had no control over their lives, which is significantly more than the England average.

There were also some statistically significant differences in Merton's performance in other aspects of adult social care, with Merton showing lower satisfaction rates in relation to feeling clean, having social contact, getting out and about, respondents being able to do things they value and enjoy, their perception of their health and being able to do things by themselves. There were also many questions where Merton scored in line with the England average including getting enough to eat and drink,

helping people in ways that help them feel good about themselves, and feeling safe.

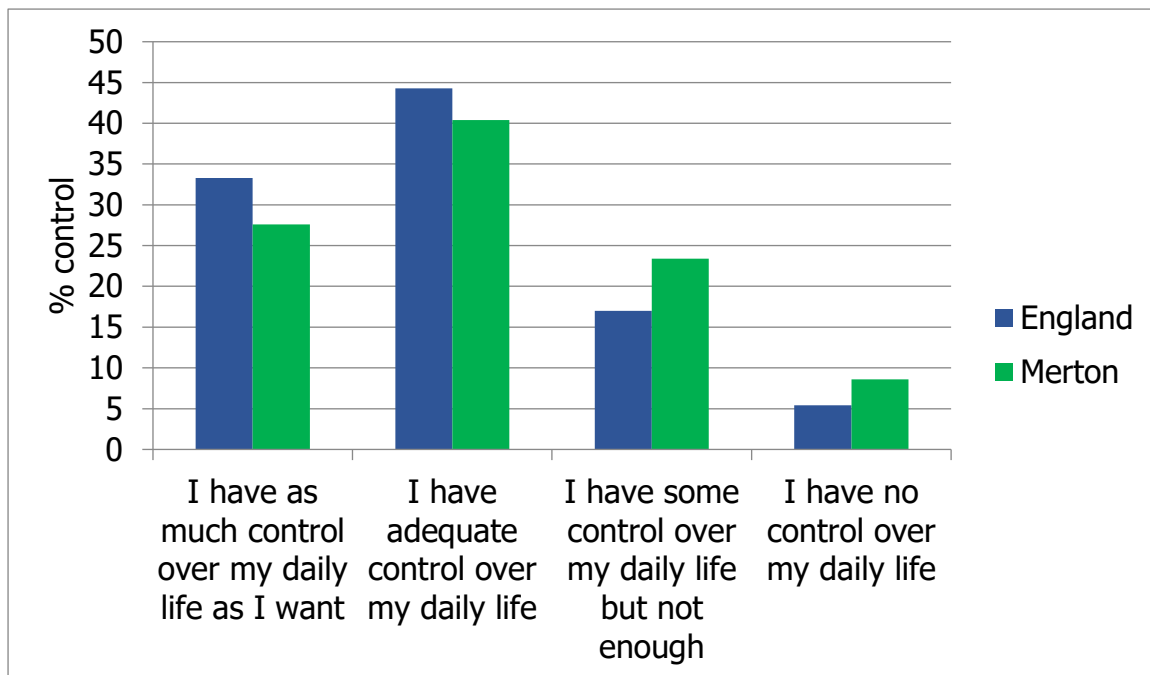


Chart 2: % service user views on feelings of control over daily life - Personal Social Services Adult Social Care Survey 2016-2017

Merton's Adult Social Care Account<sup>41</sup> also uses the data from NHS Digital to assess its performance against similar local authorities. These are not defined in the document but the Council shows that it is performing broadly in line with similar councils using the NHS Digital figures in areas including satisfaction, control and safety.

The NHS Digital surveys are based on large samples, with over 400 social care users in Merton surveyed through questionnaires or interviews in 2016-2017. It is worth noting that the local fieldwork is carried out by the Council which is then returned to NHS Digital. This means the survey is not entirely independent and people may be less likely to raise concerns or dissatisfaction if they are responding through the Council<sup>42</sup>.

<sup>41</sup><https://www2.merton.gov.uk/local-account-2013-17.pdf>

<sup>42</sup><https://digital.nhs.uk/data-and-information/publications/statistical/personal-social-services-adult-social-care-survey/personal-social-services-adult-social-care-survey-england-2016-17>

The survey does not offer any analysis of differences in terms of respondents' different equalities groups. There is some evidence that indicates satisfaction rates are lower for some communities, for example Black and Minority Ethnic communities<sup>43</sup> and the difficulties experienced with self-directed support by Disabled people from lesbian, gay, bisexual and trans, queer and intersex + communities indicate they will experience lower satisfaction with social care services in general<sup>44</sup>.

The qualitative evidence in the remainder of this report clearly shows that there are areas where the Council can improve the quality of services for those in the 3.7 percent of the 430 people who responded to the NHS Digital survey for 2016-2017 who were dissatisfied with their support. Extrapolated to all potential respondents to the survey in Merton, 2,680 people, this equates to around 100 people who may be experiencing problems with services which can have a significant impact on their quality of life, safety and human rights.

There were nearly 150 Merton respondents to the survey who said they did not have enough control over their lives. Scaled up to reflect all potential respondents, this is over 1,300 individuals in Merton who do not have enough control.

It must also be recognised that these surveys can only measure the satisfaction of people who have been able to obtain services. People unable to access the service have not been surveyed. There do not appear to be any public figures in Merton for the number of people who have assessments and are not then offered a service, or of the number of appeals against assessment decisions.

## **1.2.2 Disabled people in Merton have lower wellbeing than non-Disabled people**

Merton's own Resident Satisfaction Surveys look at the broader picture in the borough and the work of the Council.

The 2017 survey shows that 28% of Disabled People were dissatisfied with 'the way the council runs things', more than double the 13% rate for non-Disabled people. And the rate of Disabled People who said they

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<sup>43</sup><https://onlinelibrary.wiley.com/doi/abs/10.1111/hsc.12411> 2016

<sup>44</sup><https://www.scie.org.uk/lgbtqi/disabled-people/self-directed/> 2017



were very dissatisfied was 10% compared with 2% of non-Disabled people.

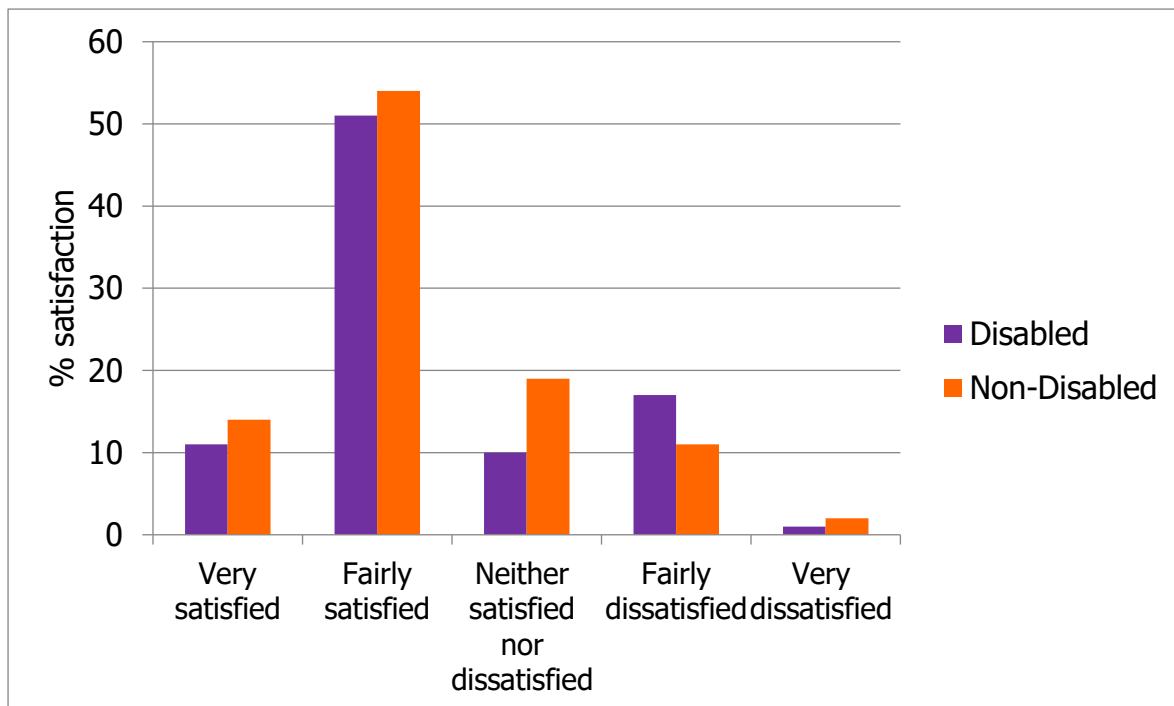


Chart 3: % satisfaction with the way the Council runs things – Merton Council Resident Survey 2017

The Council is to be congratulated for highlighting the differences in satisfaction between Disabled and non-Disabled residents in its report on the survey results<sup>45</sup>, as this was not highlighted in previous years. However, we recommend that action is taken to identify the reasons for this difference and to address it. In fact, Merton CIL have on several occasions since 2014 asked the Council to interview a representative booster or additional sample of Disabled People for the residents' survey. In 2017 additional interviews were carried out with young people, so this methodology is clearly possible.

The survey does not look at differences between Disabled People who are also members of other equalities groups however, satisfaction is generally lower among BME communities too, according to the survey.

The survey does not specifically address social care and the Disabled People who took part in the survey are not necessarily users of social care. Social care services are, by their nature, a major part of the lives

<sup>45</sup><https://democracy.merton.gov.uk/documents/s17871/10.%202017%20Cabinet%20results%20reportv%20FINAL.pdf>

of any one who uses or needs to use them, so experiences in this area are likely to have had an impact on the views about the Council of any service users who did take part in the survey.

It is surprising that while previous surveys did include questions about social care, the 2017 survey does not. The 2017 survey does cover an extensive range of other key Council duties including:

- Refuse collection
- Street cleaning
- Street lighting
- Repair of roads and pavements
- Parks, playgrounds and open spaces
- Nursery education
- Primary education
- Secondary education
- Leisure and sports facilities
- Libraries
- Recycling facilities
- Parking services

Previous surveys did include questions about social care services and they were also run as part of a London-wide survey that compared findings in different boroughs.

The report of the 2014 survey notes that when asked about adult social care, the percentage of people who use services who thought services were excellent or good had dropped by over a third from 56 percent in 2013 to 24 percent in 2014. This is based on a much smaller sample than the NHS Digital survey, but it does give evidence that user satisfaction for adult social care in the borough may not be as high as indicated in the national survey.

The 2017 residents survey also covered issues around wellbeing. It assessed wellbeing with a set of standard questions developed by the Office of National Statistics (ONS) that cover people's feelings of overall life satisfaction, their lives being worthwhile, happiness, and anxiousness.

Disabled People were significantly less positive in all four aspects of wellbeing covered by these questions. For example, where three percent of the overall survey rated their happiness as low the previous day it was 13 percent for Disabled People. Overall Disabled People felt less satisfied with life, were less likely to feel life was worthwhile, were less happy, and more anxious than non-Disabled people. The 2014 survey

also looked at wellbeing and also found that Disabled People had much lower wellbeing than non-Disabled people. However, the two surveys are not comparable as they use different scales. Nevertheless, there is broadly a downward trend in wellbeing for Disabled People.

Wellbeing is at the heart of the Care Act with local authorities having a responsibility to promote service users' wellbeing, so the Council has a clear role to play in achieving parity of wellbeing between Disabled and non-Disabled People through social care services and other services.

The Care Act defines wellbeing in terms of nine key points including dignity, health, protection from abuse and neglect, participation in education, employment and training, supporting relationships and being able to contribute to society<sup>46</sup>.

### **1.2.3 Research from other boroughs**

Research from two other London boroughs considered to sometimes be comparisons for Merton, gives examples of the type of additional research that can be useful, as well as giving useful points of comparison.

Healthwatch Kingston conducted research into satisfaction of home care services to feed into a re-commissioning exercise in 2017.

It found very high levels of satisfaction, with most aspects of the service receiving satisfaction rates above 90 percent.<sup>47</sup>

Healthwatch Greenwich was commissioned by its local council in 2017 looked at users' and carers' experience of social care.<sup>48</sup>

Their report shows very similar concerns to those raised in this report, looking at issues around assessments and how long they took, the length of time it then took to put services in place, financial monitoring and consistency of services.

This work led to the borough setting up a transformation group and a new customer reference group to develop a new co-production approach to adult social care.

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<sup>46</sup><http://www.legislation.gov.uk/ukpga/2014/23/section/1/enacted>

<sup>47</sup>[http://www.healthwatchkingston.org.uk/sites/default/files/homecare\\_report\\_hwk\\_07.17\\_00000003.pdf](http://www.healthwatchkingston.org.uk/sites/default/files/homecare_report_hwk_07.17_00000003.pdf)

<sup>48</sup><https://healthwatchgreenwich.co.uk/wp-content/uploads/2018/05/HWG-RBG-ACJ-SU-Experiences-report-2017-18.pdf>

## 1.2.4 Complaints about adult social care in Merton

We tried looking at complaints about adult social care to the Council to see if there is anything that can be learned from them.

The most recent complaints report on the Merton's website is for 2016-17. This is a report for a council meeting rather than a report aimed at the public.<sup>49</sup>

The report only breaks down the details of complaints according to the directorate so it is not possible to identify specific complaints about adult social care, which is a department within the Community and Housing Directorate.

There were 98 stage one complaints about the directorate in 2015-16, which was an increase of 25 from the previous year, but this drops again to 77 complaints in 2016-17. In the 2015-16 report the Council notes that an increase in complaints could be seen as an indication of how open the complaints process is. No reason is given for the decrease in 2016-17.

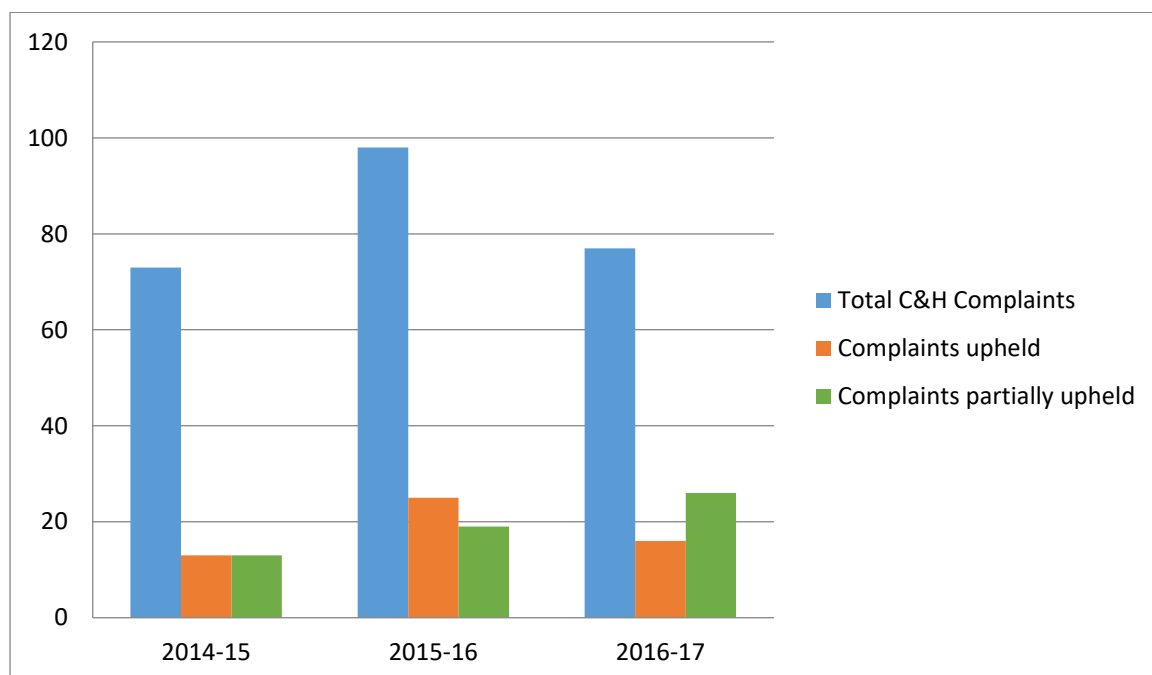


Chart 4 Numbers of complaints about communities and housing services and number upheld and partially upheld – Merton Council report

<sup>49</sup><https://democracy.merton.gov.uk/documents/s19800/Annual-Complaints-Report-2016-17%20SGPC.pdf>

Despite the overall decrease in complaints, the proportion of complaints upheld or partially upheld has increased.

Complaints about adult social care would not be covered in the second stage complaints as they are covered by separate statutory requirements that do not include a second stage of consideration by councils. If someone is unhappy with a council's response to a complaint about adult social care, they can go straight to the Local Government and Social Care Ombudsman (LGO) rather than requesting a second stage of consideration from the council. This is in line with the Local Authority Social Services and NHS Complaints Regulations 2009.<sup>50</sup>

Merton does not appear to have published details of LGO findings of maladministration about any of its services since 2013, although it does give links to the LGO's annual reports on complaints.

The Council's 2015-2016 complaints report notes that there is not a statutory requirement for councils to publish reports of complaints. However, the LGO recommends that councils should publish information about complaints in a way that is easily accessible to the public.<sup>51</sup>

The LGO's role is to investigate complaints about local authorities and other social care services where they cannot be resolved locally. The numbers of complaints that it deals with from Merton are small, as they are with other councils, and too small to give any useful indication about the performance of the Council.

However, it is far from clear that the recommendations made in each case by the LGO have been implemented by Merton Council. For example, a recommendation that they develop procedures to recover direct payments that have not been used, without causing financial hardship, do not appear to be in practice.

## **1.2.5 Policies and access to information**

We have checked through the adult social care pages of Merton's website to get a full view of the Council's policies for adult social care.

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<sup>50</sup><http://www.legislation.gov.uk/ukxi/2009/309/contents/made>

<sup>51</sup>[https://www.ombudsman.org.uk/sites/default/files/Joint\\_working\\_team\\_focus\\_report\\_December\\_2016\\_0.pdf](https://www.ombudsman.org.uk/sites/default/files/Joint_working_team_focus_report_December_2016_0.pdf)

The website is quite confusing. If you go through the home page and click the white 'adult social care' button you arrive at pages that give details about services based on different types of impairment/disability.

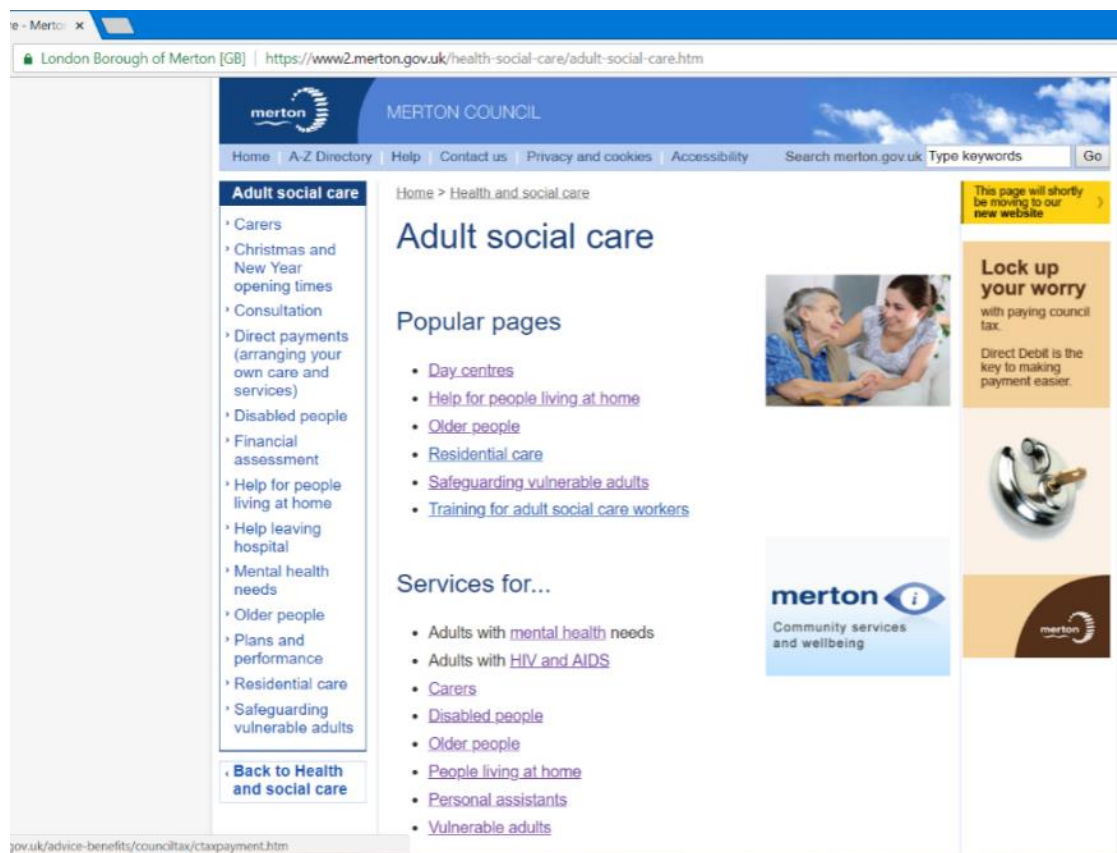


Image 3: Screenshot of Merton Council website, adult social care page<sup>52</sup>

This is not a very clear way to set out what services are available.

However, there seems to be another home page for the Council which is titled 'Local directories'.<sup>53</sup> Going through the link to the 'adult support services directory' from this page, you come to a much clearer page about adult social care that is based around services and the Care Act approach.<sup>54</sup> This includes a link to a page that gives a summary of the act.

<sup>52</sup><https://www2.merton.gov.uk/health-social-care/adult-social-care.htm>

<sup>53</sup><https://directories.merton.gov.uk/kb5/merton/directory/home.page>

<sup>54</sup><https://directories.merton.gov.uk/kb5/merton/directory/advice.page;jsessionid=195F6829521050F99098B10D59FAACAD?id=IFqmKSEvY20>

Adult Social Care Support x

London Borough of Merton [GB] | <https://directories.merton.gov.uk/kb5/merton/directory/site.page?id=JYXTudJBU7w&adultchannel=0>

## Adult Support Services Directory

My shortlist 0 My account

Keyword(s) Place name or postcode Adult Support Services Directory

### Adult Social Care Support

Adults of all ages can need extra support in day to day life for various and often complex reasons.

Adult social care is the support provided to adults with physical or learning disabilities, or physical or mental illnesses, and older people who require extra support. This could be for personal care (such as eating, washing, or getting dressed) or for domestic routines (such as cleaning or going to the shops).

This support is provided in various ways. It can be provided through formal care services, including residential care homes or a carer helping in the home. These services have to be paid for, usually by the local council or through private funds. Family members, neighbours, or friends may also provide unpaid care, which is often referred to as informal care.

In this section, you can find out how to access Adult Social Care support provided through Merton Council.

- Merton Information, Advice & Support Hub
- Who can receive support from the Adult Social Care Service?
- What is a care and support needs assessment?
- How can I request an assesment?
- What is a care and support plan?
- What is a personal budget for?
- Who can get a personal budget?
- Will I have to contribute to my personal budget?
- How can I get a personal budget?

Print

Add to My shortlist

Related Advice

- The Care Act 2014  
This Act lays out what Adult Social Care services must and should provide under law.

Contact us Cookies Accessibility Privacy Notice

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Image 4: Screenshot of Merton Council Website, adult support services directory

This second site, which Merton CIL understand is the new site which the Council has been working on for some time, was accessed after searching for 'Merton Care Act', and does not appear to be accessible via the main website for information.

Looking through the pages on the main website there seems to be some variation in their clarity about the Council's policies and practices, with some documents appearing out of date. This approach means that while there is an explanation of the Care Act assessment for on the pages for older people, there is not one on the pages for Disabled People. Carers' assessments are explained on the page about assessments for older people rather than on the pages that give advice for carers.

Merton CIL understand that the Council is working on updates of the resources on direct payments. Some of these date back to 2011. The information about direct payments and pre-payment card cards<sup>55</sup> appears to be from 2011 and still refers to the original card provider with rather than the current provider who took over in early 2018.

<sup>55</sup>[https://www2.merton.gov.uk/direct\\_payments\\_finance\\_and\\_pre-paid\\_cards.pdf](https://www2.merton.gov.uk/direct_payments_finance_and_pre-paid_cards.pdf)

There is also a toolkit about employing PAs which appears to have been taken from Lambeth Council without amending its references to services in that borough.<sup>56</sup> Similarly, some of the documentation around charging for policies is old and lacks current information about issues such as benefits (see below). The website still uses pre-Care Act language about safeguarding ('vulnerable adults'); the new terminology is adults at risk of abuse or neglect. While the link is made prominent with a large exclamation mark, it could arguably have been positioned higher up the page given its importance.

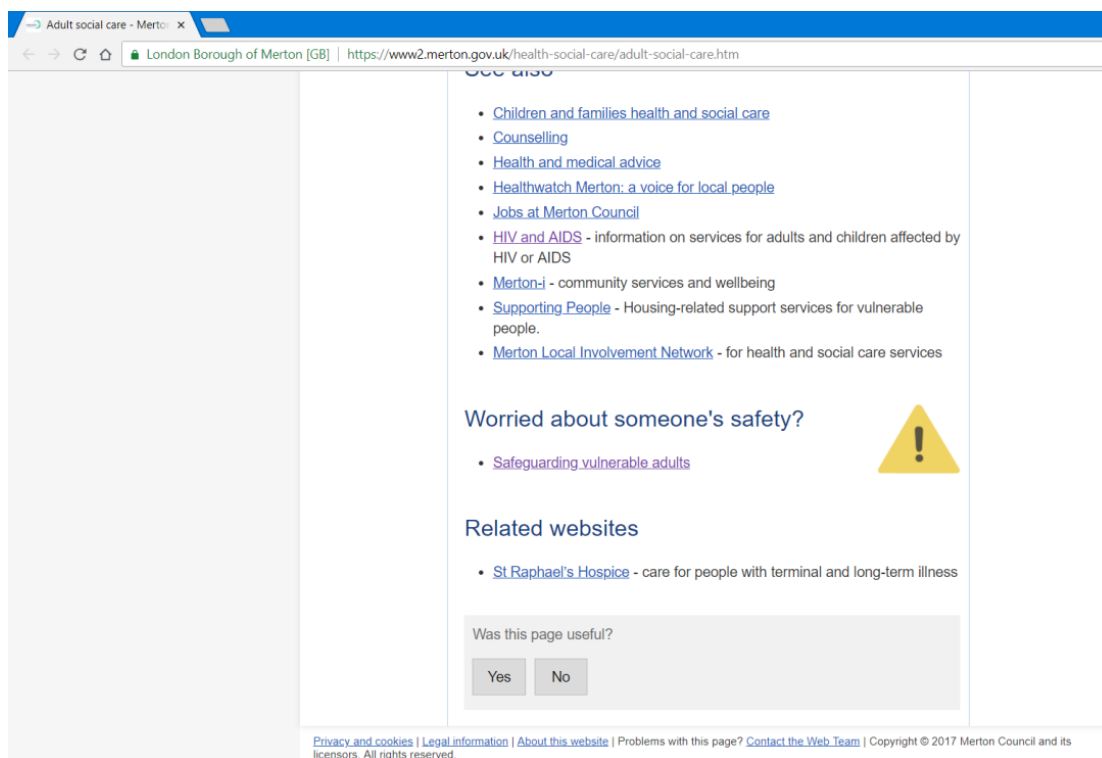


Image 5: Screenshot of Merton Council Website, adult support services, safeguarding section

The page that this links to Safeguarding<sup>57</sup> information is very clear with its first section on what to do if you are concerned about abuse and a section on how the Care Act covers safeguarding. However, the only information about the Council's policies and practices on safeguarding comes in a link the Pan-London Procedures with Merton local arrangements in the further information section. This pre-dates the Care Act so it is not clear whether this is the current policy for Merton.

<sup>56</sup>Being an employer tool kit accessed from <https://www2.merton.gov.uk/health-social-care/adult-social-care/directpayments/directpayments-beinganemployer.htm>

<sup>57</sup><https://www2.merton.gov.uk/health-social-care/adult-social-care/safeguarding-adults.htm#wh>



From a review of the Council's website and the adult social care policies it presents, Merton CIL concludes that the improvements recommended in adult social care in the borough must start with greater clarity about the services available and their basis in the Care Act.

This should be reflected in improvements to the Council's website (and other information) and based around services. Examples of how this could be done include Kingston<sup>58</sup> and North Tyneside<sup>59</sup>. This said, user testing for any changes is also recommended. Merton CIL have on several occasions offered support, and that of the members group, to support user testing in this way.

There is also a clear need for all policies and all the information on the website and other platforms to be reviewed to ensure policies are aligned to the Care Act and the information is up-to-date, with procedures put in place to ensure this is maintained into the future.

## **1.2.6 Conclusions and recommendations**

While general research such as the NHS Digital's surveys and the Council's own residents' surveys give useful indicators of the performance of social care services, there is a clear need for more local work to get a better picture of how well services are meeting people's needs.

Further research will help to develop a stronger evidence base for adult social care services and increase efficiency and effectiveness.

To achieve this, Merton CIL recommend that the Council should:

1. further investigate and address the reasons for poorer wellbeing among Disabled people in Merton with additional work around the residents' survey and specific work on wellbeing using the Care Act definition
2. report more openly and regularly on complaints about adult social care, as recommended by the LGO
3. there needs to be greater clarity about the Council's policies about adult social care, which needs to carry through to the way information about policies and services are presented on the Council's website

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<sup>58</sup>[https://www.kingston.gov.uk/info/200181/adult\\_social\\_care](https://www.kingston.gov.uk/info/200181/adult_social_care)

<sup>59</sup><https://my.northtyneside.gov.uk/category/1031/who-we-are-and-what-we-do>

## Section 2: Specific issues

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### 2.1 Case studies – four people's experiences of adult social care in Merton

We spoke to four people about their experiences of adult social care and other support. We have changed people's names, except for the first person who was happy for their name to be used.

#### 2.1.1 Slim's support hours were cut without explanation

Slim used to receive support from the Independent Living Fund. He now receives direct payments from the Council and employs his own personal assistants.

He had a review following a stay in hospital and a change in his needs. He was told that he had been given 90 hours of support a week and he started arranging his support on this basis.

However, nine months later he found out that the Outcomes Panel had looked at the assessment and cut his support to 74 hours a week. During that nine months he had been paying his PAs for 90 hours of work each week.

This has caused major financial problems for him around the money he spent during that nine-month period. And he is now having to live with 16 hours less support than he was assessed as needing, which is affecting his health and severely restricting his day-to-day life.

He now has to stay indoors a lot of the time and is unable to see family and friends. He has been very active in the community for all his life, working with voluntary organisations and serving as a councillor and serving as mayor for two terms. Slim has said:

'I now have to think very carefully about what I can and can't do in terms of my independence. I can't go out of an evening. All I can do is use my personal assistants to get me up, washed and dressed and cook meals.'

He has spoken about his experiences in this video:

<https://www.youtube.com/watch?v=zwuA3BsI8Lo>

## 2.1.2 Zoe's support was cut after review carried out over the telephone

Zoe has been disabled since she was young and now has a more serious impairment following an illness.

She had been receiving five-and-a-half hours of care a week, which she said was right for what she needed. But this was cut to three hours just over a year ago and more recently it was cut again to one hour per week.

For the first cut there was no form of review. Zoe said the Council just sent her a letter and said that her hours had been reduced because of changes to her income - she had gone from income support to receiving her pension.

This latest cut happened following a review conducted over the telephone. Zoe told us she was not told she was being reviewed until the end of the call. She also said that the person who carried out the telephone review just said at the end of the call that they had to cut her hours. She told us:

'A telephone assessment is so wrong.'

Zoe also said that the help she gets from the Council is not as good since the original direct payments support team were cut. She says she feels the people she deals with know nothing about disability and

'they're just numbers people.'

The reductions in care means Zoe now faces significant risks in her daily life. She has to take showers without any help despite the risk of falls. Cooking is very difficult too and she has burnt herself making cups of tea.

### 2.1.3 Thomas is unhappy about his financial contribution and having to use a pre-payment card

Thomas has a life-long physical impairment which means he needs 24-hour support.

He employs his own personal assistants and he is very happy with this and believes it would be too expensive to use carers from agencies. One of his PAs lives with him and has worked with him for eight years.

He says:

'I get the right support from my PAs but I am not getting the right financial support from the Council.'

Thomas had received support from the ILF for many years. Since his support was transferred to the Council he has had to pay £42 per week top-up towards his care. He feels that the contribution is too high.

The Council has now said it wants to put his contribution up to £60 a week but he says there is no way he can afford this and it would leave him unable to pay for other essentials. He says the only reason the Council has given him for it going up, has been a reduction in its grant from the government and he says they have not based it on a change in his circumstances.

Thomas has a pre-payment card but he does not like this. He used a bank account when he had funding from the ILF and finds the monitoring through the card intrusive:

'I used to get one visit a year and the lady would ask am I happy to continue, I would say yes, they would go on their way and I would see them again a year later.'

He also objects to the charges on transactions on the cards, as he finds it unfair to be charged when a bank account would be free.

## 2.1.4 Kwesi experienced a delay in the review of his support

Kwesi lives in a housing association flat. He is a wheelchair user and his impairment means that he needs social care and some health-related assistance.

His flat has been adapted but is not fully wheelchair accessible and he has not been able to get the housing association to agree to make further changes.

Kwesi uses direct payments and has carers provided through an agency. He describes his experience of agency support as 'up and down'. He said a carer from one agency put pressure on him to pay them money directly, in addition to what he was paying to the agency.

He then tried employing personal assistants directly but experienced similar problems. He also found payroll could be difficult as some workers were not very good with timesheets and some of them exaggerated the hours they had worked.

As a result of this he went back to using agency workers and is generally happy with his current carers, noting, 'that's the one thing about them, they always turn up.'

One problem he has experienced is the coordination of his carers with district nurses. The district nurses sometimes arrive when his carers are with him and this means the carers have to stop and wait for the nurses to do their work. The agency then charges Kwesi for the carers time while they are waiting.

Kwesi has never needed to ask the Council for help with administering his direct payments, although he did get help from family members when he was doing payroll for PAs.

He has a pre-payment card for his direct payments and is generally happy with this and prefers it to using a bank account. He has had some difficulties using it for online payments but just makes the payment by phone if this happens. He says things have improved with the new cards.

Kwesi has recently asked for a review of his care from the Council. He has funding for support to go swimming and do other exercise activities but cannot do this at the moment due to a health problem. This problem also means he needs some additional care.

Kwesi told us:

'I had a review recently, oh my goodness. I'm trying to get a few more hours because I need two people to lift me at the moment. They haven't sorted it out, my agency keeps saying I need the two people and I could pay for it myself and claim the money back, but I don't want to get caught out... it's just taken too long'

He said the review was difficult and,

'they are just trying to take money away from me.'

He said that the social worker phoned him after meeting him, with additional questions, and Kwesi felt that some of these went into medical issues they should not have asked about.

He arranged for a care navigator to support him with the review but the Council did not offer him any support or advocacy.

Kwesi said it took least two months to get the review. When we spoke to him it had been two weeks since the review and he was waiting for a decision from the Outcomes Panel.

## 2.2 Needs assessments and reviews

A key part of the Care Act is the duty it places on councils to assess anyone who appears to need support from adult social care services. It sets out a framework for councils to carry out an assessment of people's needs and the plan support to meet those needs if the person is eligible.<sup>60</sup> The Care Act guidance says that assessments should be carried out within 'appropriate and reasonable' timescales and councils that should tell people about the expected timescale and keep them informed of progress.<sup>61</sup> There should also be planned reviews of assessments and support plans<sup>62</sup> along with reviews when there is a

<sup>60</sup> <http://www.legislation.gov.uk/ukpga/2014/23/section/9/enacted>

<sup>61</sup> <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 6.29

<sup>62</sup> <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 13.14

change in someone's circumstances<sup>63</sup> and the guidance sets out a process for dealing with requests for reviews.<sup>64</sup>

The Act also requires councils to work with the person having the assessment, their family and carers and anyone else the person wants to be involved. If a person needs support to give their views in the assessment process and does not have someone to support them to do this, the Act requires councils to arrange independent advocacy.<sup>65</sup>

We have identified a series of issues with assessments in Merton which indicate that they are not always working as they should.

### 2.2.1 Key issues:

- Delays in getting assessments
- Some people being discharged from hospital too soon
- Not all assessments and reviews following Care Act procedures
- Reassessments/reviews appear to be being carried out with the aim of cutting support
- People previously supported by the Independent Living Fund seeing their support reduced
- Some assessments and reviews being carried out by untrained staff
- Limited advocacy support in assessments and reviews
- The Outcomes Forum's focus on financial considerations

### 2.2.2 Delays in getting assessments

The Council's website says the 'Community Care Department' aims to begin assessments within 48 hours of being contacted and complete the process within four weeks.<sup>66</sup>

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<sup>63</sup> <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 13.19

<sup>64</sup> <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 13.20 - 13.24

<sup>65</sup> <http://www.legislation.gov.uk/ukpga/2014/23/section/67/enacted> para 2

<sup>66</sup> <https://www2.merton.gov.uk/health-social-care/adult-social-care/olderpeople/contacting-social-services-for-older-people.htm#ne> Accessed 19/09/2018

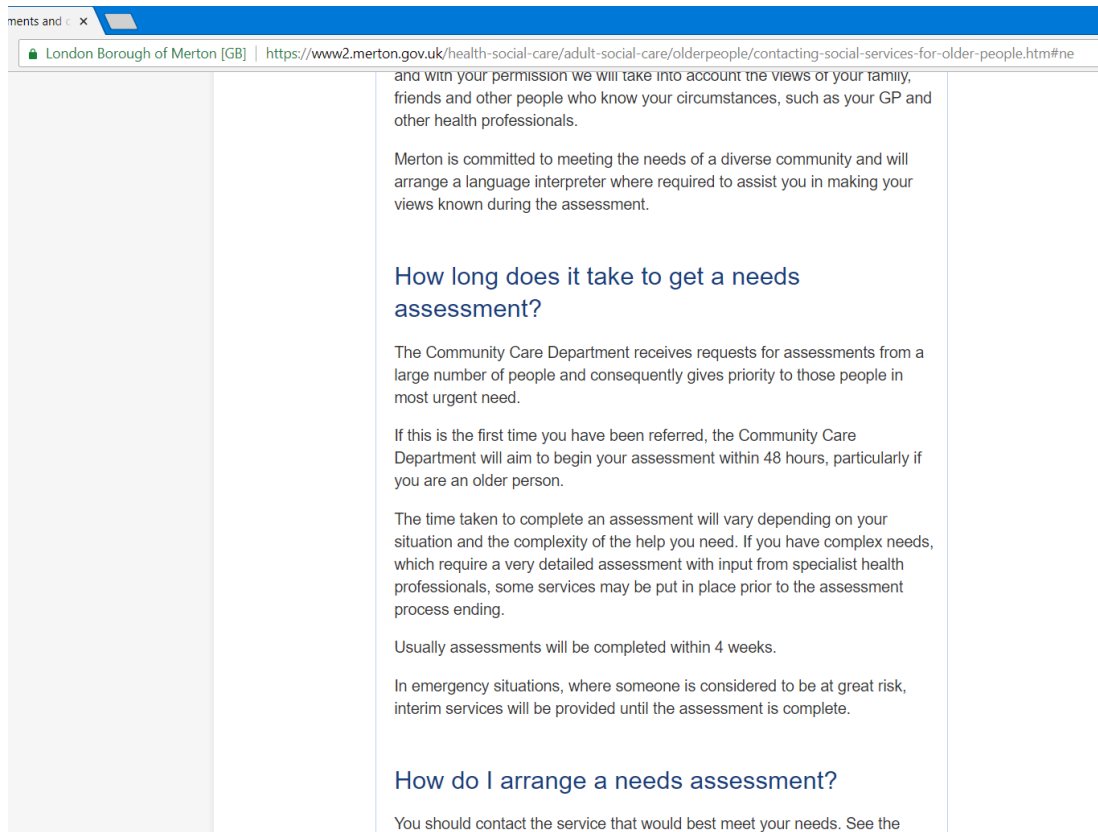


Image 6: Screenshot of Merton Council website, how long does it take to get a needs assessment?

Merton CIL has supported people who have had to wait far longer than these targets, including the examples given below. These include:

- A person came to us for assistance after waiting five months for an assessment following a request from their GP

A person who needed a review urgently after their care package and funding were changed without a review. It took over five months for the Council to carry out the review after Merton CIL began to support the service user. It was a year before the person saw an occupational therapist to look at adaptations that would support their care package. The delay meant the agency providing the person's care continued to work inappropriately. The person was left a vulnerable position around potential financial abuse and they had to stop doing community activities including going to a day centre.



A person who needed substantial further support after having major surgery who could not get a review despite their carer's repeated requests for help. The lack of early assistance led to a crisis situation for the family.

- A person who told us they had paid for an occupational therapist to help them with adaptations because of the long wait to see someone from the Council.

We made a referral for someone who was struggling to cope at home, with memory, balance, and self-care concerns. Assessment took place 10 months later following several reminders, but the individual was told they weren't eligible for support due to health and safety issues. However, 3 months later, floating support was organised without further assessment so it appears they were eligible for support all along.

A recent survey by Healthwatch England<sup>67</sup> found that only 31% of councils hold data about how long people have to wait for needs assessments, and only 22% record how long people have to wait before they receive services. It says it is important for councils to monitor these issues. Merton is one of the councils that does not hold data.

Of the councils that do monitor these issues, the average time from asking for an assessment to receiving services was 57 days. People in the community waited longer than people waiting to leave hospital, 60 days compared with 34 days. Where a service was provided to help a person avoid having to go into hospital, the average wait was 38 days.

Merton Council has told Merton CIL that they are not aware of anyone having to wait a long time for assessments. Given the anecdotal evidence from service users that there are lengthy waits, Merton CIL looked into the situation in a bit more detail. The findings were that sometimes people were being refused or put off social care in the first contact. For example, one person said they thought the Council didn't

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<sup>67</sup> [https://www.healthwatch.co.uk/sites/healthwatch.co.uk/files/20180614%20-%20Social%20care%20research%20summary%20submission\\_0.pdf](https://www.healthwatch.co.uk/sites/healthwatch.co.uk/files/20180614%20-%20Social%20care%20research%20summary%20submission_0.pdf)

provide care anymore. They said they were first told they wouldn't be entitled to care and then told they would have to pay for care anyway.

'They said there is no point having the assessment because you won't get it'

It might be helpful to revise the 48-hour timeframe for starting assessments and 4 weeks for completion, if it is causing pressure on staff to close queries inappropriately. For example, following a referral made for an assessment, the individual, who had a chaotic lifestyle, was uncontactable for a couple of weeks. The social worker called the caseworker and said as they had not been able to reach they would close the case and send a letter, and the service user would have to join the waiting list again if they still wanted support. The caseworker's view was that the lack of contact was a sign of additional issues for the person and that it would be unhelpful to close the case.

Recently some confusion has arisen around whether or not Merton Council expedites referrals for assessments made by organisations grant-funded through the Ageing Well programme. These are organisations which only support older people, and some documents state that their referrals will be seen faster. In addition, the Council website states that timeframes will be met 'particularly if you are an older person.'

There are concerns about whether such an approach is equitable, as it creates a two-tier system where older people referred by certain organisations are assessed more quickly, but self-referrers or working-age Disabled people requiring support will have to wait longer. This raises potential issues of age discrimination.

### **2.2.3 Some people being discharged from hospital too soon**

Healthwatch England says their research shows that councils are being pressured into prioritising people leaving hospital at the expense of people in the community. They argue this is an inefficient way to manage patient flow and should be reviewed.

Merton Council has put a lot of effort into improving support for people leaving hospital. Work trialled by the Council in the winter of 2017-2018

included closer working with health services, including daily meetings between social care and acute services workers, and a new service to assess people's readiness to leave hospital in community settings, has started to have an impact in delayed transfers of care.<sup>68</sup>

However, there are some concerns that some people may be being discharged too soon. In one example, an individual died following a failed hospital discharge which took place without checking the individual's home situation or support in place. They had no food at home and had been told by doctors not to leave the house. They phoned Merton CIL wanting help to send a taxi driver to get food for them. Caseworkers tried to contact multiple council teams, including reablement, but were told they didn't have capacity to help put support in place at home. The individual collapsed and was re-admitted to hospital the next day, where they later died.

## **2.2.4 Not all assessments and reviews following Care Act procedures**

Through our casework experience, there are examples where the assessment process does not appear to be following the Care Act. These concerns have been raised with the Council twice in 2018. Assurances have been given that all staff will be given Care Act training, however, as yet there is no timeframe for this.

One of the Council's assessments has been the subject of a judicial review. In this case the Council's decision to move a man from one residential home to another that cost less, led to a ruling that it had carried out an unlawful assessment, and an order to carry out a new assessment in July 2016.<sup>69</sup>

The Council's assessment found that the man did not need some of the services provided by his existing placement and identified a new placement. The judge ruled that the Council made this decision before it had completed the assessment process, the decision about the services he no longer needed was not 'rational' as it was made before the Council had written the Care and Support Plan as set out by the Care

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<sup>68</sup><https://democracy.merton.gov.uk/documents/s22928/Adult%20Social%20Care%20-%20Department%20update%20and%20current%20priorities.pdf>

<sup>69</sup><http://www.bailii.org/ew/cases/EWHC/Admin/2017/1519.html>

Act. The judgement found there was no evidence to support the reasons given by Merton Council for making the man move.

The assessment process was also the focus of a complaint against the Council upheld by the LGO in December 2017.<sup>70</sup> In this case, the LGO upheld the complaint because the Council had not carried out an assessment of a man's needs or those of his sister who was his carer, in accordance with the Care Act. The LGO said:

**'It is clear from the Council's records that many of the decisions to cut Mr E's services stretching back over several years have been motivated by a desire to save money. This has been explicitly stated. While councils do have a duty and a need to save money if possible, this does not outweigh their duty under the Act to meet eligible needs.'**<sup>71</sup>

Part of the Council's response to the Ombudsman was to set up the Outcomes Forum to 'support staff meet their statutory duties and focus on eligible need so that support plans promote independence, wellbeing, choice and control.'<sup>72</sup> Unfortunately, the Outcomes Forum itself has become a cause for concern (see section 2.2.9).

Merton CIL has also seen examples of the Council declining to carry out assessments. One man had immediate care needs that became apparent shortly after he left hospital following a bone marrow transplant, but the Council refused to assess him, saying that he should have been covered by the assessment before he left hospital. Merton CIL understand it is common for people to have changes in their condition soon after leaving hospital. He experienced extreme fatigue and was unable to carry out personal care tasks but was left hanging between the hospital team and the home care team, and the reablement team didn't take him on due to lack of capacity. This has meant he has had to depend on support from friends and has led to knock-on problems, as he has not been able to attend benefits assessments.

Another person told Merton CIL that when they contacted social services asking for support because they were struggling to manage their

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<sup>70</sup><https://www.lgo.org.uk/decisions/adult-care-services/assessment-and-care-plan/16-015-420>

<sup>71</sup><https://www.lgo.org.uk/decisions/adult-care-services/assessment-and-care-plan/16-015-420>, paragraph 51

<sup>72</sup><https://www.lgo.org.uk/decisions/adult-care-services/assessment-and-care-plan/16-015-420> paragraph 72

personal care, they were told there would be no help available. They were told to make do with a flannel wash and told that because their legs were 'dead weight' these would be a 'health and safety risk' for any carers.

One of the focus groups discussed the arrangements for carers assessments. People's experiences varied, with some feeling their experience was inadequate as it had only involved a telephone call and it was then difficult to get any further support from the Council. However, one person said it had been useful and had obtained respite care for their daughter after the assessment.

The Care Act guidance says that people should be given a record of their needs assessment<sup>73</sup> and a copy of their support plan in an accessible format.<sup>74</sup> Merton CIL's experience is that in many cases this is not happening in Merton.

## **2.2.5 Re-assessments/reviews appear to be being carried out with the aim of cutting support**

Since 2015 Merton CIL have consistently raised concerns about cuts to people's support packages as members have expressed extreme anxiety around the proposed cuts to support packages. Merton CIL considers it to be unacceptable to target support packages for cuts, as these packages reflect people's assessed need. In 2015 the Council's budget setting process stated that cuts proposed to people's support ranged from 5% to 15%<sup>75</sup>. At the time Merton CIL were reassured that in reviews, people whose needs have increased would receive more support. This necessarily means that other people would lose out to an even greater extent if the overall target still has to be met.

As these cuts have started to come through the system, there is a growing feeling among service users that when re-assessments and reviews take place, they are focused on cutting people's support

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<sup>73</sup><https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#first-contact-and-identifying-needs> paragraph 6.98

<sup>74</sup><https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#first-contact-and-identifying-needs> paragraph 10.87

<sup>75</sup>

<https://democracy.merton.gov.uk/documents/s7394/SECTION%20%20Budget%20Appendices%201-12b.pdf> p319

packages and do not give full consideration to changes to their circumstances.

People told us they would be worried about asking for a review as they thought it would probably lead to a cut in their support, with one person saying:

'Reviews are happening when they want to cut something.'

Cuts are also sometimes happening without a review taking place, even when they risk having a negative impact on a service user's wellbeing. A member of Merton CIL previously said:

'Now I have to pay extra if I wake up my carer to take me to the toilet in the night. If I am going out in the evening and having a drink, I have to decide if I should pay more money to get up in the night or if I should wear a [incontinence] pad instead.'

Others are unable to pursue activities like swimming and exercise, or social activities like visiting family or going to Church, because their support has been cut. The Council has been asked on several occasions how people with care packages will be supported to meet the Health and Wellbeing Strategy objectives around exercise and social activity, but this is not yet clear.

Some people have reported that they have had their support reviewed through a telephone call, without being explicitly told that the call was a review. In one example, a person was informed of the result of their review at the end of the call, which does not appear to be following the Care Act process of first carrying out an assessment, and then producing a support plan. In this case the person's care was reduced by two thirds during the phone call. The person said:

'It feels like a personal attack. There was no explanation why. I was told by the assessor on the phone she didn't understand why, she said "I have to cut it".'

In 2015 the Council stated that staff would be given extra training around assessments, in mitigation to the cuts planned over the following years. As yet Merton CIL have seen no evidence of this taking place.

### **2.2.6 People previously supported by the Independent Living Fund seeing their support reduced**

The Independent Living Fund (ILF) was set up in 1988 for 'people who are severely disabled' and on low incomes enabling them to pay for "domestic care" to live in the community when the alternative was residential care. It was set up as a government-funded non-departmental public body operating as an independent and discretionary trust fund managed by a board of trustees. It was ground-breaking in giving funds directly to Disabled People to purchase their own support.

The Independent Living Fund was shut permanently on 30 June 2015. In order to mitigate the negative impact of the closure, the government transferred to local authorities in England the exact spend on ILF payments to recipients in their area, for the period 01 July 2015 – 31 March 2016.<sup>76</sup> The government did not ring-fence the grant so it was positively received when Merton Council decided it would ring-fence the grant to the adult social care department, although sadly not to individual former ILF users.

Another four years of funding through a "Former ILF Recipient grant" was made available to local authorities. Again, this was not ring-fenced. In a recent FOI request Merton Council has said that this funding was ring-fenced to individual former ILF users, but it is not clear when this decision was made. There is also little evidence that this is mitigating the impact of the loss of the ILF on individuals.

A former social worker who spoke about the situation said that social workers were told to review and reduce the packages of former ILF users as 'Disabled People had to take their share of the cuts'.

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<sup>76</sup> One year on: Evaluating the impact of the closure of the Independent Living Fund <https://www.inclusionlondon.org.uk/campaigns-and-policy/facts-and-information/independent-living-social-care-and-health/ilf-one-year-on/>

Earlier this year a service user reported that social workers were describing the ILF as having been the 'Rolls Royce of care', in order to depress expectations of what support the Council will offer. This attitude appears to be indicative of a culture which sees independent living as a cost, rather than an investment in people's wellbeing.

Merton CIL spoke to some former ILF users in Merton and found that:

- For some, the money they received from the council had stayed the same or increased, however, costs had increased faster so they were receiving fewer hours of care overall
- In some cases, the care had been cut, and one of these amounted to a 20% reduction in hours but their eligible needs had not decreased
- For most, the contributions they were expected to pay for their care had increased this year, even though their income had stayed the same. Some people's contribution had increased without a fresh financial assessment
- Respite was particularly targeted for cuts, with people being told to use a cheaper service or pay the difference, and weeks being cut

People said:

'Merton Council cut my hours without telling me, my agency threatened to stop my service'

'When they stopped the ILF, everything became difficult.'

'My life has changed, I have to worry from day to day. It certainly impacts on my health. I spend hours indoors where I don't want to be indoors.'



'At my review they said I had to use their cheaper homes for respite. I went to visit them. There was no hoist in the room. I couldn't fit my wheelchair in the loo. I asked if I could shower every day and the manager said there is a queue and I could have a strip wash instead. I call that a "cat's lick". I asked about activities, they said "most people stay in their rooms". I asked about going out, they said "no one goes out". I wouldn't go in there, I wouldn't put a dog in there.'

## **2.2.7 Some assessments and reviews being carried out by untrained staff**

People in one of the focus groups were concerned about these reviews being conducted by unqualified staff, saying they are often done by support planners and key workers at day centres.

Following considerable reductions in staffing in 2015 and since, there are certainly some pressures on staff workloads. In 2016 Merton CIL were contacted by a social worker who said that they believed the situation in adult social care in Merton was dangerous and putting people at risk due to low staffing levels, high sickness absence, loss of senior expertise and use of inexperienced locums. These concerns were reported to the Director of Social Care at the time, and to the Leader of the Council.

Others have since said that a large number of social workers took redundancy during that period and that this did leave the department understaffed, and individual social workers under pressure.

A study conducted by BASW<sup>77</sup> last year found that conditions for practice are pushing many social workers away. A standout finding was that 52% of UK social workers intend to leave the profession within 15 months, due to high, unmanageable caseloads, a lack of professional and peer support and burdensome red-tape and bureaucracy. On behalf of BASW,

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<sup>77</sup> UK Social Workers: Working Conditions and Wellbeing  
[http://cdn.basw.co.uk/upload/basw\\_42443-3.pdf](http://cdn.basw.co.uk/upload/basw_42443-3.pdf)

Mike Bush, member and user of services following work stress, and independent mental health consultant said:

**'The concept seems to be that social workers can give endlessly to others and not need anything in return. Cars breakdown if they are not properly serviced and maintained – so do people in caring professions like social work.**

**A burnt-out social worker is no good to anyone. Nobody is winning from this situation.'**

Merton CIL shares these concerns as stressed and pressured social workers are unable to support people in the best possible way. In addition, social workers have previously said that it can be difficult to raise concerns with senior management, and that when things go wrong, it is often the frontline staff who get the blame. Some maintain that when there is a Judicial Review, the staff involved feel that their jobs are at risk if they lose the case. Whether or not this is true in practice, it is evident that in Merton the social care team is at risk of becoming de-skilled over time. This year staff numbers increased, which is clearly a positive. However, staff costs reduced and in a public meeting, senior council officers explained that this was because they were employing unqualified or pre-qualified staff.

The Care Act guidance says that assessments can be carried out by a range of staff but registered social workers and occupational therapists are key professionals whom both assessors and service users should be able to access.<sup>78</sup> It also highlights the importance of assessments being carried out by appropriately trained and competent staff.<sup>79</sup> It is not clear whether the Council is always meeting either of these requirements.

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<sup>78</sup><https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#first-contact-and-identifying-needs> paragraph 6.84

<sup>79</sup><https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#first-contact-and-identifying-needs> paragraphs 6.85 – 6.90

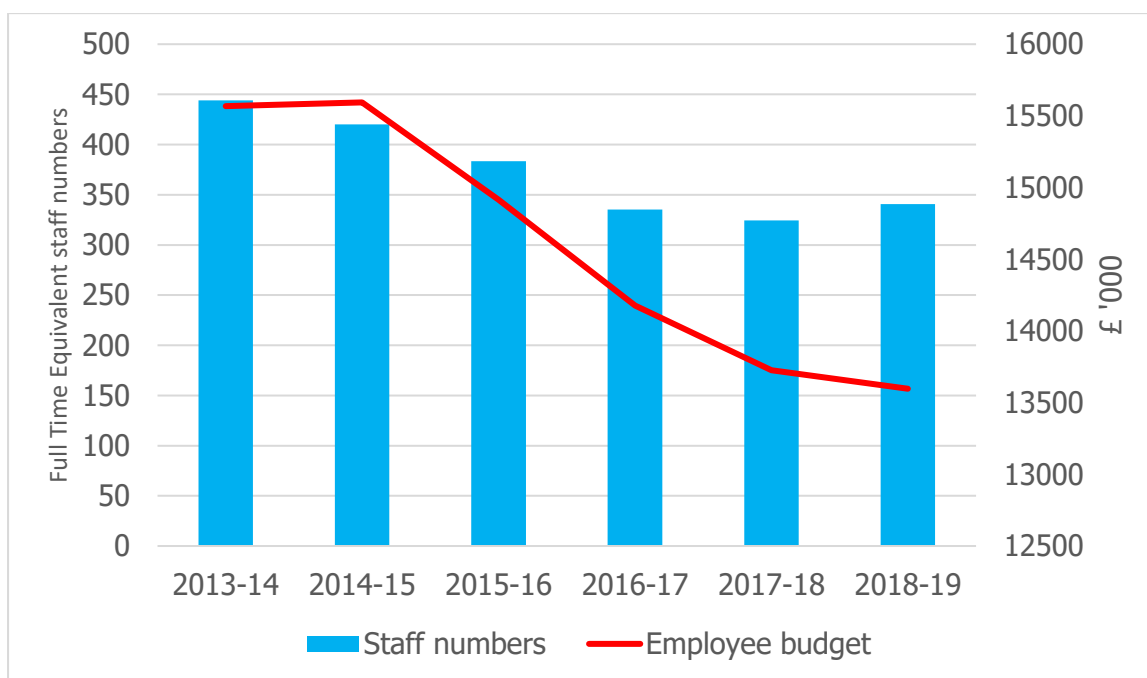


Chart 5: Merton Council adult social care employee numbers compared to employee budget<sup>80</sup>

## 2.2.8 Limited advocacy support in assessments and reviews

Merton CIL's contact with service users suggests that some people are not being offered advocacy or told that this is something they can have to support them with assessments, as required by the Care Act. Even in cases where caseworkers have identified the need for statutory advocacy and requested it on behalf of service users, it has proved very difficult to get. Merton CIL understands that there is a spot-purchase arrangement with a national organisation, however, when statutory advocacy is suggested, some social workers ask what it is, and don't know how to organise the spot purchase required.

In one example a Disabled parent was accused of neglecting their children and not engaging with services. In the context of care proceedings and eventual adoption, they seemed entitled to statutory advocacy, but this was not provided. The children were forcibly adopted.

<sup>80</sup><https://democracy.merton.gov.uk/documents/b10437/Supplementary%20Agenda%20-%20Item%204%20Business%20Plan%202018-22%20Wednesday%2028-Feb-2018%2019.15%20Council.pdf?T=9> and previous year's plans. 2018-19 is projected

Some carers interviewed for this report were also unhappy that there were times when they had not been involved in reviews. They said they were often told their son or daughter was perfectly happy with the decisions made in the review when they really needed support and advocacy to make their views known. Merton CIL have also seen this where a caseworker is supporting an individual with an assessment but the assessment is carried out without the caseworker being notified. Usually the caseworker will find out that an assessment is taking place via the service user and attend anyway, but it would be helpful to have more of a partnership approach, which when it works well is of benefit to users, their families, the Council and social care providers.

## 2.2.9 The Outcomes Forum's focus on financial considerations

In the Judicial Review in 2017, the Council's approach to decision-making, and use of a Funding Panel, was criticised. The judgement said

**'I have not been provided with any evidence about how the funding panel operates .... or any written policy and procedure which would enable me to distinguish between the significance of decisions by social workers and decisions at a corporate level about placements of this nature.'**<sup>81</sup>

Following the Judicial review, the name of the panel appeared to be changed from Funding Panel to Outcomes Forum. However, it still appears to be the case that decisions about assessments seem to be taken by the Outcomes Forum.

Services users who have asked to attend the panel have been told they cannot. There is no opportunity for users to co-produce its decisions. This seems to be a direct contradiction to the Care Act's general principle:<sup>82</sup>

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<sup>81</sup> <http://www.bailii.org/ew/cases/EWHC/Admin/2017/1519.html> para 58

<sup>82</sup> <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 1.4 e

'The importance of the individual participating as fully as possible. In decisions about them and being provided with the information and support necessary to enable the individual to participate. Care and support should be personal, and local authorities should not make decisions from which the person is excluded.'

Earlier this year Merton CIL asked whether a service user representative could be included on this panel but were told that wouldn't be possible.

Some former social workers said that the panel is made up of managers who will 'pick holes' in the assessment, criticise the worker and then approve finances below the requested amount. Other people said that they felt that the panel was making decisions overly focused on funding constraints rather than meeting eligible needs.

One service user said that they had asked for more support as their needs had increased. They were told by a senior member of staff that they had a good package of care compared to other people and that it wouldn't be increased.

The Outcomes Forum's guidance for staff was released to the Community Care website<sup>83</sup> following a Freedom of Information Act request<sup>84</sup>. The guidance, which was approved by the assistant director for community and housing in March 2017, does focus on outcomes for service users and describes it as 'a supportive Forum for practitioners to attend and present their outcome related assessments and care and support plans, and to have these approved and verified.'

While the Forum's guidance generally appears to follow the Care Act's guidance for such panels and forums, it does say that all new packages and services need to be approved by the forum, where the Care Act guidance says they are best used for complex and unusual cases. The Care Act's guidance around the role of approval panels notes the need for due concern about timeliness and bureaucracy. It says that panels

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<sup>83</sup> <https://www.communitycare.co.uk/2018/09/26/funding-panel-policies-testing-limits-care-act/>

<sup>84</sup> Merton CIL have seen the FOI response however, it is not yet available on Merton Council's website

are likely to be most useful for looking at large and unusual support plans and<sup>85</sup>:

'Local authorities should refrain from creating or using panels that seek to amend planning decisions, micro-manage the planning process or are in place purely for financial reasons.'

## 2.2.10 Conclusions and Recommendations

The Council has said in public meetings that it is mapping the "customer journey" through adult social care to work out what improvements are needed. It has also said that assessments and support plans are sent to service users and cases where this has not happened are due to administrative error.

The Care Act Guidance states that:<sup>86</sup>

The assessment and eligibility process is one of the most important elements of the care and support system. The assessment is one of the key interactions between a local authority and an individual, whether an adult needing care or a carer. The process must be person-centred throughout, involving the person and supporting them to have choice and control.'

However, the Council's own past budget plans have pointed out that the cuts to services which are being implemented mean that they can't meet their statutory duties<sup>87</sup>.

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<sup>85</sup><https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#person-centred-care-and-support-planning> 10.85

<sup>86</sup><https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#person-centred-care-and-support-planning> 6.1

<sup>87</sup><https://democracy.merton.gov.uk/documents/s7394/SECTION%202%20Budget%20Appendices%201-12b.pdf> pp 316-7

Merton Council needs to meet the statutory requirements of the Care Act and the following actions are recommended for the Council to help to achieve this:

1. monitor assessments for Care Act compliance including the provision of written assessments and support plans, and arranging advocacy where appropriate
2. monitor timescales for assessments as recommended by Healthwatch England
3. explore whether the 48-hour contact target is resulting in inappropriate case closures due to pressures on staff
4. provide a training programme for all staff involved in assessments and support planning
5. review the Outcomes Forum with a view to facilitating the involvement of service users and bringing it into line with the Care Act and recommendations from the High Court

## 2.3 Charging and financial assessments

'I hear serious talking about how much my disability costs, how much I have to contribute, how much they want to take, how much they can't give. I don't see anyone asking me what I need. Isn't it time someone asked?'

Unlike services provided by the NHS, social care services are not free at the point of delivery. The Care Act gives councils the power to make charges for care if they want to, and provides a framework for these charges to be fairer through financial assessments for service users. This includes charges for services in the user's home and in residential homes. There are some local areas of concern with charging and financial assessments

### 2.3.1 Key issues

- Charging for adult social care is a tax on disability
- Financial assessments are difficult to complete
- Disability related expenditure is not always being properly assessed
- The Council's approach to debt recovery risks being over-zealous

### 2.3.2 Charging for adult social care is a tax on disability

Many have challenged the idea of charges for social care services as a 'tax on disability', and noted that it particularly discriminates against those with the highest needs, as they will be more likely to be limited to an income just above poverty levels<sup>88</sup>.

The Independent Living Strategy Group and In Control will shortly be publishing a report on charging and the impact this has on individuals. Initial findings are that people contributing towards social care are

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<sup>88</sup> <https://jennymorrisnet.blogspot.com/2016/07/something-to-celebrate-story-of.html>



struggling to make ends meet, and some are having to borrow to pay for care and support.<sup>89</sup>

There is a growing body of people who are now arguing for social care to be free at point of use, like the NHS. For example, the Independent Living Strategy Group<sup>90</sup> (ILSG) chaired by Baroness Jane Campbell has proposed this saying they:<sup>91</sup>

'support the case for extending the NHS's 'need, not ability to pay' principle to social care and for fully funding the service as part of 'new social contract' between the citizen and the state.'

Indeed, the 2018 Darzi Review of Health and Care suggests social care free at point of need as a key component of its 10-point plan for better health and care.<sup>92</sup> More recently, the Local Government Association has launched a consultation on social care which includes social care free at the point of access as an approach under consideration in its own 'green paper' "The Lives We Want to Lead".<sup>93</sup>

Merton CIL has previously asked Merton Council to review charging for social care and to see whether they could stop charging. The Council have declined to investigate the feasibility of this, however, this isn't a far-fetched notion. Hammersmith and Fulham Council abolished charging from April 2015. The leader of the Council, Stephen Cowan, said:

**"I am pleased we have found the money from back office cuts, such as from the council's PR and admin budgets, and today announce that this administration will abolish what has rightly become known as a tax on disability."**

Cuts to PR, council publications and lamppost banners covered the lost income from charging<sup>94</sup>.

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<sup>89</sup> <http://www.in-control.org.uk/news/in-control-news/charging-for-care-and-support-survey.aspx>

<sup>90</sup> The ILSG is a national network of disabled people's organisations and their allies

<sup>91</sup> <https://www.inclusionlondon.org.uk/campaigns-and-policy/act-now/independent-living-a-position-statement-from-the-independent-living-strategy-group/>

<sup>92</sup> <https://www.ippr.org/research/publications/better-health-and-care-for-all>

<sup>93</sup> <https://www.local.gov.uk/about/news/lga-launches-own-green-paper-adult-social-care-reaches-breaking-point>

<sup>94</sup> <https://www.lbhf.gov.uk/articles/news/2014/12/tax-disability-be-abolished>

Merton Council has taken a different approach and this year decided to increase Council income through charging. The additional income target for charging in 2018-19 is £231,000. This is described in Council papers as follows<sup>95</sup>:

**Adult Social Care Income maximisation (CH74)**

**Service Implication:** The implementation of the MOSAIC social care system has identified the scope to improve the identification of service users who should contribute to the costs of their care and assess them sooner, thus increasing client income. Assessed as a 3% improvement less cost of additional staffing

**Staffing Implications:** The savings is net of increased staff costs of £90k

**Business Plan implications:** Staffing and income budgets will need to be adjusted

**Impact on other departments:** This may increase the workload of the corporate transactions team

Merton CIL has been raising concerns about the likely impact of increased charging, in particular given existing concerns, which have been communicated to the Council, about how financial assessments were being carried out. In January 2018 in a Council meeting<sup>96</sup> these issues were raised directly with councillors, as there has been no consultation on the changes. There are concerns whether the equality impact assessment (EIA)<sup>97</sup> is sufficiently robust to identify all the issues. For example, it states that every person undergoing a Financial Assessment will also be given a welfare benefits check, however, there has been no evidence of that among Merton CILs service users.

Merton Council has said it doesn't hold data on how many people are charged for care and support, so it can be concluded that it doesn't know how many people are affected by charging.<sup>98</sup>

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<sup>95</sup><https://democracy.merton.gov.uk/documents/b10413/Savings%20proposals%20consultation%20pack%20Wednesday%2028-Feb-2018%2019.15%20Council.pdf?T=9>  
p. 42

<sup>96</sup><https://democracy.merton.gov.uk/ieListDocuments.aspx?CIId=151&MIId=2799&Ver=4>

<sup>97</sup><https://democracy.merton.gov.uk/documents/b10413/Savings%20proposals%20consultation%20pack%20Wednesday%2028-Feb-2018%2019.15%20Council.pdf?T=9>  
pp 206-209

<sup>98</sup> We have seen this FOI response to In-Control on charging, however, it is not yet available on Merton Council's website

An important part of an EIA is the section around 'what evidence has been considered as part of this assessment'. In order to give proper consideration to the Public Sector Equality Duty, Councils need to have sufficient evidence of the impact which policies and practices are having, or are likely to have, on people with different protected characteristics. The courts have made clear the need to collate relevant information in order to have evidence-based decision-making<sup>99</sup>. Merton Council's EIA states that the evidence considered is as follows

'As assessing eligibility for contributing or paying for care services is part of the statutory requirement of the Care Act 2014, all those service users who should be contributing, or paying, for their care, should be charged accordingly, in line with the council's Fairer Contributions Policy.'

Following the implementation of increased charging, Merton CIL have been approached by several service users raising concerns about increases in how much they were being asked to pay as their personal contribution. They said they hadn't had a new financial assessment and their income hadn't increased.

One person said their contribution had almost doubled and they couldn't work out why. The increase was equivalent to over £1,000 extra year that they were being asked to pay

Another person said their contribution had increased when the cost of their care had increased, but the amount they were being asked to pay had increased faster than the cost of care

### **2.3.3 Financial assessments are difficult to complete**

The Council's policy on charging is slightly unclear. It was unavailable on the website for some time at the start of 2018 but is now back on the

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<sup>99</sup> R. (Rahman) v. Birmingham City Council [2011] EWHC 944 Blake J at para 35, sub para 3

Council website.<sup>100</sup> While the main policy appears to have been updated in 2016 and attempts to align with the Care Act, it is not clear how this policy was updated and what user involvement there was in the policy changes. In a recent FOI response, the Council says that the policy was introduced in 2011<sup>101</sup>, and certainly the members of the local Charging Forum<sup>102</sup> have been asking to be involved in a revision of the policy, so it does appear that the policy has been updated without user involvement, despite this being encouraged in the Care Act Guidance<sup>103</sup>.

There are some elements to the policy which could have been avoided by engaging with service users. For example, the policy states that intermediate and reablement care is free "for a maximum of 6 weeks" but the Care Act guidance says that there should not be a strict time limit as the support should reflect the needs of the person<sup>104</sup>.

In another example, Merton CIL has raised concerns about the timeframes within which people are asked to respond to financial assessments and the difficulties people may face doing this. Merton CIL have asked that the policy includes reasonable adjustments for people who may need longer to gather their paperwork or need support to complete the form. Currently the policy says the service user has to contact the financial assessments team within 14 days of the Financial Assessment Form (FC2A) being sent out and has to provide documentation with 28 days of the original issue date. It states that,

'failure to do this will be deemed as refusal to co-operate with a financial assessment and the customer will be required to contribute the full amount.'

This approach causes a lot of stress and anxiety to service users and is practically unworkable. One person was unable to gather all the paperwork requested by the Council so they were automatically charged. They hadn't been able to get the paperwork together following safeguarding issues, and were also being pursued for care debts which

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<sup>100</sup><https://www.merton.gov.uk/assets/Documents/Fairer%20Contributions%20Policy%20Merton%202016%20V1.pdf>

<sup>101</sup> Merton CIL have seen the response, however, it is not yet available on Merton Council's website

<sup>102</sup> [https://www.merton.gov.uk/social-care/adult-social-care/financial-assessment-\(adult-social-care\)/charging-consultation-group](https://www.merton.gov.uk/social-care/adult-social-care/financial-assessment-(adult-social-care)/charging-consultation-group)

<sup>103</sup> <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#contents> 8.46

<sup>104</sup> <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#contents> 8.14

the Council later agreed to write off. It was evident that they were unable to pay, and the Council could have been more supportive to the individual to get the information required.

While the main Fairer Contributions Policy may be more up to date, some of the annexes that specify how the policy is implemented do not appear to have been updated. This is really concerning because having an out-of-date policy with conflicting information is very confusing for service users, for the organisations supporting them, for staff implementing them, and arguably not enforceable.

Annex A is about what is classed as expenditure, and what is classed as income, which is how the Council works out how much people pay. There are some issues with the information, and also with how decisions are made in practice. For example, Annex A still refers to the Independent Living Fund which has been abolished (as noted in the main policy) and makes no reference to Personal Independence Payments (PIP), only referring to Disability Living Allowance (DLA), which is in the process of being replaced by PIP. A decreasing number of people will now be receiving DLA.

Another issue is that the policy lists housing costs which can be classed as expenditure, including rent minus housing benefit. However, some of service users have experienced some issues with this.

In one example, a Disabled person was told that their rent was too high and that they couldn't class the shortfall in their Housing Benefit as expenditure, because they should instead be seeking to move. This individual had a very accommodating private landlord who had adapted the property and a stable tenancy, and yet they were being told to try to move.

### **2.3.4 Disability related expenditure is not always being properly assessed**

The charging policy appears to be following the Care Act's guidance on taking disability related expenditure (DRE) into account in financial assessments. However, Annex C, which sets out how DREs are applied, is out of date with its reference to DLA and the omission of PIP. It could also make it clearer that the table of DREs given is not comprehensive and that other costs will be considered.

Higher costs for household expenses such as heating and water are calculated by reference to the National Association of Financial Assessment Officers (NAFAO) guidelines, which are given in Annex D, although these again are very old, dated 2012-13. This is particularly concerning as many of the costs referred to have risen substantially since then. For example, according to the NAFAO, laundry costs have gone up 10%. NAFAO do issue guidelines annually, so this information really should be available as part of the Fairer Charging Policy if the council relies on it. However, Merton Council also needs to clarify that the NAFAO guidelines should be understood as guidance to what the costs could be, rather than treating them as maximum possible expenditure.

There are other issues with the guidelines, and by extension the Council's policy. For example, it says that extra laundry costs can be applied if the care plan has identified an incontinence problem. However, extra washing could be needed for a range of other disability related reasons. Indeed, there seems to be no guidance for how to estimate higher water costs more broadly.

The policy includes an automatic DRE disregard of £10 a week for anyone receiving Attendance Allowance or middle level DLA. It is not clear how this is applied to people receiving the daily living component of PIP, and at which rate, low or high.

While other expenses will be considered if the service user provides evidence supported with receipts, £10 seems to be very low and the system could be made easier for service users and the Council with a more realistic figure. The most recent research on the costs related to living with an impairment put the average at £131 a week.<sup>105</sup> Examples of DREs not listed in the Council's policy include:

- Maintenance of equipment such as wheelchair, hoist, specialist bed
- Fuel for journeys to specialist appointments
- Higher insurance premiums
- Pre-cut or pre-prepared food eg cut vegetables
- Cost of ready meals where support to cook fresh food is not provided

Another key area of concern is that Merton Council's policy says that DREs will only be considered if the individual is in receipt of a disability benefit. However, in the transfer from DLA to PIP, 29% of Disabled

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<sup>105</sup> <https://www.scope.org.uk/campaigns/extra-costs>

people are losing the benefit completely. This is a problem which is national, however, the rate of loss in Merton is statistically significantly higher than the national average.<sup>106</sup> This means that any social care user who, through no fault of their own, loses their disability benefit, may also find that their personal contribution increases because their DREs are no longer considered. This is a double-whammy they can ill-afford. 77% of local people get their benefit reinstated at tribunal but this process can take nearly a year and many more people don't appeal because they lack the support to do so, meaning a significant group could be affected by this part of the policy as PIP continues to roll out in the borough.

The experience of former ILF users is instructive in this regard. Disabled people who used to receive the ILF were not charged by the local authority as they already made a contribution to their care and support. In the transfer from the ILF to local authorities, DREs were in some cases not well assessed.

One person who is dyslexic and is unable to physically handle paperwork was visited by the financial assessment team and told to pay a weekly contribution of £75. Part of the issue was that they had no evidence of costs, but this was because they weren't supported to gather the information. Council staff didn't identify potential DREs or consider giving additional time and support to gather the paperwork. Following referral to a caseworker and re-calculation of DREs, they were assessed as having nil contribution to make, a difference of nearly £4,000 per year.

It is clear from Merton CIL's experience that people need support and time to gather the information which the council wants.

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<sup>106</sup><https://democracy.merton.gov.uk/documents/s21904/Merton%20CIL%20Briefing%20on%20PIP%20Application%20and%20Assessment%20Issues.pdf>

Because a person who receives care and support outside a care home will need to pay their daily living costs such as rent, food and utilities, the charging rules must ensure they have enough money to meet these costs. After charging, a person must be left with the minimum income guarantee (MIG), as set out in the Care and Support (Charging and Assessment of Resources) Regulation 2014. In addition, where a person receives benefits to meet their disability needs that do not meet the eligibility criteria for local authority care and support, the charging arrangements should ensure that they keep enough money to cover the cost of meeting these disability-related costs. Care Act guidance paragraph 8.42

Another issue with the way the Council calculates people's expenditure is that it does not look at a person's debts or take these into account when calculating their personal contribution. This is wrong as it means that people are in a position where they have to make decisions between care and other essentials, or risking not paying debts and the consequences of that.

### **2.3.5 The Council's approach to debt recovery risks being over-zealous**

Merton CIL has supported a number of service users who have got into debt with the Council itself for the charges on their care services.

A woman with substantial care debts said she felt the Council targeted her because she had previously successfully brought a Judicial Review. The way in which the debt was pursued didn't seem to give enough consideration to how it would impact on her mental health. A potential conflict of interest occurred for the Council between providing social care to the person and recovering the debt. There were problems around involving the person's social worker in recovering the debt, potentially having a detrimental effect on the social worker's ability to focus on the person's care and support and the relationship. There were questions over whether the financial assessment had been correctly completed and whether DREs or debts, had been taken into account when considering personal contribution. The case was never resolved as the person died unexpectedly before her debt could be recovered.



The Care Act guidance gives extensive consideration to how councils should approach debt recovery. It says that councils are bound by human rights and the public law principle of acting reasonably and specifically that they should not go against the Care Act's principle of supporting people's wellbeing.<sup>107</sup>

Citizens Advice has found that there is a growing problem of households being in debt to central and local government.<sup>108</sup> While its report does not specifically address social care charges, its recommendation that people in debt should be given a six week 'breathing space' followed by a repayment plan which includes protection from interest charges and enforcement, appears to be an approach to debt that would be far fairer. Citizens Advice said the government may be introducing legislation on this issue.

The GMB Union has carried out a national survey of the number of people who are in debt for social care services by submitting Freedom of Information Act requests to local authorities.<sup>109</sup>

They found that councils took 648 people to court in 2016-2017 for debts for social care charges, up from 530 the year before. There was a total of 166,835 people with debts to councils for social care charges and just under half of them had had debt management procedures started against them.

Merton Council's response to the GMB's FOI enquiry said there were 261 people with debts for social care charges and they all had debt management procedures taken against them. The Council said it took five people to court in 2016-2017 and the same number the year before.<sup>110</sup>

It is difficult to establish whether there are any particular issues for Merton from these figures. The number of people taken to court is higher than the national average but lower than the London average, and many factors could affect this.

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<sup>107</sup> <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#annexes> Annex D, point 7

<sup>108</sup> <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Hidden%20Debts%20report.pdf>

<sup>109</sup> <http://www.gmb.org.uk/newsroom/social-care-debt>

<sup>110</sup> Merton CIL have seen the FOI response to GMB Union, which is not yet available on Merton Council's website

Merton Council appears to have debt management procedures for everyone who owes money, where nationally the figure is less than half. This reflects an active approach to debt management which Merton CIL would suggest needs to be carefully balanced with the Care Act duty to promote wellbeing. There may be other councils with similar approaches, but the GMB give a regional breakdown for the figures and most regions have less than half of people in debt management, with only a few having slightly more than half, suggesting that Merton is unusual in having so many.

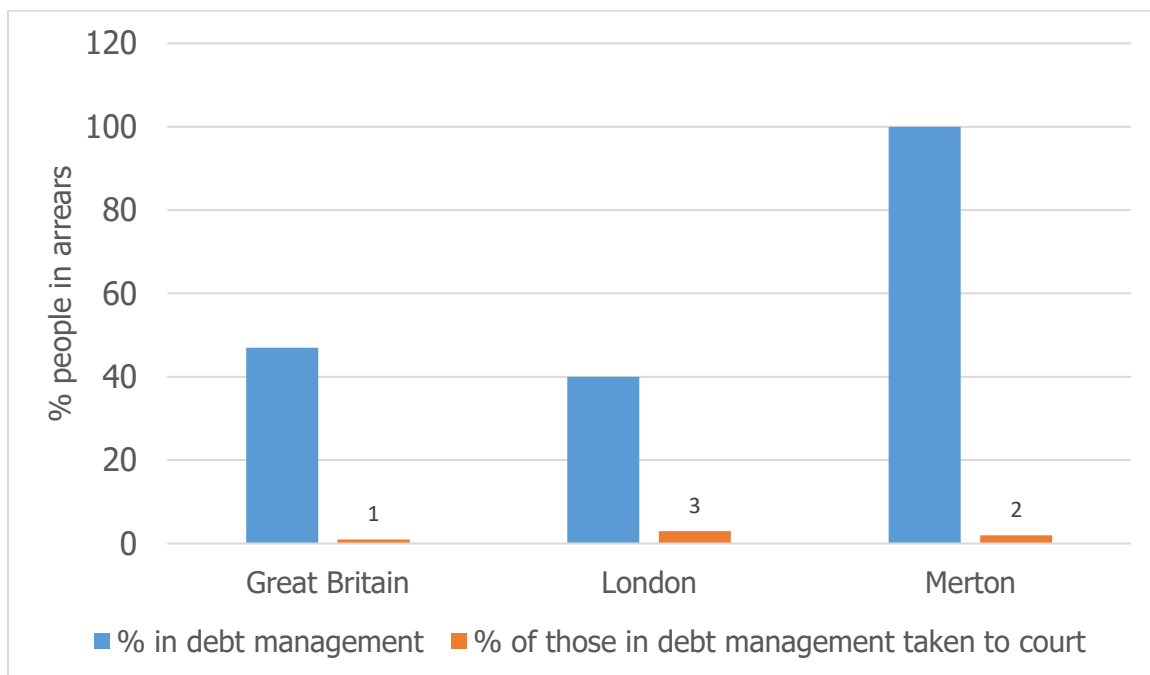


Chart 6: % of people in social care charging arrears in debt management procedures

Late billing can be a particular significant factor in people getting behind with their payments to the Council. This appears to have been a particular problem during 2017 with changes to the Council's financial systems. While some of these problems may have been resolved, people have said they are still having problems with late invoices for services like respite care, and that it is common for a late reminder and threat of debt recovery to arrive in the post just days after the original invoice. This is really very stressful for people and needs to be addressed.

## 2.3.6 Conclusions and Recommendations

Dealing with the Financial Assessment takes time for service users to sort out, and frequently impacts the wellbeing of the individual concerned.

Recommendations for Merton Council are that they:

1. work toward social care being provided on the same basis as NHS services on the basis of free at the point of use; we recognise this is a major change, and the following recommendations relate to current practice on charging and financial assessments
2. review the impact on service users of the increased target for income maximisation from charging, and in particular review whether increases in people's contributions without assessment is related to the drive to increase income from charging
3. collect data about charging, including the numbers of people charged, their contributions and the numbers of people who decide not to have, or stop having services because of charges
4. make sure that everyone is having a welfare benefit check
5. revise the Fairer Contributions Policy, including the annexes, with user engagement. In particular, the approach to Disability Related Expenses (DREs), and including people's debts in calculations will be key to review
6. ensure that the Financial Assessments process is accessible to all service users with reasonable adjustments to the process where needed, including giving people more time to gather information and support with identifying DREs
7. develop stronger protocols and protections for Disabled people being pursued by debt recovery for social care debts, including the use of independent social workers
8. use high care debts as a trigger for a review of the financial assessment and possible additional support needed

On recommendation one, which is also recommended by the Independent Living Strategy Group and others, it will take planning and Merton CIL want to work with the Council to achieve it. It may be difficult, however, London Borough of Hammersmith and Fulham achieved this by going through a process of identifying other areas less important areas of spending where it could make cuts to offset the reduction in income from not charging. It is possible. As a minimum we ask Merton Council to cost this as a proposal.

## 2.4 Direct Payments

Direct payments were first introduced by law in 1996 after earlier versions of the approach had been developed by Disabled people and Disabled People's Organisations. They essentially allow councils to make payments to people eligible for social care services so that they can buy their own services instead of having them provided by councils.

The payments are a way of service users having greater choice and control over their support. Many direct payment users use the system to employ personal assistants as they see this as the way to have the greatest control over their support and who provides it.

In the 20 years since direct payments were made legal they have become a key part of approaches to personalisation and person-centred services and are now available to all social care service users. However, we have found that some practices around Direct Payments delivery are limiting choice and control.

Many of the issues around direct payments in Merton appear to stem from the Direct Payments Agreement service users have to sign to receive payments.

Merton CIL has been so concerned about the agreement and situation with direct payments more broadly that we asked for an emergency meeting with the Procurement and Direct Payments Manager in Adult Social Care and the Direct Payments Forum.

This took place in November 2017 and covered a range of issues with the agreement. The Council said they would address these issues but since then there seems to have been little visible progress.

### 2.4.1 Key issues

- Pre-payment cards should not be the only option
- Process of 'clawback' of unspent direct payments risks harm
- The capacity of the support service to cover all aspects of direct payments
- Direct Payments Forum would benefit from more support

## 2.4.2 Pre-payment cards should not be the only option

A key issue in the way the council approaches direct payments has been the way that the Council has required people to receive their payments only through pre-payment cards until very recently.

In recent years many local authorities have used a system of giving direct payments service users pre-payment cards to manage their personal social care budget. The card is loaded with the individual's direct payments funding and is used to pay for support costs. The cards mean that local authorities now gather and hold large amounts of personal data about account holders' activities. Recent research highlighted that 43% of Local Authorities in England use pre-payment cards for care and support payments to over 28,000 people.<sup>111</sup> Many more are considering their use as an alternative to putting funds into users' bank accounts.

Local authorities believe they are easier for service users as they reduce the amount of record keeping users need to do about how they spend their payments. They also believe they make it easier for councils to monitor how people use their payments. This system also allows local authorities to take unspent funds directly back from the accounts.

However, there are a number of concerns with the use of pre-payment cards which have recently been raised by research from the ILSG and which was shared with Council staff last year. These concerns include:

- Lack of choice and control
- Excessive data collection facilitated by the card including location data, time and place of transaction, type of purchase available to the local authority and card provider
- Access to the data collected available to a large number of people and poor controls on sharing of data
- Lack of safeguards to monies being clawed back or account frozen

Merton started to issue cards in 2011 and became one of only three local authorities in the country that would only allow people to use direct

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<sup>111</sup><http://www.in-control.org.uk/media/247072/payment%20cards%20in%20adult%20social%20care.pdf>

payments through a pre-payment card and did not allow bank accounts.<sup>112</sup>

This policy is therefore out of step with the vast majority of local authorities and contradicted Care Act guidance. The guidance says there should be a range of options for people using direct payments, including using bank accounts, and states:

'The offer of a 'traditional' direct payment paid into a bank account should always be available if this is what the person requests and this is appropriate to meet needs.'<sup>113</sup>

Following a challenge by a local Disabled person, Merton CIL has recently been told that the Council will now allow people to use bank accounts. However, it appears that the revised policy on this places numerous onerous conditions on service users, and says they must demonstrate to the Council's satisfaction why they need a bank account instead of a pre-payment card. This is still not in line with Care Act guidance if a person has to justify this request to the Council. In addition, as the Council's website has not yet been updated with this information at the time of writing this report, it still remains unclear whether Merton Council will offer bank accounts as outlined in the Care Act guidance.

Merton Council also continues to go against the Care Act guidance by not allowing people to use pre-payment cards to make cash withdrawals, and Merton staff at a recent Direct Payments Forum confirmed that certain types of payments are automatically blocked.

One person tried to pay to use the gym, an agreed part of the care plan, but the payment was blocked and the person received a call querying their attempted purchase. They said they found this really stressful as they were expected to phone up the Direct Payments team and ask for the block to be lifted manually.

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<sup>112</sup><http://www.in-control.org.uk/media/247072/payment%20cards%20in%20adult%20social%20care.pdf>

<sup>113</sup><https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 12.58

The views of service users we spoke to about pre-payment cards were mixed. Some are happy to use the card to manage their direct payments and said they found this easier than using a bank account. Others (in particular former ILF users) have successfully managed their direct payments through a bank account for many years and did not want to be forced to change. The point here is that it is fine to offer a pre-payment card as part of a range of solutions, but not as the sole offer. Therefore, a key issue that pre-payment cards raise is whether they leave choice and control with service users. Concerns about misuse of direct payments are perhaps understandable but this is very rare and not a reason for the systems for direct payments to be built around such risks. In particular, they should not take choice and control away from the service user.

Local objections to the pre-payment card, raised through the Direct Payments Forum and our casework and interviews, are multiple:

- Some report that they find cards more complicated to administer than a bank account, with some saying it is difficult to see how much money is available on the card which makes it hard to plan spending. In fact, one person allowed us to see a print out from their pre-payment card account and it wasn't possible to easily identify the balance on the card.
- Some people report that the online portal for the pre-payment card doesn't meet their access needs and isn't compatible with their access software
- The card provider was changed earlier this year without consultation with local users
- Some object to the charges imposed on each transaction. In particular they object to the 50% increase in transaction fee earlier this year when the card provider was changed, rising from 30p per transaction to 45p per transaction.

On the issue of transaction fees, each individual charge may not seem like a lot but there has been conflicting feedback from Merton Council on whether they will include the transaction charges in someone's personal budget, or whether people are being expected to cover the fee themselves. In a previous Direct Payments Forum meeting it was suggested that the Council would pay a set sum into all direct payments accounts to cover the increased cost, however, this doesn't take into account the very varying usage and number of transactions between individuals. In addition, the approach of letting people be charged a

transaction fee appears to be contrary to Care Act Guidance<sup>114</sup> which says that the local authority cannot recover any administration fee relating to arranging care and support. We would expect this prohibition to also apply to any commissioned service, such as a pre-paid card.

There are also serious questions about whether the card provider, Prepaid Financial Services, is compliant with the General Data Protection Regulations. It has not issued privacy notices to service users and there are concerns about how it shares information about card holders. As well as the provider, members of the Council's direct payments team and the payroll company, Paypacket, all have access to people's accounts.

### **2.4.3 Process of 'clawback' of unspent direct payments risks harm**

The system of clawback is where the local authority considers there to be too much or unused money on the pre-payment card account and decides to take it back. The term clawback is one which has been used by the council for several years, although we understand that it may be renamed to 'reduction on card balances'.

In previous years Merton CIL was led to understand that clawbacks from pre-payment card accounts was identified as an income stream for the council. Merton CIL have consistently raised concerns about the Council's current practice around clawing back money in people's direct payments accounts.

In May 2017 the Local Government and Social Care Ombudsman upheld a complaint which was in part about the way Merton Council recovered part of a direct payment that the user had not spent.<sup>115</sup>

In this case, money was immediately recovered. The LGO said this left the service user without funds to cover social activities for three months. The Ombudsman concluded that the Council should have considered retrieving the money over a longer period and reducing the impact on the service user.

In another example, shared at a recent Direct Payments Forum, another person shared that the entire amount on their card had been reclaimed

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<sup>114</sup> <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 8.15

<sup>115</sup> <https://www.lgo.org.uk/decisions/adult-care-services/direct-payments/16-009-984>



at once. This left them so anxious about spending and being caught short, that they have stopped using their Direct Payments.

'I'm scared to use the money now.'

The cards give the Council direct access to people's accounts which means it can take money back without the agreement of the service user. Merton CIL has worked with several people who have experienced problems with building up money in their direct payment account, which is then clawed back by the Council. One person said:

'They phoned me up and said they have to give the money to someone who needs it more'

This is not a one-off, and several people report they have been told this. In fact, the Direct Payments FAQs on the Council's website relating to build-up of funds state that,

'we need to recover the extra money so that we can continue to offer services to meet the needs of others'.<sup>116</sup>

Merton CIL are not aware of any evidence in practice or in the Council's budgets, that clawed back funds are reallocated to other social care users.

For many service users it is part of the way their direct payment works for there to be some build-up of funds to cover annual costs, such as insurance, which is often cheaper paid as a lump sum, employers liability cover or the costs of respite. In addition, direct payments users are expected to build up enough funds to cover the holiday of their PAs with alternative support, and to hold redundancy payments in reserve. These could be as high as 12 weeks of payment for long-standing employees. Some people also have contingency funding for additional care built into their care plan.

For people on a large package of care and support it is possible to build up a substantial amount which will be used later in the year, however, Merton Council appears to have no mechanism for differentiating

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<sup>116</sup> <https://www2.merton.gov.uk/health-social-care/adult-social-care/directpayments/financeandmonitoring.htm>

between money saved for agreed reasons, and money that has built up for other reasons. In fact, not only does the Council clawback, it will also automatically short pay people's agreed monthly sum if the amount saved exceeds a set sum of 8 weeks of money. This creates a range of other issues:

- One person said they had been short-paid but the remittance slip stated the full amount of the direct payment. This caused anxiety and created monitoring issues

One person explained that differences in the dates between when they paid PAs and when they received direct payments meant that they kept being short-paid, but then faced a large care bill just a few weeks later. They spent a lot of time having to chase and fix payment issues

Merton CIL have suggested that where users have built up money in their accounts this is likely to be a sign that they need help with their direct payment, and getting the support it was intended to cover. Users in this situation will often be finding it difficult to employ the workers to provide the support they need. Indeed, it is very common for people to struggle to find Personal Assistants (PAs).

It would be far more positive for the Council to support people to deal with the reasons why people build up money in their accounts and help them to implement their care plan. For some people at the moment there seems to be a bureaucratic roundabout of the Council making direct payments and then clawing them back.

Regarding clawbacks, the Ombudsman's decision in May 2017 included a recommendation that the Council should work with service users who have built up balances to find the best way to recover the payment without causing hardship. Merton CIL agrees with this recommendation and believes it should be supported by an agreement from the Council not to clawback money from people's pre-payment cards without communication with the service user. A protocol to follow prior to reclaiming funds is recommended. Not being able to contact or discuss the matter with the service user should be considered as a red flag for a possible safeguarding or other issue.

Another concern with the Council's approach to clawbacks is that sometimes it is not just money from adult social care on the account.

For example, one person said that they had a combined account including contributions from Adult Social Care and also from Children's Services to cover the education element of an Education, Health and Care Plan (EHCP). The entire amount was clawed back by social care but only a proportion of it was social care funds. The person found it very difficult to get the money back.

In addition, people are expected to pay their contribution towards their care (if they make one) onto the pre-payment card account. If money on the account is subsequently clawed back, there appears to be no mechanism to distinguish between unspent funds contributed by the local authority, and unspent funds contributed by the individual, which should be returned to them.

## **2.4.4 The capacity of the support service to cover all aspects of direct payments**

As noted above, users not spending all their direct payments and having money in their accounts is a sign that they need more support with implementing their care plan. There is also evidence from Merton CIL's casework of people who use direct payments experiencing problems as a result of a lack of strong support from the Council's support service, particularly since cuts to the Direct Payments team since 2015.

The importance of support for people using direct payments is well established through research by organisations including HMRC.<sup>117</sup>

The Care Act statutory guidance states that local authorities have a key role in providing support to 'use and manage the payment appropriately'.<sup>118</sup> It suggests a direct payments support organisation as one way of doing this<sup>119</sup> although Merton Council offers this support in-house rather than commissioning an external service. The Care Act guidance links to Think Local Act Personal's best practice in direct payments support.<sup>120</sup> This sets out 10 functions that a good direct payments support service should cover:

- strategic development

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<sup>117</sup><https://www.gov.uk/government/publications/payee-schemes-for-employed-carers-direct-payments>

<sup>118</sup><https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 12.5

<sup>119</sup> <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 4.107

<sup>120</sup><https://www.thinklocalactpersonal.org.uk/assets/BPDPS.pdf> , 2012

- information and advice - including the option to meet advisors and out-of-hours support
- peer support
- advocacy
- support planning
- money management
- employment advice
- training in using direct payments
- set up support
- emergency support

Through Merton CIL's casework we have identified that support around employment advice appears to be a particular issue with:

- incorrect and out-of-date information in contract templates issued by the Council, for example on pensions. Many documents available date from 2014 and 2015
- incorrect advice about legal duties for employers of PAs to pay Statutory Sick Pay (SSP)
- lack of clarity about who supports the direct payments user to find replacement staff when their PA is off sick, or absent for another reason. This is specifically mentioned in the Care Act guidance (12.28) which says that contingency plans should be agreed in advance and written into care and support plans. We have seen no evidence of this happening, although the template exists
- lack of clarity about whether payments like wages when a PA is suspended and wages for a replacement when someone's usual PA is not working because of suspension, are paid for by the local authority

One issue which has come up for some of our service users is what to do when they go into hospital, which might happen a couple of times a year. The advice from the Council is that PAs should not be paid while the person is in hospital. This means that the service user can struggle to get appropriate support in while in hospital as nursing staff don't necessarily know how to use hoists, or meet their care needs.

The Council has been asked to review this approach, however, the position seems to be that it would be 'unfair' to treat direct payments users differently to people receiving directly funded services from the Council, and that payments for care would be stopped in those circumstances. It has been said that it would be impractical to have care agencies going into hospitals as part of their usual route which could include several people every morning and evening. This doesn't seem to be a sensible rationale, given that the entire point of direct payments is to increase choice and control. In any case, it is contrary to Care Act Guidance:<sup>121</sup>

'There may often be occasions when direct payment holders require a stay in hospital. However, this should not mean that the direct payment must be suspended while the individual is in hospital. Where the direct payment recipient is also the person requiring care and support, consideration should be given to how the direct payment may be used in hospital to meet non-health needs or to ensure employment arrangements are maintained. Suspending or even terminating the payment could result in the person having to break the employment contract with a trusted personal assistant, causing distress and a lack of continuity of care when discharged from hospital.'

Another key issue is the lack of assistance with formal meetings that people need to hold with personal assistants who they employ directly, for example disciplinary, grievance, or redundancy meetings. Merton CIL have seen both lack of practical support to arrange meetings, and lack of financial support to pay for note-takers or specialist HR guidance. It has been suggested that people's employee liability insurance should pay for this, however, a member contacted their insurer directly to check. They confirmed that support to run meetings such as these are not covered by the insurer suggested by the Council. A typical quote to run an HR meeting is in the region of £1000 plus VAT. The consequence of this lack of support places the direct payments user at risk of an employment tribunal claim for failing to manage disciplinary, grievance, or end of employment procedures appropriately. Furthermore, failure to follow appropriate employment procedures could result in additional penalties on the direct payments user if the employment tribunal finds

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<sup>121</sup><https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 12.52

against them. In addition, failure to follow the ACAS code of conduct could in some instances also invalidate the individual's insurance cover.

This situation poses a very real risk for direct payments users who find that their care has been cut by the local authority.

In Merton one person was given four weeks to implement a reduction in care hours, however, this wasn't enough time to hold consultations with the PAs they employed, nor to give their PAs the statutory amount of notice required. Employees in this situation would be entitled to bring an employment tribunal claim and the fact that they didn't in this case is down to goodwill.

Direct payments users shouldn't have to rely on their employee's goodwill not to bring a claim in situations where the Council's practices or advice means the service user can't follow employment law. In addition, as highlighted above, due to clawback practices, it is challenging for direct payments users to plan ahead and ensure they have sufficient funds to manage these processes.

## **2.4.5 Direct Payments Forum would benefit from more support**

Forums are widely recognised as a useful way for direct payments users to support each other and work with councils to ensure direct payments work efficiently and effectively.

The NICE guidelines on service user experience<sup>122</sup> recommend consideration of peer support and user-led centres for independent living. The main way this happens in Merton is through the Direct Payments Forum.

Forum members have been positive about the council chamber being used for meetings and believe this has led to an increase in participation in meetings. However, requests for the meetings to be given further

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<sup>122</sup><https://www.nice.org.uk/guidance/ng86/resources/peoples-experience-in-adult-social-care-services-improving-the-experience-of-care-and-support-for-people-using-adult-social-care-services-pdf-1837698053317>

support through a note-taker have not been implemented and there have been challenges around the following areas:

- Getting meetings organised regularly
- Agreeing the agenda between the Chair and the Council
- Getting meeting invites out early enough
- Acting on topics raised in the meetings.

## 2.4.6 Conclusions and Recommendations

The Council has recognised that work is needed on the direct payments agreement and other aspects of support to direct payments service users but there seems to have been little visible progress since November 2017.

The strength of its commitment to the use of pre-payment cards suggests there is still a lack of trust around giving funds to service users to manage their own support through direct payments. While it is right for the Council to ensure that funds are used correctly, this should not be to the point at which all users are not trusted.

The Care Act says: <sup>123</sup>

For direct payments to have the maximum impact, the processes involved in administering and monitoring the payment should incorporate the minimal elements to allow the local authority to fulfil its statutory responsibilities.'

Merton CIL recommends that the Council:

1. develop a proportionate approach to monitoring direct payments, in line with the Care Act
2. be clearer that pre-payment cards and bank accounts are both acceptable options for managing direct payments, and share that information with direct payments users
3. cover people's transaction fees when using pre-payment cards - the amounts concerned tend to be relatively small and could be refunded on a monthly or quarterly basis once the actual amount is known.

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<sup>123</sup> <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 12.4

4. ensure that data on the pre-paid cards is held and managed in a way which is compliant with General Data Protection Regulations (GDPR)
5. ensure that any clawback of funds is done in a managed way rather than as a lump sum, as recommended by the Local Government and Social Care Ombudsman, and develop a protocol to ensure that this is properly discussed and managed with the direct payments user
6. urgently review progress on work to update the Direct Payments Agreement and related information, giving a clear timescale for this work to be completed with user involvement and a co-produced approach



## 2.5 Safeguarding

The Care Act guidance says safeguarding is about 'protecting an adult's right to live in safety, free from abuse and neglect'<sup>124</sup>, with people and organisations working together to prevent abuse and deal with incidents of abuse and neglect. Councils are required to investigate the abuse and neglect, have a safeguarding adults board, arrange advocacy for service users involved in safeguarding cases and to work with partner organisations to address neglect and abuse.

'I just want my safety. Nothing else....'

The process for safeguarding is that anybody concerned about an adult with care and support needs being neglected or abused should report the matter to the Council's safeguarding team, or to the police if there is an immediate danger. The Council is then responsible for ensuring that this concern is investigated, either themselves or by the organisation best placed to do so.

The matter may be resolved as a 'concern' if this initial investigation concludes there is no risk. If there is a risk, the concern proceeds to become a section 42 investigation under the Care Act. This includes producing a safeguarding plan to ensure the safety of the person involved, and may involve a police investigation if there is a suspicion of criminal activity or neglect.

It appears that that safeguarding in Merton may not be working as effectively as it could. Since 2016 Merton CIL has been engaging with the safeguarding team, undergoing training, and undertaking a review of all alerts (all but one, a self-harm case, were made appropriately). Merton CIL co-delivered a learning forum on safeguarding and hate crime alongside the police and Safer Merton in 2017. We have made two requests for Safeguarding Adults Reviews following the death of service users in the hope that learnings from these strengthen the overall approach to safeguarding.

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<sup>124</sup><https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 14.7

Despite this, concerns remain. In the first 6 months of this year Merton CIL saw as many safeguarding alerts as in the whole of the previous year, which was itself an increase on 2016-17.

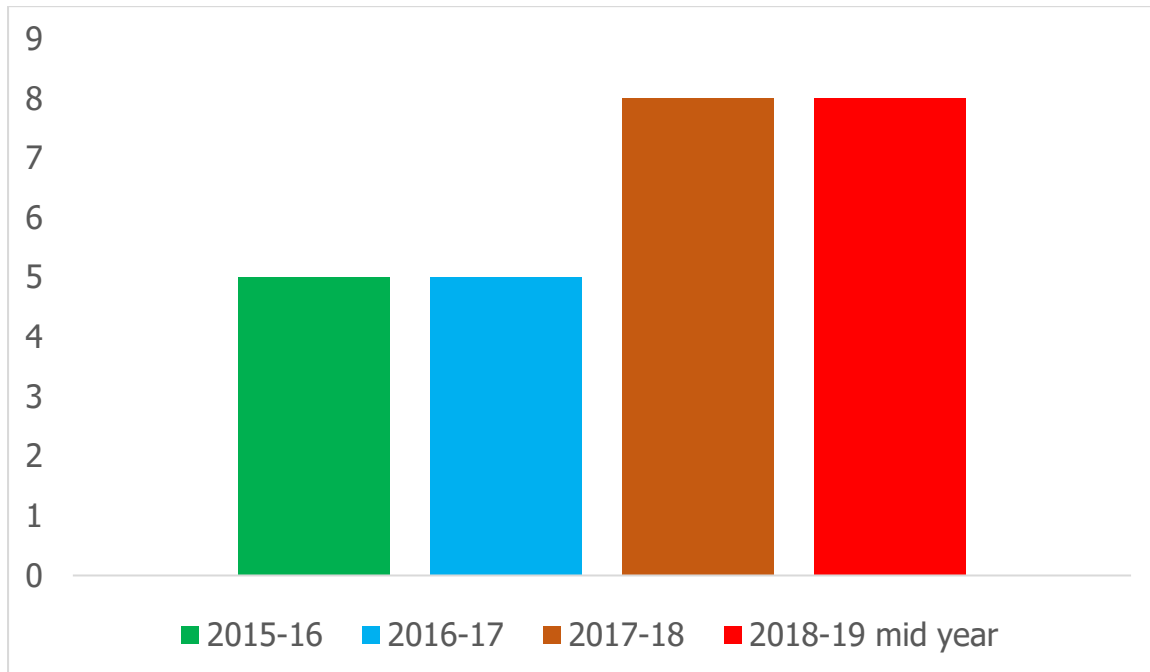


Chart 7 Number of safeguarding alerts at Merton CIL

A particular feature of the alerts made so far this year is that they are on people who are experiencing issues following a reduction in care, or they are people on whom a previous alert was made and not resolved, this is unprecedented since the organisation first started running advice and advocacy services in 2013.

### 2.5.1 Key issues

- Sometimes unclear handling of initial safeguarding concerns
- Low progression rate to Section 42 enquiries
- There can be poor coordination between departments and services
- Confusion over supporting service users during a police investigation
- Safeguarding Adults Reviews can be slow

## 2.5.2 Sometimes unclear handling of initial safeguarding concerns

Merton CIL do not make safeguarding alerts lightly. We use the ADASS Threshold Matrix in order to assess whether a case meets the threshold for an alert prior to making one, and in some cases decide that an incident or issue of concern doesn't meet the threshold for a safeguarding alert. When that happens we still record the concerns to help us recognise if similar incidents happen again.

The experience has often been that after raising safeguarding concerns with the Council there has not been any feedback about the progress of the report or its outcome. As a partner in the safeguarding process feedback on concerns reported seems appropriate and will help learning for future concerns.

The situation has improved since the start of the year in terms of receiving feedback and updates.

Care Act Guidance states that:<sup>125</sup>

'Local authorities must make enquiries, or cause others to do so, if they reasonably suspect an adult who meets the criteria ...is, or is at risk of, being abused or neglected.'

An enquiry can range from a conversation with the adult right through to a formal section 42 enquiry and multi-agency plans of action.

In 2016-17 there were 589 safeguarding concerns raised in Merton, so clearly alerts made by Merton CIL represent just a fraction of the total. However, there seems to be a lack of follow up following an initial call to the safeguarding duty line. In one example, Merton CIL made an alert and advised safeguarding that the individual had reported experiencing domestic abuse, and the casworker had also directly observed an incident of concern. It was made clear that the individual had a learning difficulty and some access support needs. Following initial assurance that support was being given, following another domestic incident Merton Council said they had no record on their system of the original alert or subsequent conversations and actions, and that the case had been closed because the individual had said they 'were fine'. This was flagged to a manager.

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<sup>125</sup> <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 14.76

In one particularly challenging case where the caseworker had provided a detailed referral, Merton Council staff said that upon discussion with the individual concerned they felt able to seek alternative support. However, following that call the individual said something quite different:

'I felt as if I had to fight in order to be protected while talking to the safeguarding officer. I was very upset at their findings.'

Examples like these raise concerns about whether initial reports are being adequately and consistently screened. Additionally, on two occasions recently caseworkers were unable to even get through on the safeguarding duty line by telephone. However, there has recently been an improvement in the feedback received about safeguarding concerns that we report, if we ask for it.

### 2.5.3 Low progression rate to Section 42 enquiries

A Section 42 enquiry must take place if there is reason to believe that abuse or neglect is taking place or is at risk of taking place, and the local authority believes that an enquiry is needed to help it to decide what action to take to support and protect the person in question.<sup>126</sup>

NHS Digital's Safeguarding Adults Collection<sup>127</sup> gives national figures for the number of safeguarding concerns and enquires that were open in the year 2016-2017. The figures show that Merton is significantly below the national and London-wide average of conversion from safeguarding concern into a section 42 enquiry. In Merton 20 percent of concerns led to enquires where the national average is 41 percent and the average in London is 45 percent.

Merton is also third lowest in the percentage of safeguarding concerns it progresses to enquires when looked at in relation to other London boroughs.

<sup>126</sup> <https://www.scie.org.uk/safeguarding/adults/practice/questions>

<sup>127</sup> <https://digital.nhs.uk/data-and-information/publications/statistical/safeguarding-adults/2016-17>

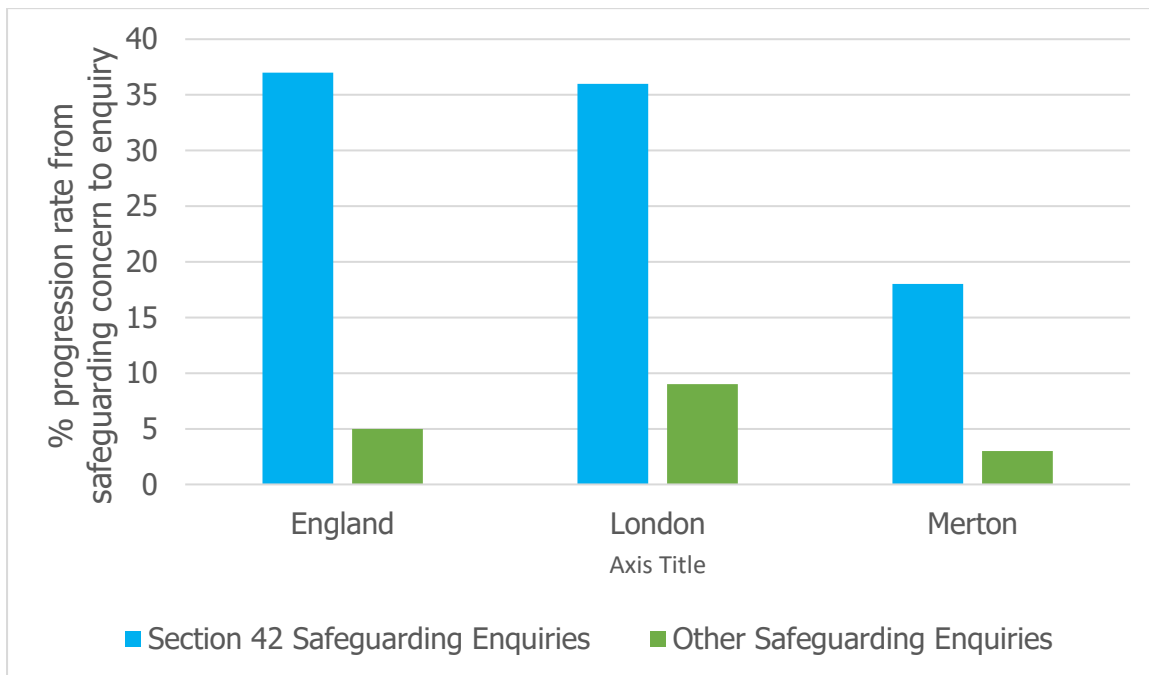


Chart 8: % progression rate from safeguarding concern to safeguarding enquiry

The Merton Safeguarding Adults Board Annual Report 2016-2017<sup>128</sup> uses the NHS Digital figures for progression to section 42 enquires, 18 percent. The annual report was reported to the Health and Wellbeing Board in March 2018. In that meeting Merton CIL asked how the 18% conversion rate compares to other boroughs and were told a comparison isn't possible. Clearly this is incorrect, and Merton's rate is comparatively low. However, it should be acknowledged that the Council has raised questions about the robustness of the data-set.

The Safeguarding Annual Report addresses the low enquiry rate, suggesting this may indicate there is a high level of reporting of safeguarding concerns in the borough and that they are dealt with as concerns or are not appropriate for investigation.

However, Merton CIL remains concerned about the low conversion rate due to experiences of referring cases to the Council including these examples:

- A case involving a person being placed in a residential home inappropriately and alleged physical and financial abuse by family members – Merton CIL have worked extensively with this person and the police over a period of six months without any action following a safeguarding referral

<sup>128</sup><https://democracy.merton.gov.uk/documents/s22139/Merton%20Safeguarding%20Adults%20Board%20annual%20report%2020162017.pdf>

A Disabled man along with other family members (including children), experienced repeated physical and verbal abuse from a family member over a period of at least 16 months. The person's GP raised concerns about the impact of the abuse on the person's physical and mental health but the Council concluded it would not to proceed with an enquiry, stating the issues were about relationship breakdown and housing. He has been trying get re-housed and has tried to get a needs assessment throughout this time. The case has also been taken to CMARAC, but he remains in the abusive situation.

- A case where Merton CIL raised a safeguarding concern about financial abuse by one of the council's own social workers and it took over six weeks to get confirmation that an investigation was underway and that the Council was supporting the service user with their situation. These circumstances resulted in them being out of pocket and experiencing a period of homelessness

There is also a need for greater clarity about what should happen in cases where there are safeguarding incidents which may not met the level needed for an enquiry on their own, but they continue to happen and become an ongoing concern. This has happened in one case where a person has reported several threats of violence and family issues where one safeguarding concern on its own would not have met the threshold for an enquiry, however, repeated reports may have been an indication of the need for an enquiry.

In general, there seems to be a need for a clearer approach to assessing initial alerts and decisions about whether it will be progressed to a Section 42 enquiry. Written guidelines shared with partner organisations would be helpful in this regard.

In addition, it would be helpful for there to be agreed guidelines for undertaking any enquiry following a safeguarding alert in order to prevent incidents such as the following examples:

A Disabled Person who alleged serious physical, financial and psychological abuse for over a decade was not invited to their safeguarding meeting because it was held in an inaccessible venue

A Disabled Person alleged financial abuse and neglect by their care agency, and Merton Council invited the care agency to the safeguarding meeting with the person. The caseworker objected very strongly to this and were able to prevent them attending as the person alleged the care agency manager had been threatening them

## 2.5.4 There can be poor coordination between departments and services

In some safeguarding cases there are issues around different departments within the Council not working together effectively, in particular social care and housing.

These issues are sometimes even more evident when other organisations are involved and the Council does not always appear to be working in partnership with other organisations.

In one example a service user alleged abuse and neglect by staff from a care agency. Incidents included not being taken to the toilet, not being helped to use a breathing machine, not being given fluids, staff untrained in medicine management and the use of a hoist. The Disabled Person also reported that staff shouted at them. As the services were funded through the Clinical Commissioning Group (CCG), the Council referred the concern to the CCG and there was no action over a period of four months.

It was left to Merton CIL to escalate the issue to both the Chair and CEO of the CCG before this was finally addressed. While it is clear that the CCG should have acted faster, the Council position that the rule that they couldn't incur costs on continuing healthcare patients somehow overruled their statutory safeguarding duty, seems misconceived. The Care Act guidance is clear:<sup>129</sup>

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<sup>129</sup> <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 14.78

'If the local authority decides that another organisation should make the enquiry, for example a care provider, then the local authority should be clear about timescales, the need to know the outcomes of the enquiry and what action will follow if this is not done.'

In other cases, safeguarding concerns made via the duty line have been passed to mental health services and there has been limited follow-up. In one example, Merton CIL reported significant alleged abuse including denial of food and water. The caseworker advised that the individual should not be visited at home as that risked causing reprisals by the alleged abuser. Staff from the mental health trust, acting on the safeguarding report, visited the individual at home and the person later said they did experience reprisals as a result. Our caseworker was then phoned and told that the case would be closed. Merton CIL argued very strongly against this given that the situation had in no way been addressed.

### **2.5.5 Confusion over supporting service users during a police investigation**

There seems to be a lack of clarity about what action the Council should take in safeguarding cases where the police are investigating the issue.

The Council has said that it cannot take action when there is a police investigation. This seems to be a misinterpretation of the Care Act guidance which says<sup>130</sup>:

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<sup>130</sup> <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 14.84



'police investigations should be coordinated with health and social care enquiries but they may take priority.'

and<sup>131</sup>:

'A criminal investigation by the police takes priority over all other enquiries, although a multi-agency approach should be agreed to ensure that the interests and personal wishes of the adult will be considered throughout, even if they do not wish to provide any evidence or support a prosecution. The welfare of the adult and others, including children, is paramount and requires continued risk assessment to ensure the outcome is in their interests and enhances their wellbeing.'

and<sup>132</sup>:

'The local authority has an ongoing duty to promote the wellbeing of the adult in these circumstances.'

Skills for Care's briefing on the role of police in safeguarding<sup>133</sup> usefully describes there being a 'hierarchy of enquiries', with police investigations taking precedence while the local authority will, 'work together with the police to ensure appropriate steps are taken to safeguard and support the adult.'

It goes on to say:

'The police should work with the local authority and other partner agencies to ensure that all relevant information is shared and

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<sup>131</sup> <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 14.91

<sup>132</sup> <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#annexes> para 14.101

<sup>133</sup> <https://www.skillsforcare.org.uk/Document-library/Standards/Care-Act/learning-and-development/care-act-changes-to-the-police-role-in-the-safety-and-protection-of-adults-at-risk-from-harm-or-abuse-briefing.pdf>

identified and a risk management or safeguarding plan is agreed at an early stage.'

Again, there seems to be a need for clarity about the Council's role in Merton once a police investigation is underway. It would be helpful to know that the Council is actively working with the police and other organisations to ensure that any necessary action is taken to safeguard the people involved at the same time as the police investigation.

## 2.5.6 Safeguarding Adults Reviews can be slow

Safeguarding Adults Boards must arrange a SAR when an adult in its area dies as a result of abuse or neglect, whether known or suspected, and there is concern that partner agencies could have worked more effectively to protect the adult. Care Act guidance para 14.162

Safeguarding Adults Reviews (SARs) are focussed on learning and improving. They are not for holding organisations to account, as other processes exist for that, such as disciplinary or criminal proceedings. In the Merton Council Safeguarding Annual Report 2016-17 it says that no SARs took place during the year. It was positive therefore that when Merton CIL reviewed safeguarding cases with a Safeguarding manager in early 2017, it was agreed that a SAR referral would be appropriate where a Disabled person had died following a safeguarding alert. However, while the Council was open to undertaking a SAR, the timeframes for achieving this have been very slow. A Serious Incident Learning Process took place 13 months after the initial referral. 5 months on and the learnings are not yet distributed to partners. One of these learnings relates to the need for improved debt recovery procedures mentioned in section 2. There were also learnings around the need to action safeguarding alerts more quickly. There was a six week gap between the original safeguarding alert and initial action, and the individual died shortly thereafter.

A second SAR referral following the death of another service user was made earlier this year. The Care Act Guidance states that a SAR should be completed within 6 months<sup>134</sup>, however, it has taken seven months

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<sup>134</sup> <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance> para 14.173

for the Council to decide whether or not to proceed with a SAR in this case, although it is indicated that this will take place, which is positive. Merton CIL recognise that some of the delay may be related to barriers in gathering initial information from other organisations involved, however, this highlights some of the challenges caused around communication and coordination barriers between departments and organisations covered in section 2.5.4.

## **2.5.7 Conclusions and Recommendations**

Safeguarding is a very important part of the role of adult social care. It is essential that this is constantly scrutinised to ensure it is working as effectively as possible, as failings in safeguarding can have disastrous consequences for the people involved.

While Merton CIL recognise the improvements in the Council's approach in this area, particularly in the development of the Safeguarding Adults Board, there is still room for improvement.

Recommendations are that the Council:

1. ensures there is a clear process for and full transparency about when concerns should proceed to section 42 investigations
2. monitors the progression of safeguarding concerns to section 42
3. provides timely feedback to partner organisations about reports of safeguarding concerns
4. reviews practice in relation to safeguarding when there is a police investigation to ensure that the safety and wellbeing of service users is maintained
5. support the Safeguarding Adults Board to capture and share learning from Safeguarding Adults Reviews and Serious Incident Learning Processes more quickly

## Appendix 1 Questions for Merton Council

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Merton CIL sent an extended version of the executive summary, our recommendations, and a series of clarification questions (below) to Merton Council on 25 September 2018. We sent a reminder on 02 October and engaged in further correspondence. At the time of publication (15 October 2018) we have not yet received a response.

### Overall

1. What work has been undertaken to implement the quality assurance plans mentioned in the Local Account 2013-17 to ensure that "the views of our customers feed into our process"?
2. What action is being planned or taken to address findings that social care users in Merton don't have enough control over their lives (NHS Adult Social Care survey)?
3. What action has been undertaken since 2014 to improve the wellbeing of local Disabled people, since this was revealed as being significantly lower than non-Disabled people in 2014 and 2017 Residents Surveys?
4. What has been done by Merton to implement the recommendations of the LGO following complaints?
5. What is the timeframe for finalising the Merton Website and making it Care Act compliant, and, when will user testing be carried out?

### Needs assessments

6. We understand that every team and every pathway in ASC is under review and requires improvement. What is the timeframe for this review to be completed and what user involvement will there be in this?
7. What is Merton's position on the question of accelerated referral routes for older users of social care? Differing feedback has been received on whether or not these routes have existed in the past and whether they will exist in the future.

8. Needs assessments for people with learning disabilities were previously commissioned externally. Who is now undertaking these assessments?
9. How will care plans reflect Merton's wider health and wellbeing objectives and strategies such as increased access to exercise or improved diet?
10. In practice, how has the former Independent Living Fund (ILF) recipient grant been ringfenced to former ILF users as stated in a recent FOI response, and how will that money be spent this year?
11. What action has been taken to address the findings of the Judicial Review JF v London Borough of Merton which highlighted a range of concerns with the functioning of the outcomes panel?
12. What is the timeframe for providing Care Act Training and Independent Living for the Adult Social Care team?

### **Charging**

13. According to GMB research, 261 social care users have debt management procedures against them. What action is being taken to implement the findings of the recent SILP which highlighted the need for guidelines around debt recovery, especially in terms of supporting people's mental health and wellbeing?
14. What work, if any, is being done to assess the impact of increased charging targets?

### **Direct payments**

15. We're aware that 2 additional temporary staff have been brought into the Direct Payments team. Beyond this, what specific actions are being taken to address our concerns and agreed actions from our Direct Payments meeting last November?
16. When money is clawed back from pre-payment card accounts, what action is taken to ensure that only public money, and not the individual's personal money, is taken?

### **Safeguarding**

17. Merton has low progression rates to s.42. What is the reason for this and how will it be addressed?
18. What is the process to enable Merton Council to track repeat concerns about a care home, home care agency or individual personal assistants?

## Appendix 2 Abbreviations

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ASC	Adult Social Care
CCG	Clinical Commissioning Group
CEO	Chief Executive Officer
DLA	Disability Living Allowance
DRE	Disability related expenses
DWP	Department for Work and Pensions
EHCP	Education, Health and Care Plan
EIA	Equality impact assessment
FOI	Freedom of Information
GDPR	General Data Protection Regulations
ILF	Independent Living Fund
ILSG	Independent Living Strategy Group
JSNA	Joint Strategic Needs Assessment
LGO	Local Government and Social Care Ombudsman
NAFAO	National Association of Financial Assessment Officers
NICE	National Institute for Health and Care Excellence's
PA	Personal Assistant
PIP	Personal Independence Payments
PR	Public Relations
SAR	Safeguarding Adults Review
SILP	Serious Incident Learning Process
WCA	Work capability assessment



## **Merton Centre for Independent Living**

Email: [info@mertoncil.org.uk](mailto:info@mertoncil.org.uk)

Website: [www.mertoncil.org.uk](http://www.mertoncil.org.uk)

Telephone: 020 3397 3119

Mobile: 0779 671 2502

Facebook: Mertoncil

Twitter: @MertonCIL