



**CHARGING FOR NON-RESIDENTIAL SERVICES  
POLICY**

**TAMESIDE METROPOLITAN BOROUGH COUNCIL**

**April 2022**

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## 1. INTRODUCTION AND LEGAL FRAMEWORK

- 1.1 This Policy provides a single legal framework for charging for care and support services in settings other than care homes. The Care Act 2014 provides a single legal framework for charging for care and support. This is set out in Sections 14 and 17 of the Care Act 2014.
- 1.2 This Charging Policy for non-residential care is based on the Care Act 2014 and the regulations under it, including the [Care and Support \(Charging and Assessment of Resources\) Regulations 2014](#).

## 2. SERVICES COVERED BY THIS POLICY

- 2.1 The way in which a person is charged differs depending on whether the person receives care in a care home setting, their own home or another setting. This Policy will set out how charges apply in settings other than care homes, also known as “non-residential” settings and provides clear information on what information may be needed to inform a financial assessment based on the setting a person lives in.
- 2.2 Examples of non-residential settings:
- A person’s own home
  - Extra care housing
  - Supported living accommodation
  - Shared Lives arrangements
- 2.3 The Council has a duty to arrange care and support for those with eligible needs, and a power to meet both eligible and non-eligible needs. In all cases, the Care Act 2014 gives a local authority the discretion to choose whether or not to charge under section 14 of the Care Act following a person’s needs assessment. When arranging care and support to meet needs Tameside Metropolitan Borough Council (the Council) can charge, except where required to provide care and support free of charge.
- 2.4 The Legal Framework for charging is set out within the Care Act 2014 within [Section 14](#), [Section 17](#) and [Chapters 8 and 9 and Annexes B and C of the statutory guidance](#).
- 2.5 A person’s ability to make an informed choice is a key element of the care and support system. This extends to where the care and support planning process has determined that a person needs to live in a specific type of accommodation to meet their care and support needs.
- 2.6 Where the Council arranges care and support to meet a person’s needs, it will charge the person, except where the Council is required to arrange care and support free of charge.
- 2.7 This Policy intends to make charging fair, and the process around charging easy to understand for everyone.
- 2.8 [The Care and Support Statutory Guidance](#) has been considered in advance of preparing this Policy which the Council is required to act under the guidance in the exercise of its functions in accordance with Section 78(1) Care Act 2014. This Policy is made having due regard to the Statutory Guidance issued by the Secretary of State. The Council will apply the guidance contained in the Care and Support Statutory Guidance 2014.
- 2.9 The overarching principle is that where a person is required to pay for care and support they should only pay what they can afford. Some people will be entitled to financial support on a means-tested basis and some people will be entitled to receive free care and support. There are some services where a flat rate is charged. This Policy will provide information on this.

## 2.10 Equality Act 2010

In addition to this Policy, the Council will endeavour to ensure there is sufficient information and advice available in a suitable format for the person's needs, in line with the Equality Act 2010 (in particular for those with a sensory impairment, with learning disabilities or for whom English is not their first language), to ensure that they or their representative are able to understand any contributions they are asked to make. The Council will also make the person or their representative aware of the availability of independent financial information and advice, when required.

2.11 This Policy is based on the following principles:

- Charges are affordable
- be comprehensive and equitable
- be clear and transparent
- promote wellbeing, social inclusion, support personalisation,
- independence, choice and control;
- support carers
- be person-focused
- apply the charging rules equally
- encourage employment, education or training
- be sustainable for the local authority

The appropriate assessment of needs has been carried out and the Council has chosen to charge.

2.12 The Council's Charging Policy will ensure that people are not charged more than it is reasonably practicable for them to pay. The Policy is comprehensive, to reduce variation in the way people are assessed and charged and is clear and transparent, so people know what they will be charged. It also promotes wellbeing, social inclusion, and supports the vision of personalisation, independence, choice and control along with the above principles provided for in the Statutory Guidance.

2.13 The overarching principle is that people should only pay what they can afford to pay, and this will be based on a mean-test financial assessment unless the person has more than the upper capital limit (which is currently set at £23,250). Some people will be entitled to free care and this Policy will set out where this is the case under the Charging heading.

2.14 The financial assessment will be based on the person's income and capital only and their share of any joint income and capital. The Council do not assess couples or civil partners jointly. However, regard will be given to any partner or spouse living in the same household to ensure they have enough money to live on.

## CHARGING

### 3. CHARGING FOR CARE AND SUPPORT IN NON-RESIDENTIAL SETTINGS

3.1 This section should be read in conjunction with the [Care and Support \(Charging and Assessment of Resources\) Regulations 2014](#) and [Annex B \(Treatment of capital\)](#) and [Annex C \(Treatment of income\)](#) of this Policy.

3.2 These charging arrangements cover other settings for meeting care and support needs outside of a care home. For example, care and support received in a person's own home,

and in other accommodation settings such as in extra care housing, supported living accommodation or shared lives accommodation. When a person is living in Shared Lives and living in the Shared Lives carer's home, the person's accommodation and care will be provided by the same person. The person's rent and care charges will be treated separately: the Council will charge for care only under this framework, and the person will be supported to enter into a licence agreement for their accommodation with the carer so that their right to live in the property and responsibilities as a licensee are defined. The person will be supported to apply for Housing Benefit or any other relevant benefit to assist with payment for their accommodation, and the Shared Lives service can help to arrange direct payment of rent to the Shared Lives carer to reduce administrative burdens. However, even if the person does not qualify for Housing Benefit, the person will have the ultimate responsibility of paying for their own accommodation if they are not in residential care.

- 3.3 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 policy will ensure they have enough money to meet these costs. After charging, a person will be left with the Minimum Income Guarantee (MIG) as prescribed in the [Care and Support \(Charging and Assessment of Resources\) Regulations 2014 \(at section 8.42\)](#)
- 3.4 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 Policy will endeavour to ensure that the person will keep enough money to cover the cost of meeting these disability related costs. (see [disability related expenditure section 45](#) for more detailed information).
- 3.5 After charging, a person will be left with the minimum income guarantee (MIG) (see [minimum income guarantee section 35](#) for more detailed information) as set out in the Care and Support (Charging and Assessment of Resources) Regulations 2014 and updated by the Department for Health and Social Care.
- 3.6 The financial assessment of the person's capital will exclude the value of their property which they occupy as their main or only home. Beyond this, the rules on what capital must be disregarded are the same for all types of care and support. Where a Deferred Payment Agreement or Voluntary Legal Charge (see [deferred payment agreement section 46](#) for more information) applies, the Council will consider if this allows enough income to maintain the property concerned.
- 3.7 Where the Council is meeting needs by arranging care, we are responsible for contracting with the care provider. The Council is also responsible for paying the full amount, including where a 'top up' fee is being paid, e.g. Supported Living. The Council will invoice the person for their contribution towards the cost of the care as worked out in the financial assessment.
- 3.8 The only exception to 3.7 above is where a person chooses to buy some additional care and support which does not form part of the care package to meet the person's eligible needs. In such cases the person will need to make these arrangements themselves and the Council will not be responsible for meeting these costs, nor will the costs be allowed as a Disability Related Expense. Please see [section 45 below for disability related expenditure](#). This does not apply in relation to Direct Payments.
- 3.9 The Council is committed to helping people to remain in their own homes, promoting individual wellbeing and independence, and therefore have set a maximum charge and disregards elements of additional sources of income.

#### **4. WHAT THE COUNCIL WILL NOT CHARGE FOR**

- 4.1 The Council will not charge for the following services as they must be arranged free of charge:

- i. Intermediate care, including reablement, which will be provided free of charge for **up to** six weeks;
- ii. Community equipment (aids and minor adaptations). Aids must be provided free of charge whether provided to meet or prevent/delay needs. A minor adaptation is one costing £1,000 or less;
- iii. Care and support provided to people with Creutzfeldt-Jacob Disease (CJD);
- iv. After-care services/support provided under section 117 of the Mental Health Act 1983;
- v. Any service or part of service which the NHS is under a duty to provide. This includes Continuing Health Care and the NHS contribution to Funded Nursing Care;
- vi. More broadly, any services which the Council is under a duty to provide through other legislation may not be charged for under the Care Act 2014;
- vii. Assessment of needs and care planning may also not be charged for, since these processes do not constitute “meeting needs”.
- viii. Any services which a local authority is under a duty to provide through other legislation may not be charged for under the Care Act 2014.

## 5. FINANCIAL ASSESSMENT

- 5.1 The purpose of a financial assessment is to calculate what, if any, charge a person will pay towards their care and support services. The Council will carry out a financial assessment to determine what the person can afford to pay.
- 5.2 Social care is means tested and the Council will not charge more than the cost that it incurs in meeting the assessed needs of a person with eligible needs.
- 5.3 Income and capital will either be disregarded (ignored), partly disregarded, or included in the calculation.

## 6. CAPITAL LIMITS AND THE BASIS FOR CHARGING

- 6.1 The financial limit, known as the ‘upper capital limit’, sets out at what point a person is entitled to access local authority support to meet their eligible needs. Full detail is set out in [Annex B](#) and the Care and Support (Charging and Assessment of Resources) Regulations 2014.

The upper capital limit is currently set at £23,250.

The lower capital limit is currently set at £14,250.

- 6.2 A person with assets above £23,250 will be deemed to be able to afford the full cost of their care and would need to make private arrangements unless they are unable to do so.
- 6.3 The Council will not generally arrange care but will provide an individual with advice and information and signpost accordingly. A person with more in £23,250 can ask the Council to arrange their care and support for them.
- 6.4 Those with capital between £14,250 and £23,250 will be deemed as able to contribute, known as “savings income”, from their capital.
- 6.5 Any capital below £14,250 will be disregarded. This means that a person will not need to contribute to the cost of their care and support **from their capital** (i.e. their contribution will be based on **their income only**).
- 6.6 Where a person’s capital is below the upper capital limit, a person can seek means-tested support from the Council. This means that the Council will undertake a financial assessment of the person’s assets and will make a charge based on what the person can afford to pay.

- 6.7 Where a person has above £23,250 in capital, they are not entitled to receive any financial assistance from the Council and will be expected to pay the full cost of their care and support until their capital falls below the upper capital limit.
- 6.8 If the person has more than the upper capital limit, the Council will not generally arrange care but will provide them with advice and information and signpost them accordingly.
- 6.9 The Council may support to meet those needs and arrange the care and in circumstances where the Council assists the person, or there is no other person who can assist a person (for example where an individual is assessed as lacking capacity to make decisions regarding their care and support arrangements) then the Care Act 2014 allows for a charge to be made to cover the cost of making such arrangements.

## **7. WHAT IS CONSIDERED?**

- 7.1 In the financial assessment, the person's capital is considered unless it is subject to one of the disregards (see [section\(s\) 25-30 below](#)). The main examples of capital are property and savings. Where the person receiving care and support has capital below the capital limit (£23,250) but more than the lower capital limit (£14,250), they will be charged £1.00 per week for every £250.00 between the two amounts.
- 7.2 For example – if a person has £2000 above the lower capital limit (i.e. £16,250) they are charged an income of £8.00 per week towards the cost of their care.
- 7.3 In assessing what a person can afford to pay, the Council will consider the person's income except for earnings from current employment (please refer to [section 36-44 below for information relating to income](#)).

## **8. CALCULATING THE CHARGE**

- 8.1 The financial assessment will be completed in accordance with the Department of Health and Social Care's [Care and Support Statutory Guidance](#).
- 8.2 The assessment calculates a weekly charge, which is the maximum amount that a person will be asked to pay for any combination of assessed charge services.
- 8.3 The following services are assessed charge services:
- Home Care and Personal Support (including night sitting service)
  - Day Care
  - Shared Lives
  - Supported Living/Accommodation
- 8.4 Charges for these services are reviewed annually, but the Council reserves the right to review service charges at other times as and when it is considered appropriate to do so.
- 8.5 The weekly assessed charge, based on 100% of the personal budget/direct payment, is then compared with the maximum charge for the services received set by the Council, and the person will be charged whichever is the lower of the two figures.
- 8.6 At the time a financial assessment takes place, the person's capacity in respect of financial affairs will be considered. (see [section 10 Mental Capacity](#).)



- 8.7 Every person who receives a financial assessment will be given a written record of the assessment, which will explain how the assessment has been carried out, what the charge will be, how often it will be made and when it will be reviewed. The review generally takes place on an annual basis but this may vary according to individual circumstances (for example, additional information relating to [disability related expenditure](#), or a change in income/capital is highlighted to the Council).
- 8.8 The financial assessment of the person's capital will exclude the value of the property that they occupy as their main or only home e.g. the place they are living. The only exception to this is where the person is moving to Supported Living, in such cases the property they occupied as their main or only home will be included in the financial assessment. Any other capital will be treated as outlined under the Capital Section at Section 16-34 below.

## **9. CHARGES THAT DO NOT FALL UNDER A FINANCIAL ASSESSMENT**

- 9.1 The Council charges a standard flat rate for meals and drinks provided in day centres with no charge for those who do not wish to avail themselves of the refreshments. These charges are applied without a means test, as these charges substitute for ordinary living costs.

## **10. MENTAL CAPACITY**

- 10.1 Where a person has been assessed as lacking the capacity to take part in the financial assessment at the time it is due to take place, the Council will need to consult with anyone who holds:
- Enduring Power of Attorney (EPA);
  - Lasting Power of Attorney (LPA) for Property and Affairs;
  - Lasting Power of Attorney (LPA) for Health and Welfare;
  - Property and Affairs Deputyship under the Court of Protection; or
  - Any other person dealing with that person's affairs (e.g. someone who has been given appointee-ship by the Department for Work and Pensions (DWP) for the purpose of benefits payments).
- 10.2 If the Council is made aware that a Lasting Power of Attorney for Property and Affairs, or a Court of Protection Deputy for Property and Affairs is in place, the Council will request sight of the registered Lasting Power of Attorney documentation or relevant court order appointing a Deputy. The Council will also complete an OPG100 search.
- 10.3 The Council will work with an Enduring Power of Attorney, a Lasting Power of Attorney or a Deputy and request evidence of their legal representation. Where an application is in progress the representative will be required to keep the Council informed of the development of the application.
- 10.4 Where a person has been assessed as lacking the capacity to make decisions in relation to their property or financial affairs, the Council will consult with and engage with family members; however, family members may not have the legal right to access the person's bank accounts and the relevant authority will need to be sought. The Council will signpost and support family members in obtaining the necessary information and advice in these circumstances.
- 10.5 In these circumstances the Council, where appropriate, will suggest that a family member(s) may wish to seek legal advice in relation to becoming a Property and Affairs deputy in order to make financial decisions on behalf of a person who lacks capacity for such decisions. Family members can apply for this to the Court of Protection or the Council can apply if there is no family involved in the care of the person.

- 10.6 Applying to the Court of Protection and the processing of any court application can take some time. However, it is vitally important that such lawful authority is sought on behalf of a person who lacks capacity to give consent to a financial assessment taking place.
- 10.7 A person who is unable to make decisions because of impaired decision making capabilities (i.e. they have been assessed as lacking the capacity to make decisions in respect of their finances or consent to a financial assessment) will not be forced to sign documents that they are unable to understand. In these cases, the Council will work with the individual who has lawful authority to manage the financial responsibilities on behalf of the person receiving care and will be liable to pay the person's fees on their behalf once they have access to their funds.

## **11. CHARGING FOR SUPPORT TO CARERS**

- 11.1 Where a carer has eligible support needs of their own, the Council has a duty, or in some cases a power, to arrange support to meet their needs. When the Council is meeting this need by providing a service directly to a carer, it has the power to charge the carer.
- 11.2 The Council values carers within its local community as partners in care and recognise the significant contribution they make. Carers help to maintain the health and wellbeing of the person they care for, support this person's independence and enable them to stay in their own homes for longer.
- 11.3 The Council do not charge carers for support.

## **12. SELF- FUNDERS REQUESTING LOCAL AUTHORITY SUPPORT TO MEET ELIGIBLE NEEDS**

- 12.1 The Council will meet a person's eligible needs outside of a care home setting if they have financial assets which result in the person paying full cost for their care and support. Where a person has been financially assessed to pay full cost for their care and support, the Council will continue to take on the responsibility for meeting those needs. This means that the Council may for example provide or arrange their care and support.
- 12.2 When a person has been financially assessed to pay full cost for their care and support services; they will not be entitled to financial support from the Council. These people may be referred to as 'self-funders'.
- 12.3 In this instance, a person may choose to arrange their own care and support, or ask the council to arrange their care for them.
- 12.4 Where a person wishes to arrange their own care and support, the Council will help people in meeting their own needs, by providing information and advice on different options.
- 12.5 However, a person may wish to ask the Council to arrange their care and support and the Care Act gives the power to charge an administration fee for arranging care for self-funders.
- 12.6 There is an annual fee of £95 charged to the management of a self-funders package of care where the person wishes for the council to arrange their care.
- 12.7 This annual charge reflects the time and resource taken to support an individual to establish the care they require and will only cover the cost of the administration of arranging the care.

12.8 The Council will not charge people for a financial assessment, a needs assessment or the preparation of a care and support plan.

### **13. 'LIGHT-TOUCH' FINANCIAL ASSESSMENTS**

13.1 In some circumstances, the Council may choose to treat a person as if a financial assessment has been carried out. This type of assessment is defined as a "light touch financial assessment". The Council must be satisfied on the basis of evidence provided by the person that they can afford, and will continue to be able to afford, any charges due.

13.2 The main circumstances in which the Council will consider carrying out a light-touch financial assessment are:

- (a) If a person does not wish, or refuses, to disclose their financial information.
- (b) Where a person has significant financial resources, and does not wish to undergo a full financial assessment for personal reasons, but wishes nonetheless to access the Council's support in meeting their needs. In these situations, the Council may accept other evidence in lieu of carrying out the financial assessment and consider the person to have significant financial resources that would result in the person paying full cost for their care and support.
- (c) Where the Council charges a small or nominal amount for a particular service which a person is clearly able to meet and would clearly have the relevant minimum income left, and carrying out a financial assessment would be disproportionate.
- (d) When an individual is in receipt of benefits, which demonstrate that they would not be able to contribute towards their care and support costs.
- (e) When an individual is in receipt of benefits which demonstrate that they would not be able to contribute towards their care and support costs. This might include income from Jobseeker's Allowance.

13.3 The Council may be satisfied that a person is able to afford any charges based on evidence that the person has either a property in which they do not live that is clearly worth more than the upper capital limit, where they are the sole owner, or own a share of the property, savings that are worth more than the upper capital limit, or have enough income left following the charge being paid.

13.4 Where a person or their representative declares on the Financial Assessment Form that they do not wish to disclose details of their finances, the person will be charged at the maximum rate.

13.5 Where a person or their representative does not complete the Financial Assessment Form or the relevant declaration, then the person will be charged at the maximum rate for services received.

13.6 If the person or their representative decide to complete the financial assessment form at a later date, then any assessed charge will apply from the Monday following the date that the financial assessment form is received by the Council.

13.7 Where a person has refused a financial assessment or the Council has been unable to carry out a full financial assessment because of a person's refusal to cooperate, the Council will assume the person has the financial resources in excess of the upper capital limit and the person will be charged the full cost of their care and support, until such a time a financial assessment can be conducted or completed.

13.8 In some circumstances the Council may use its discretion to backdate an assessed charge to the date that charges started, dependant on the merits of each individual case.

- 13.9 In some circumstances, the Council will complete a financial assessment using information obtained from the Department for Work and Pensions (DWP) where that information indicates the service user has savings below the upper limit.
- 13.10 Where the Council is going to meet the person's care and support needs, and it proposes to undertake a light-touch financial assessment, the Council proposes to take steps to assure itself that the person concerned is willing, and will continue to be willing, to pay all charges due.
- 13.11 The Council has responsibility for ensuring that people are not charged more than it is reasonable for them to pay. The Council will always be mindful and ensure that people are not charged more than it is reasonable for them to pay. Where a person does not agree to the charges that they have been assessed as being able to afford to pay under this route, a full financial assessment may be needed.
- 13.12 When deciding whether or not to undertake a light-touch financial assessment, the Council will consider both the level of the charge it proposes to make, as well as the evidence or other certification the person is able to provide.
- 13.13 The Council will also inform the person when a light-touch assessment has taken place and make clear that the person has the right to request a full financial assessment should they so wish, as well as making sure they have access to sufficient information and advice, including the option of independent financial information and advice.

#### **14. OUTCOME OF A FINANCIAL ASSESSMENT**

- 14.1 Once complete, the Council will provide a written record of that assessment to the person. This will explain how the assessment has been carried out, what the charge will be and how often it will be made, and if there is any fluctuation in charges.
- 14.2 The Council will provide this information in a manner that the person can easily understand, in line with the Council's duties on providing information and advice when requested.
- 14.3 In carrying out the assessment, the Council will have regard to how both capital and income should be treated as set out in [Annexes B](#) and [C](#) of the Care and Support Statutory Guidance and details around this will be provided in the documentation provided to the person or their representative.
- 14.4 The Council will aim to reassess annually a person's ability to meet the cost of any charges to take account of any changes to their resources. However, a reassessment will also take place if there is change in circumstance or at the request of the person or their representative.

#### **15. MANAGEMENT OF CHARGES**

- 15.1 Under the Care Act the Council has the power to charge from the moment it starts to meet a person's care and support needs. The Council will notify the person of the outcome of their financial assessment in writing. This financial assessment will be backdated to the day the care and support started.
- 15.2 When a person is notified of the outcome of their financial assessment; they are informed of their obligation to advise the Council of any changes in their financial circumstances. Failure to inform the Council of additional income received i.e. additional benefits; inheritance that would result in an increase in the charges made to the person will involve a backdated charge to the point of when the additional income was received.

- 15.3 If a person does not disclose financial information at the point of request; it will result in the person being charged full cost. If at a later date the financial information is provided, backdating can be considered where a person can demonstrate that they had good cause for not providing the financial information at an earlier date.

## CAPITAL

### 16. WHAT IS CAPITAL?

- 16.1 Capital refers to financial resources available for use and tends to be from sources that are considered more durable than money in the sense that they can generate a return.
- 16.2 The following list gives examples of capital. This list is intended as a guide and is not exhaustive.
- (a) Buildings
  - (b) Land
  - (c) National Savings Certificates and Ulster Savings Certificates
  - (d) Premium Bonds
  - (e) Stocks and shares
  - (f) Capital held by the Court of Protection or a Deputy appointed by that Court
  - (g) Any savings held in Building Society Accounts and Bank Current Accounts, Deposit Accounts or special investment accounts. This includes savings held in the National Savings Bank; Girobank and Trustee Savings Bank; SAYE schemes; Unit Trusts; Co-operatives share accounts.
  - (h) Cash
  - (i) Trust funds (in certain circumstances).

### 17. WHO OWNS THE CAPITAL?

- 17.1 The Council will need to investigate who owns the capital as outlined in the financial assessment process. The person in whose name the capital asset is held is the legal owner. There may be cases where ownership is shared or disputed.
- 17.2 Beneficial ownership is where someone enjoys the benefits of ownership but they do not own the asset, someone else does. In most cases, a person will be a legal and beneficial owner. The Council will need to take steps to confirm the ownership of assets as part of the financial assessment process and the Council may ask for evidence in writing to prove where ownership lies if it is disputed.

### 18. CASES WHERE IT IS NOT CLEAR WHETHER A PAYMENT IS CAPITAL OR INCOME

- 18.1 It is important that people are not charged twice on the same resources. Therefore, resources will only be treated as [income or capital](#), but not both. If a person has saved money from their income, then those savings will normally be treated as capital. However, they should not be assessed as both income and capital in the same period. Therefore, in the period when they are received as income, the resource will not be counted as capital.
- 18.2 For example, this means that savings will not be considered as both income and capital in the same period. If in the period income is received and the person uses this income and places some monies into savings, then the resource will be counted as income, not as capital to prevent the same amount of resource being assessed twice as part of a financial assessment.

18.3 See also [income treated as capital](#).

## 19. HOW TO CALCULATE THE VALUE OF CAPITAL

- 19.1 The Council will need to work out the value of a capital asset to take account of it as part of the financial assessment. Other than National Savings Certificates, the valuation must be the current market or surrender value of the capital asset, e.g. a property, whichever is higher, minus:
- i. 10% of the value if there will be any actual expenses involved in selling the asset – i.e. expenses from the actual sale of an asset, such as legal fees.
  - ii. Any outstanding debts secured against the asset – such as paying the outstanding mortgage owed.
- 19.2 Please note, the Council will only include the value of the property in a financial assessment for non-residential care where the person is moving into another setting such as Supported Living, or where the person owns another property as well as the home that they live in.
- 19.3 A capital asset may have a current market value, for example stocks or shares, or a surrender value, for example premium bonds. The current market value will be the price a willing buyer would pay to a willing seller. The way the market value is obtained will depend on the type of asset held.
- 19.4 If the person and the Financial Assessment Officer both agree that after deducting any relevant amounts set out above, the total value of the person's capital is more than the upper capital limit of £23,250 or less than the lower capital limit of £14,250, it is not necessary to obtain a precise valuation.
- 19.5 If there are any disputes, a precise valuation should be obtained. However, the Council will consider how close the person is to the upper capital limit when deciding whether to obtain a precise valuation.
- 19.6 Where a precise valuation is required, a professional valuer should be asked to provide a current market valuation. Once the asset is sold, the capital value to be considered is the actual amount realised from the sale, minus any actual expenses of the sale.
- 19.7 Where the value of a property is disputed, the aim should be to resolve this as quickly as possible. The Council will try to obtain an independent valuation of the person's beneficial share to enable us to work out what charges a person should pay and will help the person, or their representative, to consider whether to seek a deferred payment agreement if applicable.
- 19.8 The value of National Savings Certificates (and Ulster Savings Certificates) is assessed in the same way as other capital assets. A valuation for savings certificates can be obtained by contacting the NS&I helpline on 0808 500 7007.
- 19.9 An alternative method to get the value of National Savings Certificates is to use the NS&I online calculator (please see <https://www.nsandi.com/ilsc-calculator>).
- 19.10 To enable an accurate value for the savings certificates the person must provide details of the certificate issue number(s); the purchase price and the date of purchase.

## **20. ASSETS HELD ABROAD**

- 20.1 Where capital is held abroad and all of it can be transferred to the UK, its value in the other country will be obtained and taken into account less any appropriate deductions under paragraph 14. Where capital is held jointly, it will be treated the same as if it were held jointly within the UK. The detail will depend on the conditions for transfer to the UK.
- 20.2 Where the capital cannot be wholly transferred to the UK due to the rules of that country, for example currency restrictions, the Council will require evidence confirming this fact. Examples of acceptable evidence could include documentation from a bank, government official or solicitor in either this country or the country where the capital is held.
- 20.3 Where some restriction is in place, the Council will seek evidence showing what the asset is, what its value is and to understand the nature and terms of the restriction so that should this change, the amount can be taken into account. The Council will also take into account the value that a willing buyer would pay in the UK for those assets, but be aware that it may be less than the market or surrender value in the foreign country.

## **21. CAPITAL NOT IMMEDIATELY REALISABLE**

- 21.1 Capital which is not immediately realisable due to notice periods, for example National Savings Bank investment accounts or Premium Bonds, will be taken into account in the normal way at its face value. This will be the value at the time of the financial assessment. It may need to be confirmed and adjusted when the capital is realised. If the person chooses not to release the capital, the value at the time of assessment will be used and it will be reassessed at intervals in the normal way.
- 21.2 Where a person receiving care and support inherits a sum of money, this will be included in the financial assessment form from the date the person becomes entitled to that money.

## **22. NOTIONAL CAPITAL**

- 22.1 In some circumstances a person may be treated as possessing a capital asset even where they do not actually possess it. This is called notional capital.
- 22.2 Notional capital may be capital which:
- (a) would be available to the person if they applied for it;
  - (b) is paid to a third party in respect of the person;
  - (c) the person has deprived themselves of in order to reduce the amount of charge they have to pay for their care.
- 22.3 A person's capital will therefore be the total of both actual and notional capital.
- 22.4 Where a person has been assessed as having notional capital, the value of this will be reduced over time. The value of notional capital will be reduced weekly by the difference between the weekly rate the person is paying for their care and the weekly rate they would have paid if notional capital did not apply.

*Example of diminishing notional capital:*

Vera is receiving care and support at home. She is assessed as having notional capital of £20,000 plus actual capital of £6,000. This means her assets are above the upper capital limit and she needs to pay the full cost of her care and support at £300 per week.

If she did not have the notional capital, it would not affect her ability to pay. Vera has a weekly income of £291.80 and a MIG of £189.00 per week. Vera would therefore be assessed as being able to pay £102.80 per week.

The notional capital should therefore be reduced by £197.20 per week – the difference between the sum Vera is assessed to pay (£300) and the amount she would have paid without the notional capital (£102.80).

## **23. CAPITAL DISREGARDED**

23.1 The following capital assets will be disregarded:

- (a) Property in specified circumstances (see point 8 of this policy);
  - i. The surrender value of any Life insurance policy and/or Annuity.
- (b) Payments of training bonuses of up to £200;
- (c) Payments in kind from a charity;
- (d) Any personal possessions such as paintings or antiques, unless they were purchased with the intention of reducing capital in order to avoid care and support charges.
- (e) Any capital which is to be treated as income or student loans;
- (f) Any payment that may be derived from:
  - i. The Macfarlane Trust;
  - ii. The Macfarlane (Special Payments) Trust;
  - iii. The Macfarlane (Special Payment) (No 2) Trust;
  - iv. The Caxton Foundation;
  - v. The Fund (payments to non-haemophiliacs infected with HIV);
  - vi. The Eileen Trust;
  - vii. The MFET Trust;
  - viii. The Independent Living Fund (2006);
  - ix. The Skipton Fund;
  - x. The London Bombings Relief Charitable Fund;
  - xi. The London Emergencies Trust;
  - xii. The We Love Manchester Emergency Fund.
  - xiii any payment made under or by a trust, established for the purpose of giving relief and assistance to disabled persons whose disabilities were caused by the fact that during their mother's pregnancy she had taken a preparation containing the drug known as Thalidomide, and which is approved by the Secretary of State (the Thalidomide Trust)
  - xiv the scheme established by the government for former British child migrants in response to the Investigation Report on Child Migration Programmes by the Independent Inquiry into Child Sexual Abuse published on 1 March 2018, made to a former child migrant
- (g) The value of funds held in trust or administered by a court which derive from a payment for personal injury to the person. For example, the vaccine damage and criminal injuries compensation funds;
- (h) The value of a right to receive:
  - i. Income under an annuity;
  - ii. Outstanding instalments under an agreement to repay a capital sum;
  - iii. Payment under a trust where the funds derive from a personal injury;



- iv. Income under a life interest or a life-rent;
  - v. Income (including earnings) payable in a country outside the UK which cannot be transferred to the UK;
  - vi. An occupational pension;
  - vii. Any rent. Please note however that this does not necessarily mean the income is disregarded. Please see [Annex C](#) of the Statutory Guidance for treatment of income.
- (i) Capital derived from an award of damages for personal injury which is administered by a court or which can only be disposed of by a court order or direction;
  - (j) The value of the right to receive any income under an annuity purchased pursuant to any agreement or court order to make payments in consequence of personal injury or from funds derived from a payment in consequence of a personal injury and any surrender value of such an annuity;
  - (k) Periodic payments in consequence of personal injury pursuant to a court order or agreement to the extent that they are not a payment of income and are treated as income (and disregarded in the calculation of income);
  - (l) Any Social Fund payment;
  - (m) Refund of tax on interest on a loan which was obtained to acquire an interest in a home or for repairs or improvements to the home;
  - (n) Any capital resources which the person has no rights to as yet, but which will come into his possession at a later date, for example on reaching a certain age;
  - (o) Payments from the Department of Work and Pensions to compensate for the loss of entitlement to Housing Benefit or Housing Benefit Supplement;
  - (p) The amount of any bank charges or commission paid to convert capital from foreign currency to sterling;
  - (q) Payments to jurors or witnesses for court attendance (but not compensation for loss or earnings or benefit);
  - (r) Community charge rebate/council tax rebate;
  - (s) Money deposited with a Housing Association as a condition of occupying a dwelling;
  - (t) Any Child Support Maintenance Payment;
  - (u) The value of any ex-gratia payments made on or after 1st February 2001 by the Secretary of State in consequence of a person's, or person's spouse or civil partner's imprisonment or internment by the Japanese during the Second World War;
  - (v) Any payment made by a local authority under the Adoption and Children Act 2002 (under section 2(b)(b) or 3 of this act);
  - (w) The value of any ex-gratia payments from the Skipton Fund made by the Secretary of State for Health to people infected with Hepatitis C as a result of NHS treatment with blood or blood products;
  - (x) Payments made under a trust established out of funds provided by the Secretary of State for Health in respect of persons suffering from variant Creutzfeldt-Jakob disease to the victim or their partner (at the time of death of the victim);
  - (y) Any payments under Section 2, 3 or 7 of the Age-Related Payments Act 2004 or Age Related Payments Regulations 2005 (SI No 1983);
  - (z) Any payments made under section 63(6)(b) of the Health Services and Public Health Act 1968 to a person to meet childcare costs where he or she is undertaking instruction connected with the health service by virtue of arrangements made under that section;
  - (ab) Any payment made in accordance with regulations under Section 14F of the Children Act 1989 to a resident who is a prospective special guardian or special guardian, whether income or capital;
  - (ac) Any payments by or on behalf of a person who is suffering or who suffered from Haemophilia as would be disregarded under paragraphs 22 of Schedule 10 of the Income Support (General) Regulations 1987.

*Example of disregarded capital:*

Mr T is a former Far East prisoner of war and receives a £10,000 ex-gratia payment as a result of his imprisonment. He now requires care and support and has a total of £25,000 in capital. When calculating how much capital should be taken into account, the Council will disregard the first £10,000 – the value of the ex-gratia payment.

The normal capital rules are then applied to the remaining £15,000. In this case, the first £14,250 would be completely disregarded in addition to the £10,000. Tariff income would therefore only be applied to the remaining £750.00 giving him a weekly charge of £3.00.

## **24. PENSION FLEXIBILITIES**

24.1 From 6 April 2015, several changes were introduced to non-state pensions, which allow individuals to access their pension savings from age 55. These are generally known as “pension flexibilities.” The flexibilities allow an individual to choose what they want to do with their defined contribution fund or money purchase benefits scheme (often referred to as a pension pot).

24.2 If a person would like to, they can:

- a) Draw out all the pension pot
- b) Purchase an annuity
- c) Opt for a draw down arrangement (where lump sums or regular amounts can be drawn down) without any restriction either in the form of a cap or minimum income amount
- d) Do nothing and leave the pension untouched.

### **24.3 Effects on working age people:**

- While a person’s pension pot is held by the pension provider, it falls to be disregarded as capital and no notional income is assumed from the pot.
- Under pension flexibilities, there will be greater opportunity to withdraw money from a pension pot. This is known as a drawdown.
- Where a person chooses to take ad-hoc withdrawals or take the whole sum; then the money falls to be treated as capital.
- Where a person chooses to draw down amounts on a regular basis, then the money falls to be treated as income and should be considered as such.
- Any amount remaining in the pension pot held by the pension provider following drawdowns should be disregarded as capital, and no notional income should be assumed from the remaining pot.
- A person may choose to use their pension pot to purchase an annuity. As with any annuity, the capital held in the annuity is disregarded, but the income is treated as pension income in the financial assessment.

### **24.4 Effects on Pension Credit qualifying age:**

- While a person’s pension pot is held by the pension provider, notional income should be assumed from it. The amount of notional income to be considered is the maximum amount of income that may be withdrawn from the pension pot.
- Where a person chooses to take ad-hoc withdrawals or take the whole sum; then the money falls to be treated as capital.

- Where a person chooses to draw down amounts on a regular basis and/or purchases an annuity with it, then the money falls to be treated as income and considered as such.
- Where the pension pot is held by the provider and notional income is assumed, **but** the person also draws down income from their pension pot.

24.5 The Council uses the whole notional income amount even if the person decides to take a lesser amount.

24.6 For the purposes of notional income, the person's pot should be re-valued after:

- every drawdown of capital;
- every drawdown of income which exceeds the notional income amount; or
- upon the person's request.

24.7 See section 50 for more information about deprivation.

## **25. PROPERTY AND PROPERTY DISREGARDS**

25.1 The value of the person's main or only home (i.e. where the person lives) will be disregarded where the person is receiving care in their own home.

25.2 Where the person moves into a non-residential setting the value of the former home will be included in the financial assessment.

## **26. DISCRETIONARY DISREGARD**

26.1 There may be occasions where the Council will use its discretion to disregard the property in other circumstances. However, in doing so we will need to balance this discretion with ensuring a person's assets are not maintained at public expense.

### *Example of local authority discretion to apply a property disregard*

Hilda is 63 and lives in a rented flat. Her brother, Stephen, has recently died and his wife, Charlotte, has moved in to a care home. Hilda suddenly loses her job and finds she unable to afford to live in her rented flat. As a result, Hilda moves into Stephen and Charlotte's house and this becomes her only home. In the circumstances, the local authority exercises its discretion to disregard the property.

## **27. 26-WEEK DISREGARD**

27.1 In line with the [Care and Support Statutory Guidance](#), the following capital assets will be disregarded for at least 26 weeks in a financial assessment.

27.2 However, there may be occasions where the Council choose to apply the disregard for longer where it considers this appropriate, for example, where a person is taking legal steps to occupy premises as their home, but the legal processes take more than 26 weeks to complete.

- (a) Assets of any business owned or part-owned by the person in which they were self-employed worker and has stopped work due to some disease or disablement but intends to take up work again when they are fit to do so. This will apply from the date the person first receives care and support.
- (b) Money acquired specifically for repairs to or replacement of the person's home or personal possessions provided it is used for that purpose. This should apply from the date the funds were received.
- (c) Premises which the person intends to occupy as their home where they have started legal proceedings to obtain possession. This should be from the date legal advice was first sought or proceedings first commenced.
- (d) Premises which the person intends to occupy as their home where essential repairs or alterations are required. This should apply from the date the person acts to affect the repairs.
- (e) Capital received from the sale of a former home where the capital is to be used by the person to buy another home to live in themselves. This should apply from the date of completion of the sale.
- (f) Money deposited with a Housing Association which is to be used by the person to purchase another home. This should apply from the date on which the money was deposited.
- (g) Grant made under a Housing Act which is to be used by the person to purchase a home or pay for repairs to make the home habitable. This should apply from the date the grant is received.

## 28. 52-WEEK DISREGARD

28.1 line with the [Care and Support Statutory Guidance](#), the following payments of capital will be disregarded for a maximum of 52 weeks from the date they are received:

- (a) The balance of any arrears of or any compensation due to non-payment of:
  - i. Mobility supplement
  - ii. Attendance Allowance
  - iii. Constant Attendance Allowance
  - iv. Disability Living Allowance / Personal Independence Payment
  - v. Exceptionally Severe Disablement Allowance
  - vi. Severe Disablement Occupational Allowance
  - vii. Armed forces service pension based on need for attendance
  - viii. Pension under the Personal Injuries (Civilians) Scheme 1983, based on the need for attendance
  - ix. Income Support/Pension Credit
  - x. Working Tax Credit
  - xi. Child Tax Credit
  - xii. Housing Benefit
  - xiii. Universal Credit or Employment and Support Allowance\*
  - xiv. Special payments to pre-1973 war widows.

As the above payments will be paid for specific periods, they will be treated as income over the period for which they are payable. Any money left over after the period for which they are treated as income has elapsed will be treated as capital.

\* Employment and Support Allowance arrears paid to a person due to an official error by the Department for Work and Pensions will be disregarded with no end date, unless the person comes off benefits completely and then returns to benefits.

- (b) Payments or refunds for:

- i NHS glasses, dental treatment or patient's travelling expenses;
- ii Cash equivalent of free milk and vitamins;
- iii Expenses in connection with prison visits.
- iv Personal Injury Payments

*Example of a disregard for 52 weeks*

During his financial assessment it is identified that Colin is eligible for Pension Credit but is not currently claiming the support. He is therefore assessed as being able to pay £75 per week towards the cost of his care. Colin tells the local authority that he will apply for Pension Credit. It is explained to him that the level of what he can afford to contribute will be reassessed once he started receiving the additional support. If the payments are backdated, his contributions to the cost of his care will also be backdated and he may therefore need to make an additional payment to meet any arrears. Colin therefore chooses to pay £90 per week. After six weeks, arrears of Pension Credit at £35 per week (£210) are received. What Colin can afford to contribute is reassessed and he is now asked to pay £110 per week. As Colin has been paying £15 a week more than required, he only owes £120 rather than the full £210 of Pension Credit arrears. The remaining £90 of arrears payments should therefore be treated as capital and disregarded

## **29. 2-YEAR DISREGARD**

29.1 In line with the Care and Support Statutory guidance, the Council will disregard payments made under a trust established out of funds by the Secretary of State for Health in respect of CJD to a member of the victim's family for 2 years from the date of death of the victim (or from the date of payment from the trust if later); or a dependent child or young person until they turn 18.

## **30. OTHER DISREGARDS**

30.1 In some cases a person's assets may be tied up in a business that they own or part-own.

30.2 Where a person is taking steps to realise their share of the assets, these will be disregarded during the process. However, the person will be required to show that it is their clear intention to realise the asset as soon as practicable. In order to show their intent, the Council will request the following information:

- (a) A description of the nature of the business asset;
- (b) The person's estimate of the length of time necessary to realise the asset or their share of it;
- (c) A statement of what, if any, steps have been taken to realise the asset, what these were and what is intended in the near future; and
- (d) Any other relevant evidence, for example the person's health, receivership, liquidation, estate agent's confirmation of placing any property on the market.

30.3 Where the person has provided this information to show that steps are being taken to realise the value of the asset, the Council will disregard the value for a period that it considers to be reasonable. In deciding what is reasonable, we will consider the length of time of any legal processes that may be needed.

30.4 Where the person has no immediate intention of attempting to realise the business asset, its capital value will be included in the financial assessment. Where a business is jointly owned, this will apply only to the person's share.

### **31. TREATMENT OF INVESTMENT BONDS**

31.1 The value of investments bonds will generally be included in the financial assessment as a capital asset. The main exception to this will be where the bond includes one or more element of life insurance policies that contain cashing in rights for total or partial surrender.

31.2 The value of these rights will generally be disregarded.

31.3 The Council recognises that investment bonds can be complex instruments, and it retains the discretion to consider the treatment of these on a case by case basis.

### **32. CAPITAL TREATED AS INCOME**

32.1 The following capital payments will be treated as income:

(a) Any payment under an annuity, however, any tax free lump sum not used to purchase an annuity is still treated as capital (unless it is already included as generating notional income in the assessment);

(b) Capital paid by instalment where the total of:

- i. The instalments outstanding at the time the person first becomes liable to pay for their care, or in the case of a person in temporary care whom we had previously decided not to charge, the first day on which we decide to charge; and
- ii. The amount of other capital held by the person is over £16,000. If it is £16,000 or less, each instalment should be treated as capital.

### **33. INCOME TREATED AS CAPITAL**

33.1 As per the Care and Support Statutory Guidance, the following types of income will be treated as capital:

(a) Any refund of income tax charged on profits of business or earnings of an employed earner; any holiday pay payable by an employer more than 4 weeks after the termination or interruption of employment.

(b) Income derived from a capital asset, for example, building society interest or dividends from shares. This should be treated as capital from the date it is normally due to be paid to the person. This does not apply to income from certain disregarded capital.

(c) Any advance of earnings or loan made to an employed earner by the employer if the person is still in work. This is as the payment does not form part of the employee's regular income and would have to be repaid.

(d) Any bounty payment paid at intervals of at least one year from employment as:

- i. A part time fireman;
- ii. An auxiliary coastguard;
- iii. A part time lifeboat man;
- iv. A member of the territorial or reserve forces.

(e) charitable and voluntary payments which are neither made regularly nor due to be made regularly, apart from certain exemptions such as payments from AIDS

trusts. Payments will include those made by a third party to the person to support the clearing of charges for accommodation.

- (f) Any payments of arrears of contributions by a local authority to a custodian towards the cost of accommodation and maintenance of a child.

#### **34. CAPITAL AVAILABLE ON APPLICATION**

34.1 In some instances a person may need to apply for access to capital assets but has not yet done so. In such circumstances this capital will be treated as already belonging to the person except in the following instances:

- (a) Capital held in a discretionary trust;
- (b) Capital held in a trust derived from a payment in consequence of a personal injury;
- (c) Capital derived from an award of damages for personal injury which is administered by a court;
- (d) Any loan which could be raised against a capital asset which is disregarded, for example the home.

34.2 The Council will distinguish between:

- (a) Capital already owned by the person but which in order to access they must make an application for. For example:

- i. Money held by the person's solicitor;
- ii. Premium Bonds;
- iii. National Savings Certificates;
- iv. Money held by the Registrar of a County Court which will be released on application; and

- (b) Capital not owned by the person that will become theirs on application, for example an unclaimed Premium Bond win. This will be treated as notional capital.

- (c) Premium Bond win. This will be treated as notional capital.

34.3 Where the Council are including capital available on application as notional capital, the Council will only do so from the date at which it could be acquired by the person.

#### **35. MINIMUM INCOME GUARANTEE**

35.1 The purpose of the Minimum Income Guarantee is to promote independence and social inclusion and ensure that a person has sufficient funds to meet basic needs such as purchasing food, utility costs or insurance. This will be after any housing costs such as rent and council tax net of any benefits provided to support these costs – and after any disability related expenditure.

35.2 The Council will ensure that a person's income is not reduced below a specified level after charges have been deducted. This level will be set at the minimum income guarantee level set out in the Care and Support (Charging and Assessment of Resources) Regulations 2014 and reviewed annually by the Department of Health and Social Care. In addition, we also include the following as part of the MIG over and above the statutory minimum provided for in Regulations.

- Disability premium added to MIG for all working age assessments
- Higher amounts allowed for Enhanced Disability and Carers

- 35.3 If you are paying rent and Council Tax, these costs will be allowed on top of the MIG, after any Housing Benefit or Council Tax support.
- 35.4 If you have less than £23,250 in savings and investments, and your weekly income is less than the Minimum Income Guarantee (MIG) for your age group, you will not have to pay towards the cost of your care service.
- 35.5 Where a person is responsible for, and a member of the same household as, a dependent child the Council will consider the needs of the child in determining how much income a person should be left with after charges. Any child benefit or child tax credit received is disregarded and a personal allowance for each child is allowed. The amount to be allowed will be set annually by the Department of Health and Social Care.
- 35.6 Where the person receiving care is a carer themselves (i.e. cares for another person) and receives a Carer's Allowance or a Carer Premium within other benefits, an additional amount will be added to the MIG to allow the person to be left with more income.

## INCOME

### 36. HOW INCOME IS TREATED

- 36.1 There are differences in how income is treated in a care home compared to non-residential settings. When charging a person in all other settings, the Council has more discretion to enable us to take account of local practices and innovations.
- 36.2 The Care and Support Statutory Guidance sets out the common issues then those particular to each setting. The Council has considered the guidance in preparation of this policy. This aspect of the Charging Policy should be read in conjunction with [Annex B](#) on the Treatment of Capital. The detail of the sources of income that the Council must disregard are set out in the [regulations](#).
- 36.3 Only the income of the cared-for person will be considered in the financial assessment.
- 36.4 Where the person receives means-tested income as one of a couple, the starting presumption is that the cared-for person has an equal share of the income.
- 36.5 However, the Council will consider the implications for the cared-for person's partner.
- 36.6 Income is net of any tax or National Insurance contributions.
- 36.7 Income will always be considered unless it is disregarded under the Regulations.
- 37.8 Income that is disregarded will either be partially disregarded or fully disregarded.

### 37. EARNINGS

- 37.1 In all cases, employed and self-employed earnings are fully disregarded in the financial assessment.
- 37.2 Earnings in relation to an employed earner are any remuneration or profit from Employment:
- (a) any bonus or commission



- (b) any payment in lieu of remuneration except any periodic sum paid to the person on account of the termination of their employment by reason of redundancy
- (c) any payments in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only in so far as it represents loss of income
- (d) any holiday pay except any payable more than four weeks after the termination or interruption of employment
- (e) any payment by way of a retainer
- (f) any payment made by the person's employer in respect of any expenses not wholly, exclusively and necessarily incurred in the performance of the duties of employment, including any payment made by the person's employer in respect of travelling expenses incurred by the person between their home and the place of employment and expenses incurred by the person under arrangements made for the care of a member of the person's family owing to the person's absence from home
- (g) any award of compensation made under section 112(4) or 117(3)(a) of the Employment Rights Act 1996 (remedies and compensation for unfair dismissal)
- (h) any such sum as is referred to in section 112 of the Social Security Contributions and Benefits Act 1992 (certain sums to be earnings for social security purposes)
- (i) any statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay, or a corresponding payment under any enactment having effect in Northern Ireland
- (j) any remuneration paid by or on behalf of an employer to the person who for the time being is on maternity leave, paternity leave or adoption leave or is absent from work because of illness
- (k) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001

37.3 Earnings in relation to an employed earner do not include:

- (a) any payment in kind, with the exception of any non-cash voucher which has been taken into account in the computation of the person's earnings – as referred to above
- (b) any payment made by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment
- (c) any occupational/personal pension

37.4 Earnings in the case of employment as a self-employed earner mean the gross receipts of the employment. This includes any allowance paid under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990 to the person for the purpose of assisting the person in carrying on his business.

37.5 Earnings in the case of employment as a self-employed earner do not include:

- (a) any payment to the person by way of a charge for board and lodging accommodation provided by the person
- (b) any sports award

37.6 Earnings also include any payment provided to prisoners to encourage and reward their constructive participation in the regime of the establishment, this may include payment for working, education or participation in other related activities.

## 38. BENEFITS

- 38.1 The Council will take most of the benefits people receive into account. Those the Council will disregard are listed below. However, the Council will ensure that in addition to the minimum guaranteed income or personal expenses allowance (details of which are set out below) people retain enough of their benefits to pay for things to meet those needs not being met by the Council. Any mid-week change of benefit rates will be applied from the following Monday from the date of change and will result in a financial reassessment.
- 38.2 Any income from the following sources will be fully disregarded:
- (a) Direct Payments;
  - (b) Guaranteed Income Payments made to Veterans under the Armed Forces Compensation Scheme;
  - (c) The mobility component of Disability Living Allowance;
  - (d) The mobility component of Personal Independence Payments.
- 38.3 Any income from the following benefits must be taken into account when considering what a person can afford to pay from their income towards the cost of their care and support in a care home:
- (a) Attendance Allowance, including Constant Attendance Allowance and Exceptionally Severe Disablement Allowance
  - (b) Bereavement Allowance
  - (c) Carers Allowance
  - (d) Disability Living Allowance (DLA) (Care component)
  - (e) Employment and Support Allowance or the benefits this replaces such as Severe Disablement Allowance and Incapacity Benefit
  - (f) Income Support
  - (g) Industrial Injuries Disablement Benefit or equivalent benefits
  - (h) Jobseeker's Allowance
  - (i) Maternity Allowance
  - (j) Pension Credit
  - (k) Personal Independence Payment (PIP) (Daily Living component)
  - (l) State Pension
  - (m) Universal Credit
- 38.4 Working Tax Credits must be taken into account when considering what a person can afford to pay from their income towards the cost of their care in a care home. However, they should be disregarded in the calculation of income for care and support arranged other than in a care home.
- 38.5 Where any Social Security benefit payment has been reduced (other than a reduction because of voluntary unemployment), for example because of an earlier overpayment, the amount taken into account should be the gross amount of the benefit before reduction.
- 38.6 In the Financial Assessment:
- (a) for those people who receive the higher rate of DLA Care component – to disregard the *difference in income between the higher rate and the middle rate*
  - (b) For those people who receive the enhanced rate of PIP Daily Living component – to disregard the *difference in income between the enhanced rate and the standard rate*.
- 38.7 Please refer to **Table 1** below which details benefits that will be included in the assessment and benefits which will be disregarded in part or in full for people living in a non-residential setting.

**Table 1**

| <b>Name of Benefit</b>   | <b>Non-residential settings</b>   |
|--|---|
| Attendance Allowance, including Constant Attendance Allowance  | Included<br>The Night Care element when the benefit is paid at the higher rate, will be disregarded if the care and support package does not include care during the night.<br>Night services are defined as the period from when the household closes down for the night. Dressing in the morning and undressing before going to bed are daytime activities. |
| Disability Allowance (Living Care component)   | Included with a disregarded element<br>For people who receive the higher rate of Disability Living Allowance Care component, the difference in income between the higher rate and the middle rate will be disregarded.  |
| Personal Independence Payment (Daily Living component)   | Included with a disregarded element<br>For people who receive the enhanced rate of Personal Independence Payment Daily Living component, the difference in income between the enhanced rate and the standard rate will be disregarded.  |
| Bereavement Allowance  | Included  |
| Carers Allowance   | Disregarded.  |
| Employment and Support Allowance or the benefits this replaces such as Severe Disablement Allowance and Incapacity Benefit | Included  |
| Income Support   | Included  |
| Industrial Injuries Disablement Benefit or equivalent benefits   | Included  |
| Jobseeker's Allowance  | Included  |
| Maternity Allowance  | Included  |
| Pension Credit – Guaranteed Credit, including Severe Disability Premium and Carers Premium.                                | Included  |
| Pension Credit – Savings Credit  | Disregard savings credit in full.   |
| State Pension  | Included  |

|  |  |
|--|--|
| Universal Credit   | <p>Not all of the Universal Credit is included</p> <p>Personal allowance and the health element are the only amounts taken into consideration within the financial assessment</p> <p>Deductions from Universal Credit for debt repayment will be classed as income as debt repayment isn't disregarded</p> <p>Disregard carers premium</p> |
| Working Tax Credit   | Disregarded in full.   |
| Armed forces and war pension payments to war widows and war widowers | First £10 is disregarded   |

38.8 Where any Social Security benefit payment has been reduced (other than a reduction because of voluntary unemployment), for example because of an earlier overpayment, the amount taken into account will be the gross amount of the benefit before reduction.

### 39. ANNUITY AND PENSION INCOME

39.1 An annuity is a type of pension product that provides a regular income for several years in return for an investment. Such products are usually purchased at retirement in order to provide a regular income.

39.2 While the capital is disregarded, any income from an annuity will be taken fully into account except where it is:

- (a) Purchased with a loan secured on the person's main or only home; or
- (b) A gallantry award such as the Victoria Cross Annuity or George Cross Annuity.

39.3 For those who have purchased an annuity with a loan secured on their main or only home (as per (a) above), this is known as a 'home income plan'.

39.4 Under these schemes, a person has purchased the annuity against the value of their home – similarly to a Deferred Payment Agreement and this may be disregarded in the financial assessment.

39.5 In order to qualify for the disregard on the income, one of the annuitants must still be occupying the property as their main or only home.

39.6 This may happen where a couple has jointly purchased an annuity and only one of them has moved into a care home.

39.7 If this is not the case, the disregard will not be applied.

39.8 Where the disregard is applied, only the following aspects will be disregarded:

- (a) The net weekly interest on the loan where income tax is deductible from the interest; or
- (b) The gross weekly interest on the loan in any other case.

39.9 Before applying the disregard, the following conditions must be met:

- (a) The loan must have been made as part of a scheme that required that at least 90% of that loan be used to purchase the annuity;
- (b) The annuity ends with the life of the person who obtained the loan, or where there are two or more annuitants (including the person who obtained the loan), with the life of the last surviving annuitant;
- (c) The person who obtained the loan or one of the other annuitants is liable to pay the interest on the loan;
- (d) The person who obtained the loan (or each of the annuitant where there are more than one) must have reached the age of 65 at the time the loan was made;
- (e) The loan was secured on a property in Great Britain and the person who obtained the loan (or one of the other annuitants) owns an estate or interest in that property; and
- (f) The person who obtained the loan or one of the other annuitants occupies the property as their main or only home at the time the interest is paid.

39.10 Where the person is using part of the income to repay the loan, the amount paid as interest will be disregarded. If the payments the person makes on the loan are interest only and the person qualifies for tax relief on the interest they pay, the net interest will be disregarded. Otherwise, it will be the gross interest that is disregarded.

39.11 Reforms to defined contribution pensions came into effect from April 2015. The aim of the reforms is to provide people with much greater flexibility in how they fund later life. This may lead to changes in how people use the money in their pension fund.

39.12 The rules for how to assess pension income for the purposes of charging are:

- (a) if a person has removed the funds and placed them in another product or savings account, they should be treated according to the rules for that product
- (b) if a person is only drawing a minimal income, or choosing not to draw income, then a local authority can apply notional income. This must be the maximum income that could be drawn under an annuity product. If applying maximum notional income, any actual income should be disregarded to avoid double counting
- (c) if a person is drawing down an income that is higher than the maximum available under an annuity product, the actual income that is being drawn down should be taken into account

## **See Pension Flexibilities for more information**

## **40. MORTGAGE PROTECTION INSURANCE POLICIES**

40.1 Any income from an insurance policy is usually included in the financial assessment. In the case of mortgage protection policies, where the income is specifically intended to support the person to acquire or retain an interest in their main or only home or to support them to make repairs or improvements to their main or only home, it will be disregarded.

40.2 However, the income must be being used to meet the repayments on the loan.

40.3 The amount of income from a mortgage protection insurance policy that should be disregarded is the weekly sum of:

- (a) The amount which covers the interest on the loan; plus
- (b) The amount of the repayment which reduced the capital outstanding; plus

- (c) The amount of the premium due on the policy. It should be remembered that Income Support, Employment and Support Allowance and Pension Credit may be adjusted to take account of the income from the policy.

*Example of mortgage protection policy in payment:*

Winifred has an outstanding mortgage and was making repayments of £180 per month to her lender until she suffered a stroke. Winifred has a mortgage protection policy which pays her the sum of £240 per month if she is unable to meet repayments due to ill health.

Winifred applies for Employment & Support Allowance. Winifred would usually be entitled to assistance with her mortgage but the amount she receives from her policy is greater than her mortgage. The mortgage protection policy is taken into account as income by the Department for Work & Pensions.

This reduces the amount of Employment & Support Allowance to which Winifred is entitled.

The financial assessment for her care will therefore only include the lower amount of Employment & Support Allowance paid to Winifred together with the excess income from the mortgage protection policy.

#### **41. OTHER INCOME THAT MUST BE FULLY DISREGARDED**

41.1 Any income from the following sources **must** be fully disregarded:

- (a) Armed Forces Independence Payments and Mobility Supplement
- (b) Child Support Maintenance Payments and Child Benefit, except where the accommodation is arranged under the Care Act in which the adult and child both live
- (c) Child Tax Credit
- (d) Council Tax Reduction Schemes where this involves a payment to the person
- (e) Disability Living Allowance (Mobility Component) and Mobility Supplement
- (f) Christmas bonus
- (g) dependency increases paid with certain benefits
- (h) Discretionary Trust
- (i) Gallantry Awards
- (j) Guardian's Allowance
- (k) Guaranteed Income Payments made to Veterans under the Armed Forces Compensation Scheme
- (l) Payments made to Veterans under the War Pension Scheme with the exception of Constant Attendance Allowance
- (m) Income frozen abroad
- (n) income in kind
- (o) pensioners Christmas payments
- (p) Personal Independence Payment (Mobility Component) and Mobility Supplement
- (q) personal injury trust, including those administered by a Court
- (r) resettlement benefit
- (s) savings credit disregard
- (t) Social Fund payments (including winter fuel payments)
- (u) war widows and widowers special payments

- (v) any payments received as a holder of the Victoria Cross, George Cross or equivalent
- (w) any grants or loans paid for the purposes of education; and
- (x) payments made in relation to training for employment.
- (y) any payment from:
  - (i) Macfarlane Trust
  - (ii) Macfarlane (Special Payments) Trust
  - (iii) Macfarlane (Special Payment) (No 2) Trust
  - (iv) Caxton Foundation
  - (v) The Fund (payments to non-haemophiliacs infected with HIV)
  - (vi) Eileen Trust
  - (vii) MFET Limited
  - (viii) Independent Living Fund (2006)
  - (ix) Skipton Fund
  - (x) London Bombings Relief Charitable Fund
  - (xi) Scottish Infected Blood Support Scheme
  - (xii) an approved blood scheme (this is a scheme approved by the Secretary of State, or trust established with funds provided by the Secretary of State, to provide compensation in respect of a person having been infected from contaminated blood products)
  - (xiii) London Emergencies Trust
  - (xiv) We Love Manchester Emergency Fund

## **42. CHARITABLE AND VOLUNTARY PAYMENTS**

- 42.1 Charitable payments are not necessarily made by a recognised charity but could come from charitable motives. The individual circumstances of the payment will need to be considered before deciding. In general, a charitable or voluntary payment which is not made regularly is treated as capital.
- 42.2 Charitable and voluntary payments that are made regularly will be fully disregarded.

## **43. PARTIALLY DISREGARDED INCOME**

- 43.1 The following income is partially disregarded:
- 43.2 The first £10 per week of the following:
  - War Widows and War Widowers pension
  - Survivors Guaranteed Income Payments from the Armed Forces Compensation Scheme (SGIP)
  - Civilian War Injury pension.
  - Payments to victims of National Socialist persecution (paid under German or Austrian law).
- 43.3 In the financial assessment:
  - Where a person is receiving the higher rate of Disability Living Allowance (care component), the difference in income between the higher rate and the middle rate will be disregarded

- Where a person is receiving the enhanced rate of Personal Independence Payment (PIP) (daily living component), the difference in income between the enhanced rate and the standard rate will be disregarded.

#### 44. NOTIONAL INCOME

- 44.1 In some circumstances a person may be treated as having income that they do not actually have. This is known as notional income. This might include for example income that would be available on application but has not been applied for, income that is due but has not been received or income that the person has deliberately deprived themselves of for the purpose of reducing the amount they are liable to pay for their care. For guidance on [Deprivation of Assets](#) please see section 50.
- 44.2 In all cases the Council must satisfy itself that the income would or should have been available to the person.
- 44.3 Notional income should also be applied where a person has reached retirement age (i.e. when the person reaches the Pension Credit qualifying age) and has a personal pension plan, but has not purchased an annuity or arranged to draw down the equivalent maximum annuity income that would be available from the plan. Estimates of the notional income can be received from the pension provider or from estimates provided by the Government Actuary's Department.

*Example of notional income*

Andrew is 70 and is living in a care home. He has not been receiving his occupational pension to which he would have been entitled to from age 65. After contacting his former employer, they state Andrew will be paid the entire pension due from age 65. The local authority can therefore apply notional income from age 65.

- 44.4 Where notional income is included in a financial assessment, it will be treated the same way as actual income. Therefore, any income that would usually be disregarded will continue to be so.
- 44.5 Notional income will be calculated from the date it could be expected to be acquired if an application had been made. In doing so, the Council will assume the application was made when it first became aware of the possibility and take account of any time limits which may limit the period of arrears.

*Example of notional income in relation to new pension flexibilities*

Ben has a pension fund worth £30,000. He has taken the opportunity to access this flexibly and as a result is only drawing down £5 a week as income at the point he begins to receive care and support. The equivalent maximum annuity income would be £120 per week. For the purposes of the financial assessment, the local authority can assume an income £120 per week.

- 44.6 There are some exemptions and the following sources of income must not be treated as notional income:
- (a) income payable under a discretionary trust
  - (b) income payable under a trust derived from a payment made as a result of a personal injury where the income would be available but has not yet been applied for



- (c) income from capital resulting from an award of damages for personal injury that is administered by a court
- (d) occupational pension which is not being paid because:
  - (i) the trustees or managers of the scheme have suspended or ceased payments due to an insufficiency of resources
  - (ii) the trustees or managers of the scheme have insufficient resources available to them to meet the scheme's liabilities in full
- (e) Working Tax Credit

#### **45. DISABILITY RELATED EXPENDITURE (DRE)**

45.1 Where disability-related benefits are taken into account, the local authority should make an assessment and allow the person to keep enough benefit to pay for necessary disability-related expenditure to meet any needs which are not being met by the local authority.

45.2 In assessing disability-related expenditure, local authorities should include the following. However, it should also be noted that this list is not intended to be exhaustive and any reasonable additional costs directly related to a person's disability should be included:

- (a) payment for any community alarm system
- (b) costs of any privately arranged care services required, including respite care
- (c) costs of any specialist items needed to meet the person's disability needs, for example:
  - (i) Day or night care which is not being arranged by the local authority
  - (ii) specialist washing powders or laundry
  - (iii) additional costs of special dietary needs due to illness or disability (the person may be asked for permission to approach their GP in cases of doubt)
  - (iv) special clothing or footwear, for example, where this needs to be specially made; or additional wear and tear to clothing and footwear caused by disability
  - (v) additional costs of bedding, for example, because of incontinence
  - (vi) any heating costs, or metered costs of water, above the average levels for the area and housing type
  - (vii) occasioned by age, medical condition or disability
  - (viii) reasonable costs of basic garden maintenance, cleaning, or domestic help, if necessitated by the individual's disability and not met by social services
  - (ix) purchase, maintenance, and repair of disability-related equipment, including equipment or transport needed to enter or remain in work; this may include IT costs, where necessitated by the disability; reasonable hire costs of equipment may be included, if due to waiting for supply of equipment from the local council
  - (x) personal assistance costs, including any household or other necessary costs arising for the person
  - (xi) internet access for example for blind and partially sighted people
  - (xii) other transport costs necessitated by illness or disability, including costs of transport to day centres, over and above the mobility component of DLA or PIP, if in payment and available for these costs. In some cases, it may be reasonable for a council not to take account of claimed transport costs – if, for example, a suitable, cheaper form of transport, for example, council-provided transport to day centres is available, but has not been used
  - (xiii) in other cases, it may be reasonable for a council not to allow for items where a reasonable alternative is available at lesser cost. For example, a council might

adopt a policy not to allow for the private purchase cost of continence pads, where these are available from the NHS

- 45.3 This list is not exhaustive and any reasonable additional costs directly related to a person's disability will be considered:
- 45.4 The care plan may be a good starting point for considering what is necessary disability-related expenditure.
- 45.5 However, flexibility is needed. What is disability-related expenditure should not be limited to what is necessary for care and support. For example, above average heating costs should be considered.
- 45.6 The Council allows a standard disregard for disability related expenses per week which is deducted from a person's disposable income following the financial assessment. If a person's disability related expenses are higher than this figure, then the actual amount of the disability related expenses will replace the standard disregard. The standard disregard is reviewed annually

*Example of disability related expenditure*

Zach is visually impaired and describes the internet as a portal into the seeing world – in enabling him to access information that sighted people take for granted. For example he explains that if a sighted person wants to access information they can go to a library, pick up a book or buy an appropriate magazine that provides them with the information they need.

The internet is also a portal into shopping. For example without the internet if Zach wanted to shop for clothes, food or a gift he would have to wait until a friend or family member could accompany him on a trip out, he would be held by their schedule and they would then have to explain what goods were on offer, what an item looked like, the colour and would inevitably be based on the opinion and advice of said friend. A sighted person would be able to go into a shop when their schedule suits and consider what purchase to make on their own. The internet provides Zach with the freedom and independence to do these things on his own

## **46. DEFERRED PAYMENTS**

- 46.1 The Council operates a Deferred Payment Scheme. Deferred Payments are designed to prevent people from being forced to sell their home in their lifetime to meet the cost of their care. The Deferred Payment Scheme is also open to those people moving into non-residential settings. For further details relating to the Deferred Payments Scheme, please refer to our Deferred Payments Policy.

## **47. THIRD PARTY PAYMENTS**

- 47.1 Where the care planning process has determined that a person's needs are best met in Supported Living or a Shared Lives Scheme, the Council will provide for the person's preferred choice of accommodation, subject to certain conditions. Determining the appropriate type of accommodation will be made with the person/representative as part of the care and support planning process.

- 47.2 In some cases, a person may actively choose a setting that is more expensive than the amount identified for the provision of the accommodation in the personal budget. Where they have chosen a setting that costs more than this, an arrangement will need to be made as to how the difference will be met. This is known as an additional cost or 'top up' payment and is the difference between the amount specified in the Personal Budget and the actual cost.
- 47.3 In such cases, the Council must arrange for them to be placed there, provided a third party, or in certain circumstances the person in need of care and support, is willing and able to meet the additional cost.
- 47.4 When entering into a contract to provide care in a setting that is more expensive than the amount identified in the personal budget, the Council is responsible for the total cost of that placement.
- 47.5 This means that if there is a break down in the arrangement of a 'top up', for instance if the person making the 'top up' ceases to make the agreed payments, then we are liable for the fees until we have either recovered the additional costs we incur or made alternative arrangements to meet the cared for person's needs.
- 47.6 It is therefore really important that the person paying the top up fully understands the implications of this choice and that they are aware that they will need to meet the additional cost of care for the full duration of the stay and that should this cost not be met, the cared for person may be moved to an alternative setting. The Council should also advise the person paying the top-up that they may want to seek [independent financial advice](#) before entering into a Third Party agreement.
- 47.7 The Council must also ensure that the person paying the 'top up' is willing and able to meet the additional cost for the likely duration of the arrangement, recognising that this may be for some time into the future.
- 47.8 Therefore, the person paying the 'top-up' must enter into a written agreement with the Council, agreeing to meet that cost. The agreement is called a "Third Party Agreement".
- 47.9 The Council has adopted this arrangement because we consider it most suitable for most cases and this is the Department of Health and Social Care recommended best practice.
- 47.10 However, the Council also recognises that in some cases, the individual circumstances of the case will mean that one of two different approaches is more suitable, and we will consider, in our discretion, the following alternatives:
- To treat the 'top up' payment as part of the person's income and therefore recover the costs from the person concerned through the financial assessment.
  - To agree with the third party paying the 'top up' and the provider that payment for the 'top up' element can be made directly to the provider with the Council paying the remainder.
- 47.11 The Third Party Contribution Agreement includes the following information:
- The weekly cost of the accommodation
  - The amount specified for the accommodation in the person's personal budget;
  - The additional amount to be paid;
  - The frequency of the payments;
  - To whom the payments are to be made;
  - A statement on the consequences of ceasing to make payments;
  - A statement on the effect of any increases in charges that a provider may make;

- A statement on the effect of any changes in the financial circumstances of the person paying the 'top up';
- When the agreement will be reviewed.

#### **48. RESIDENTS 'TOP UPS'**

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

- Where they have a deferred payment agreement in place; or
- Where they are receiving accommodation provided under S117 for mental health aftercare.

48.2 In such cases we will follow the same principle as outlined above, i.e. we will pay the provider and invoice the person for the top-up.

#### **49. CHOICE OF ACCOMMODATION AND MENTAL HEALTH AFTER-CARE**

49.1 The above also applies to those people who qualify for after-care under section 117A of the Mental Health Act 1983. However, there is an exception in that the cared for person can meet the top-up costs themselves as they will not be contributing towards the cost of their care.

### **DEPRIVATION OF ASSETS**

#### **50. WHAT IS MEANT BY DEPRIVATION OF ASSETS?**

50.1 People with care and support needs can as with any other person spend their income and assets as they see fit. This can include making gifts to friends and family and this is an important aspect of promoting wellbeing and living an independent and fulfilling life. It is however important that people pay their fair contribution towards their care and support costs.

50.2 Deprivation of assets means where a person has intentionally deprived or decreased their overall assets in order to reduce the amount they are charged towards their care. This means that they must have known that they needed care and support and have reduced their assets in order to reduce the contribution they are asked to make towards the cost of that care and support.

50.3 This can be by either depriving themselves of their capital or income. There may be good reasons why someone no longer has an asset but the Council must ensure all cases are explored before concluding whether a deprivation of assets has occurred. A person is considered to have deprived themselves of an asset where they must have known that they needed care and support and therefore reduced their assets in order to reduce the contribution they are asked to make towards the cost of their care where the local authority decides to charge.

50.4 Where this has been done to remove a debt that would otherwise remain, even if that is not immediately due, this must not be considered as deprivation.

## 51. HAS DEPRIVATION OF CAPITAL OCCURRED?

- 51.1 It is up to the person to prove to the local authority that they no longer have the asset. If they are not able to, the local authority must assess them as if they still had the asset. For capital assets, acceptable evidence of their disposal would be:
- (a) a trust deed
  - (b) deed of gift
  - (c) receipts for expenditure
  - (d) proof that debts have been repaid
- 51.2 A person can deprive themselves of capital in many ways, but common approaches may be:
- (a) a lump-sum payment to someone else, for example as a gift
  - (b) substantial expenditure has been incurred suddenly and is out of character with previous spending
  - (c) the title deeds of a property have been transferred to someone else
  - (d) assets have been put in to a trust that cannot be revoked
  - (e) assets have been converted into another form that would be subject to a disregard under the financial assessment, for example personal possessions
  - (f) assets have been reduced by living extravagantly, for example gambling
  - (g) assets have been used to purchase an investment bond with life insurance
- 51.3 However, this will not be deliberate in all cases. The Council will therefore raise questions regarding a deprivation considered where the person ceases to possess assets that would have otherwise been taken into account for the purposes of the financial assessment or has turned the asset into one that is now disregarded.
- 51.4 There may be many reasons for a person depriving themselves of an asset. TMBC will therefore consider the following before deciding whether deprivation for the purpose of avoiding care and support charges has occurred:
- (a) whether avoiding the care and support charge was a significant motivation in the timing of the disposal of the asset; at the point the capital was disposed of could the person have a reasonable expectation of the need for care and support?
  - (b) did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs?

### *Example of where deprivation has not occurred*

Max has moved into a care home and has a 50% interest in a property that continues to be occupied by his civil partner, David. The value of the property is disregarded whilst David lives there, but he decides to move to a smaller property that he can better manage and so sells their shared home to fund this.

At the time the property is sold, Max's 50% share of the proceeds could be taken into account in the financial assessment, but, in order to ensure that David is able to purchase the smaller property, Max makes part of his share of the proceeds from the sale available.

In such circumstance, it would not be reasonable to treat Max as having deprived himself of capital in order to reduce his care home charges.

51.5 It would be unreasonable to decide that a person had disposed of an asset in order to reduce the level of charges for their care and support needs if at the time the disposal took place they were fit and healthy and could not have foreseen the need for care and support.

## **52. HAS DEPRIVATION OF INCOME OCCURRED?**

52.1 It is also possible for a person to deliberately deprive themselves of income. For example, they could give away or sell the right to an income from an occupational pension.

52.2 It is up to the person to prove to the Council in these circumstances that they no longer have the income. Where the Council considers that a person may have deprived themselves of income, they may treat them as possessing notional income.

52.3 The Council will need to determine whether deliberate deprivation of income has occurred. In doing so the Council will consider:

(a) was it the person's income?

(b) what was the purpose of the disposal of the income?

(c) the timing of the disposal of the income (at the point the income was disposed of could the person have a reasonable expectation of the need for care and support?)

52.4 In some circumstances the income may have been converted into capital. The local authority should consider what tariff income may be applied to the capital and whether the subsequent charge is less or more than the person would have paid without the change.

## **53. LOCAL AUTHORITY INVESTIGATIONS**

53.1 In some cases the Council may wish to conduct its own investigations into whether deprivation of assets has occurred rather than relying solely on the declaration of the person.

53.2 There is separate guidance under the [Regulation of Investigatory Powers Act 2000](#) that has recently been updated. That sets out the limits to local authority powers to investigate and local authorities should have regard to it before considering any investigations.

### **53.3 What happens where deprivation of assets has occurred?**

If the Council decides that a person has deliberately deprived themselves of assets in order to avoid or reduce a charge for care and support, they will first need to decide whether to treat that person as still having the asset for the purposes of the financial assessment and charge them accordingly.

53.4 As a first step, the Council will seek to charge the person as if the deprivation had not occurred. This means assuming they still own the asset and treating it as notional capital or notional income.

53.5 If the person in depriving themselves of an actual resource has converted that resource into another of lesser value, the person should be treated as notionally possessing the difference between the value of the new resources and the one which it replaced. For example, if the value of personal possessions acquired is less than the sum spent on them, the difference should be treated as notional resource.

*Example of assets to be considered*

Emma gives her daughter Imogen a painting worth £2,000 the week before she enters care home. The local authority should not consider this as deprivation as the item is a personal possession and would not have been taken into account in her financial assessment.

However, if Emma had purchased the painting immediately prior to entering a care home to give to her daughter with £2,000 previously in a savings account, deprivation should be considered.

*Example of assets to be considered*

Mrs Kapoor has £18,000 in a building society and uses £10,500 to purchase a car. Two weeks later she enters a care home and gives the car to her daughter Julie.

If Mrs Kapoor knew when she purchased the car that she would be moving to a care home, then deprivation should be considered. However, all the circumstances must be taken into account so if Mrs Kapoor was admitted as an emergency and had no reason to think she may need care and support when she purchased the car, this should not be considered as deprivation.

#### **54. RECOVERING CHARGES FROM A THIRD PARTY**

- 54.1 Where the person has transferred the asset to a third party to avoid the charge, the third party is liable to pay TMBC the difference between what it would have charged and did charge the person receiving care. However, the third party is not liable to pay anything which exceeds the benefit they have received from the transfer.
- 54.2 If the person has transferred funds to more than one third party, each of those people is liable to pay TMBC the difference between what it would have charged or did charge the person receiving care in proportion to the amount they received.
- 54.3 As with any other debt, TMBC can use the county court process to recover debts, but this should only be used after other avenues have been exhausted. When pursuing the recovery of charges from a third party, TMBC will recover in accordance with the Debt Recovery

*Example of liability of a third party*

Mrs Tong has £23,250 in her savings account. This is the total of her assets. One week before entering care she gives her daughters Louisa and Jenny and her son Frank £7,750 each. This was with the sole intention of avoiding care and support charges.

Had Mrs Tong not given the money away, the first £14,250 would have been disregarded and she would have been charged a tariff income on her assets between £14,250 and £23,250. Assuming £1 for every £250 of assets, this means Mrs Tong should have paid £36 per week towards the cost of her care.

After 10 weeks of care, Mrs Tong should have contributed £360. This means Louisa, Jenny and Frank are each liable for £120 towards the cost of their mother's care.

Process and act in accordance with [Annex D of the Care and Support Statutory Guidance](#) on debt recovery.

## **55. DEBT COLLECTION**

55.1 Where a person has accrued a debt to the Council, we will use our powers under the Care Act to recover that debt. For further information relating to debt collection, please refer to the Council's [Debt Recovery Policy](#).

## **56. FINANCIAL INFORMATION AND ADVICE**

56.1 Under section 4 of the Care Act local authorities have a duty to establish and maintain an information and advice service relating to care and support for adults and support for carers. Information and advice must be proportionate and accessible. This applies to financial information and advice and means that the person concerned (or their representative) must be able to understand any contributions they are asked to make and how they can pay.

56.2 The Council will therefore provide information to help people to understand care charges, (including how contributions are calculated), and means- tested support available, top-ups, and how care and support choices may affect costs.

56.3 The Council will also make people aware of independent financial advice, including flagging up the existence of regulated financial advice. This is to ensure that people have a better understanding of how their available resources can be used more flexibly to fund a wider range of care options. In these cases, the Council will ensure that people are helped to understand how to access this advice.

56.4 There will be occasions where the Council can provide the advice and similarly where the person must be referred elsewhere.

56.5 Such advice that the Council will provide will be limited to how to understand care charges; ways to pay; money management; making informed financial decisions and facilitating access to independent financial information and advice.

56.6 Where we recommend the person seeks independent financial advice, we will make the person aware which independent services may charge for the information and advice they provide. We will also describe the general benefits of independent information and advice and be explain the reasons why it may be beneficial for a person to take independent financial advice.

## **57. WHAT TO DO IF YOU DISAGREE WITH YOUR FINANCIAL ASSESSMENT**

57.1 Everyone can ask the Council to look again at the amount they have been assessed to contribute toward the cost of their service, including Disability Related Expenses (DRE), if they think something is incorrect.

57.2 You may wish to point out any mistakes that you think the Council have made. You may think we have made a wrong decision because we have missed some information, or we do not know something about your circumstances, including any exceptional expenses because of an illness or disability.



- 57.3 Where you have indicated that you do not agree with the outcome of your financial assessment, or any aspect of the assessment such as the DRE considered, this will be considered an appeal to the financial assessment outcome/decision.
- 57.4 If you wish to appeal your financial assessment, (including Disability Related Expenses (DRE) or any other aspect of your assessment), you need to put the reasons you disagree in writing to the Financial Assessment Team who will consider your request based on the evidence you provide.
- 57.5 You can do this by:
- writing to Exchequer Services, PO Box 304, Ashton-U-Lyne, OL6 0GA
  - or by email at [AdultServicesFinance@tameside.gov.uk](mailto:AdultServicesFinance@tameside.gov.uk)
- 57.6 The Council will then look at your charges again and change any details where we can. Your financial details will be amended, and you will be notified of your revised contribution in writing, including the date from which the amendment is effective.
- 57.7 If our decision is found to be correct, we will write to you and explain why.
- 57.8 We aim to complete this review in 28 working days from receipt of your request.
- 57.9 If you are still not satisfied with the decision, you can make a formal complaint through the [Corporate Complaints](#) process.

## **58. COMPLAINTS**

- 58.1 A person may wish to make a complaint about any aspect of the financial assessment, or how we have chosen to charge. The Council will therefore make it clear what our complaints procedure is and provide information and advice on how to lodge a complaint
- 58.2 All complaints relating to our Charging Policy should be referred through the Corporate Complaints process. Full details on how to do this and how complaint are handled are shown under the [Tameside Borough Council's website](#).
- 58.3 Complaints about the level of charge levied by a local authority are subject to the usual Care and Support complaints procedure as set out in The Local Authority Social Services and NHS Complaints (England) Regulations 2009.