

ANNEX A: CHOICE OF ACCOMMODATION AND ADDITIONAL PAYMENTS AND TOP-UPS

1. Additional payments for preferred accommodation.

A person's ability to make an informed choice is a key element of the care and support system.

The care and support planning process will determine what type of accommodation is best to meet a person's needs. Where this involves a particular type of accommodation, i.e. care home accommodation, shared lives scheme accommodation or supported living accommodation, the person receiving care and/or their family have the right to choose between different providers and/or locations. The social worker or care co-ordinator will prepare a personal budget designed to cover the cost of meeting the person's eligible needs and be able to provide information about the choice of settings affordable within that budget.

In some cases, a person may actively choose accommodation that is more expensive than the amount identified for the provision of the accommodation in the personal budget and 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.

In such cases, placements may be agreed 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.

A 'top-up' payment will not be applied where accommodation is not available at the amount identified in a personal budget and temporary arrangements are put into place until suitable accommodation becomes available.

2. Agreeing a 'top-up' fee

Where the chosen accommodation is more expensive than the personal budget, the council must 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.

Before a top arrangement is agreed, the person offering to pay the additional amount will be required to provide sufficient financial information to satisfy the Council that they have resources available to them to meet the top up fee.

The person paying the 'top up' will be required to enter into a written agreement with the Council, agreeing to meet that cost. The agreement will form part of the contract between the client, the care provider and the Council and will include the following terms.

- the additional amount to be paid;

The amount of the 'top-up' will be the difference between the actual costs of the preferred provider and the amount that the Council has set in a personal budget to meet the person's eligible needs.

- the amount specified for the accommodation in the person's personal budget;
- the frequency of the payments;
- to whom the payments are to be made;

'Top-up' payments will be treated as part of the cared for person's income. (i.e. It will be assumed that the person making the 'top-up' payment is making the payment to the person with care needs. The 'top-up' payment will be recorded as part of the financial assessment and included in the total client contribution the cared for person needs to pay towards the cost of their care);

- provisions for reviewing the agreement;
- a statement on the consequences of ceasing to make payments;

Where 'top-up' payments are not made as agreed, consideration will be given to moving the person receiving care to alternative accommodation where this would be suitable to meet their needs and affordable within the personal budget. As with any change of circumstance, a new needs assessment will be undertaken before considering this course of action.

- 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'.

Where a person is unable to continue making 'top-up' payments, it is important that they contact the Council without delay.

Before entering into the agreement, it is important that the person paying the 'top-up' understands the terms and conditions of the contract. Anyone considering making a 'top up' payment will be given information and support to access independent financial information and advice.

3. First party 'top ups'

The person who will be receiving care may themselves choose to make a 'top-up' payment only in the following circumstances:

- where they are subject to a 12-week property disregard;
- where they have a deferred payment agreement in place with the Council and the terms of the agreement reflect this arrangement; or
- where they are receiving accommodation provided under S117 for mental health aftercare.

4. Self-funders who ask the local authority to arrange their care

The Care Act 2014 enables a person who can afford to pay for their own care and support in full to ask the Council to arrange their care on their behalf.

Self-funders will have to pay for the costs of their care and support including, in cases where they choose a setting that is more expensive than the amount identified in their personal budget, the top-up element of the costs of that setting.

5. Complaints

Complaints about how choice or any 'top-up' arrangement is exercised by the Council fall within the scope of our statutory complaints procedure outlined in the main Charging Policy at Section 16.

ANNEX B: TREATMENT OF CAPITAL

The treatment of capital, as set out in this Annex, is broadly the same for all settings. Where there is a distinction between residential care homes and all other settings, this is clearly set out.

However, the Council currently applies a maximum charge of £200.00 per week for non-residential community care services and this will be retained during the financial year 2015/16. Where a person receives care in a domiciliary setting and has capital in excess of the upper limit, £23,250, they will be expected to pay the actual cost of their care up to a maximum of £200.00 per week.

1. Capital Limits

In assessing what a person can afford to contribute the Council will apply the upper and lower capital limits.

- The upper capital limit is currently set at £23,250 and
- The lower capital limit at £14,250.

A person with assets above the upper capital limit will be deemed to be able to afford the full cost of their care (subject to the maximum charge for domiciliary care noted above).

Those with capital between the lower and upper capital limit will be deemed as able to make a contribution, known as “tariff income”, from their capital. Where the Council contributes towards the cost of care for a person receiving non-residential care services and where that person’s capital is above the Upper Capital Limit, Tariff income will continue to be applied above the Upper Limit.

Any capital below the lower capital limit is disregarded.

2. What is Capital?

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.
 - Bank current accounts, deposit accounts or special investment accounts. This includes savings held in the National Savings Bank, Giro Bank and Trustee Savings Bank.
 - SAYE schemes.

- Unit Trusts.
- Co-operatives share accounts.
- Cash.

(h) Trust Funds

3. Who owns the capital?

A capital asset is normally defined as belonging to the person in whose name it is held, the legal owner. However in some cases this may be disputed and/or beneficial ownership argued.

Where ownership is disputed, we will seek written evidence to prove where the ownership lies. If a person states they are holding capital for someone else, we will require evidence of the arrangement, the origin of the capital and intentions for its future use and return to its rightful owner.

Where a person has joint beneficial ownership of capital, except where there is evidence that the person owns an unequal share, the total value will be divided equally between the joint owners and the person will be treated as owning an equal share. Once the person is in sole possession of their actual share, they will be treated as owning that actual amount.

4. Calculating the value of capital

In order to complete a financial assessment we will need to work out the value of a capital asset. Other than National Savings Certificates, valuation will be the current market or surrender value of the capital asset, e.g. property, whichever is higher, *minus*

(a) 10% of the value if there will be any actual expenses involved in selling the asset. This must be expenses connected with the actual sale and not simply the realisation of the asset. For example the costs to withdraw funds from a bank account are not expenses of sale, but legal fees to sell a property would be; and

(b) any outstanding debts secured on the asset, for example, a mortgage.

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.

A precise valuation will only normally be required where there is a dispute in the estimated value of capital. In all other circumstances, where the person and the assessing officer both agree that the total value of the person's capital is more than the upper capital limit, then it will not be necessary to obtain a precise valuation.

Where the value of a property is disputed, we will aim to obtain an independent valuation of the person's beneficial share of the property within the 12-week disregard period where a person is in a care home.

The value of National Savings Certificates (and Ulster Savings Certificates) (Premium Bonds) is assessed in the same way as other capital assets. To enable an accurate value for the savings certificates the person will be required to provide details of the:

- certificate issue number(s);
- purchase price;
- date of purchase.

5. Assets held abroad

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 relating to the cost of the sale.

Where the capital cannot be wholly transferred to the UK due to the rules of that country, for example currency restrictions, we will require evidence confirming this fact.

6. Capital not immediately realisable.

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.

7. Tariff income

Where a person has assets between the lower and upper capital limits the tariff income will be applied. This assumes that for every £250 of capital, or part thereof, a person is able to afford to contribute £1 per week towards the cost of their eligible care needs.

Where the Council contributes towards the cost of care for a person receiving non-residential care services and where that person's capital is above the Upper Capital Limit, Tariff income will continue to be applied above the Upper Limit.

8. Notional capital

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.

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.

A person's capital will therefore be the total of both actual and notional capital.

Where a person has been assessed as having notional capital, the value of this must be reduced over time. The rule is that the value of notional capital must 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.

Where a person is benefiting from the 12-week property disregard and has chosen to pay a "top-up" fee from their capital resources between the upper and lower capital limits, the level of tariff income that applies during those 12 weeks is the same as it would be if the person were not using the capital to "top-up".

9. Capital disregarded

The following capital assets are disregarded.

- (a) Property in specified circumstances (see Property Disregards below);
- (b) The surrender value of any:
 - (i) Life insurance policy;
 - (ii) Annuity.
- (c) Payments of training bonuses of up to £200;
- (d) Payments in kind from a charity;
- (e) 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;
- (f) Any capital which is to be treated as income or student loans;
- (g) 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.
- (h) 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;
- (i) 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 for guidance on the treatment of income.
- (j) 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;
 - (k) 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;
 - (l) 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);
 - (m) Any Social Fund payment;
 - (n) 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;
 - (o) 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;
 - (p) Payments from the Department of Work and Pensions to compensate for the loss of entitlement to Housing Benefit or Housing Benefit Supplement;
 - (q) The amount of any bank charges or commission paid to convert capital from foreign currency to sterling;
 - (r) Payments to jurors or witnesses for court attendance (but not compensation for loss of earnings or benefit);
 - (s) Community charge rebate/council tax rebate;
 - (t) Money deposited with a Housing Association as a condition of occupying a dwelling;
 - (u) Any Child Support Maintenance Payment;
 - (v) 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;
 - (w) Any payment made by a local authority under the Adoption and Children Act 2002 (under section 2(b)(b) or 3 of this act);
 - (x) 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;
 - (y) 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);
 - (z) Any payments under Section 2, 3 or 7 of the Age-Related Payments Act 2004 or Age Related Payments Regulations 2005 (SI No 1983);
 - (aa) 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.

10. Property disregards

In some circumstances the value of the person's *main or only* home will be disregarded:

- a) Where the person is receiving care in a setting that is not a care home;
- b) If the person's stay in a care home is temporary and they:
 - a. intend to return to that property and that property is still available to them; or
 - b. are taking reasonable steps to dispose of the property in order to acquire another more suitable property to return to.
- c) Where the person no longer occupies the property but it is occupied in part or whole as their main or only home by any of the people listed below, the mandatory disregard only applies where the property has been continuously occupied since before the person went into a care home (for discretionary disregards see Section 12):
 - a. the person's partner, former partner or civil partner, except where they are estranged;
 - b. a lone parent who is the person's estranged or divorced partner;
 - c. a relative as defined in paragraph 35 of the person or member of the person's family who is:
 - i. Aged 60 or over, or
 - ii. Is a child of the resident aged under 18, or
 - iii. Is incapacitated.

For the purposes of the disregard a relative is defined as including any of the following:

- a) Parent (including an adoptive parent)
- b) Parent-in-law
- c) Son (including an adoptive son)
- d) Son-in-law
- e) Daughter (including an adoptive daughter)
- f) Daughter-in-law
- g) Step-parent
- h) Step-son
- i) Step-daughter
- j) Brother
- k) Sister
- l) Grandparent
- m) Grandchild
- n) Uncle
- o) Aunt
- p) Nephew

- q) Niece
- r) The spouse, civil partner or unmarried partner of a to k inclusive.

A member of the person's family is defined as someone who is living with the qualifying relative as part of an unmarried couple, married to or in a civil partnership.

For the purposes of the disregard the meaning of "incapacitated" is not closely defined. However, it will be reasonable to conclude that a relative is incapacitated if either of the following conditions apply:

(a) the relative is receiving one (or more) of the following benefits: incapacity benefit, severe disablement allowance, disability living allowance, personal independence payments, armed forces independence payments, attendance allowance, constant attendance allowance, or a similar benefit; or

(b) the relative does not receive any disability related benefit but their degree of incapacity is equivalent to that required to qualify for such a benefit. Medical or other evidence may be needed before a decision is reached.

11. Occupation of a property

For the purpose of the property disregard, the meaning of "occupy" is not closely defined. In most cases it will be obvious whether or not the property is occupied by a qualifying relative as their main or only home. However, there will be some cases where this may not be clear.

An emotional attachment to the property alone is not sufficient for the disregard to apply.

The following factors will be considered in making a decision:

- Does the relative currently occupy another property?
- If the relative has somewhere else to live do they own or rent the property (i.e. how secure/permanent is it?)
- If the relative is not physically present is there evidence of a firm intention to return to or live in the property
- Where does the relative pay council tax?
- Where is the relative registered to vote?
- Where is the relative registered with a doctor?
- Are the relative's belongings located in the property?
- Is there evidence that the relative has a physical connection with the property?

A property must be disregarded where the relative meets the qualifying conditions (i.e. is aged 60 or over or is incapacitated) and has occupied the property as their main or only home since before the resident entered the care home.

12. Discretionary Disregard

The Council may also use its discretion to apply a property disregard in other circumstances. However, we will need to balance this discretion with ensuring a person's assets are not maintained at public expense.

A property may be disregarded when a qualifying relative moves into the property after the resident enters a care home. Where this happens, consideration will be given to all the relevant factors in deciding whether the property must be disregarded. This could include factors such as the timing and purpose of the move which may be relevant to establishing if the property is the relative's main or only home. The purpose of the disregard in these circumstances is to safeguard certain categories of people from the risk of homelessness.

Consideration will be given to the principle reason for the move. A disregard would not be appropriate, for example where a person moves into a property solely to protect the family inheritance. Each case will be considered on its own individual circumstances taking into account the following factors:

- Was the relative occupying another property as their main or only home at the time of the previous financial assessment?
- Could the relative have reasonably expected to have the property taken into account at the time they moved into the property?
- Would failure to disregard the property result in the eligible relative becoming homeless?
- Would failure to disregard the property negatively impact on the eligible relatives own health and wellbeing?

13. 12-week property disregard

A key aim of the charging framework is to prevent people being forced to sell their home at a time of crisis. The regulations under the Care Act 2014 therefore create space for people to make decisions as to how to meet their contribution to the cost of their eligible care needs.

We will disregard the value of a person's *main or only* home when the value of their non-housing assets is below the upper capital limit for 12 weeks in the following circumstances:

- (a) when they first enter a care home as a permanent resident; or
- (b) when a property disregard other than the 12-week property disregard unexpectedly ends because the qualifying relative has died or moved into a care home.

In addition, the Council has discretion to choose to apply the disregard when there is a sudden and unexpected change in the person's financial circumstances. In deciding whether to do so, we will consider the individual circumstances of the case. Such circumstances might include a fall in share prices or an unanticipated debt.

14. 26-week disregard

The following capital assets will be disregarded for at least 26 weeks in a financial assessment. However, we may choose to apply the disregard for longer where 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 a 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. Where the person is in a care home, this will apply from the date they first took up residence.
- 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 will 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 will 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 will apply from the date the person takes action to effect 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. This will 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 will 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 will apply from the date the grant is received.

15. 52-week disregard

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) Minimum Income Guarantee
- (xi) Working Tax Credit
- (xii) Child Tax Credit
- (xiii) Housing Benefit
- (xiv) Universal Credit
- (xv) Special payments to pre-1973 war widows.

As the above payments are 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.

(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.

(c) Personal Injury Payments.

16. 2-year disregard

The Council will disregard payments made under a trust established out of funds by the Secretary of State for Health in respect of vCJD to:

- (a) 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
- (b) A dependent child or young person until they turn 18.

17. Other disregards

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

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

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

18. Treatment of investment bonds

The treatment of investment bonds is currently complex. This is in part because of the differing products that are on offer. If necessary we will take advice from the Council's Legal Services on how to treat particular investment bonds.

Where an investment bond includes one or more element of life insurance policies that contain cashing-in rights by way of options for total or partial surrender, then the value of those rights will be disregarded as a capital asset in the financial assessment.

19. Capital treated as income

The following capital payments will be treated as income (see Annex C).

- (a) Any payment under an annuity.
- (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 the council decided to charge; and
 - (ii) the amount of other capital held by the resident is over £16,000. If it is £16,000 or less, each instalment will be treated as capital. [Regulation 16]

20. Earnings

Any income of the person derived from employment will be treated as earnings and not taken into account in the financial assessment.

21. Income treated as capital

The following types of income will be treated as capital:

- (a) Any refund of income tax charged on profits of a business or earnings of an employed earner;
- (b) Any holiday pay payable by an employer more than 4 weeks after the termination or interruption of employment;
- (c) Income derived from a capital asset, for example, building society interest or dividends from shares. This will 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;
- (d) 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;
- (e) 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.
- (f) 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;
- (g) Any payments of arrears of contributions by a local authority to a custodian towards the cost of accommodation and maintenance of a child.

22. Capital available on application

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.

We 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.

Where we treat capital available on application as notional capital we will do so only from the date at which it could be acquired by the person.

April 2015 also sees much greater flexibility introduced regarding how people can access their defined contribution pensions, including enabling them to access their full pension pot. As a result, when applying notional income to a defined contribution pension this will be calculated as the maximum income that would be available if the person had taken out an annuity. Further guidance is provided in Annex C.

ANNEX C: TREATMENT OF INCOME

This annex covers:

The treatment of income when conducting a financial assessment in all circumstances.

This is divided into:

- Care homes;
- All other settings

The purpose of this annex is to provide guidance on how different types of income are treated when calculating what a person can afford to contribute to the cost of their eligible care needs.

This annex should be read in conjunction with Annex B on the “Treatment of capital”.

Common issues

The following section sets out the issues common to charging for all settings.

- Only the income of the cared-for person is taken into account in the financial assessment of what they can afford to pay for their care and support. Where this person receives income as one of a couple, the starting presumption is that the cared-for person has an equal share of the income. We will also consider the implications for the cared-for person’s partner.
- Income is net of any tax or National Insurance contributions.
- Income will always be taken into account, unless it is disregarded under the regulations.
- Income that is disregarded will either be:
 - (a) Partially disregarded; or
 - (b) Fully disregarded

1. Earnings

In all cases, irrespective of setting, employed and self-employed earnings are fully disregarded.

Earnings in relation to an employed earner are any remuneration or profit from employment. This will include:

- (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.

1.1 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.

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.

1.2 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.

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.

2. Benefits

We will take most of the benefits people receive into account. Those we will disregard are listed below.

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.

Any income from the following benefits will be **taken fully into account** when considering what a person can afford to pay towards their care from their income:

- (a) Attendance Allowance, including Constant Attendance Allowance and Exceptionally Severe Disablement Allowance
- (b) Bereavement Allowance
- (c) Carers Allowance
- (d) Disability Living Allowance (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 (Daily Living component)
- (l) State Pension
- (m) Universal Credit
- (n) Working Tax Credit.

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.

3. Annuity and pension income

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

For those who have purchased an annuity with a loan secured on their main or only home, this is known as a 'home income plan'. Under these schemes, a person has purchased the annuity against the value of their home – similarly to a Deferred Payment Agreement.

Where a person is in a care home and paying half of the value of their occupational pension, personal pension or retirement annuity to their spouse or civil partner the council will disregard 50% of its value.

In order to qualify for the disregard, one of the annuitants must still be occupying the property as their main or only home. This may happen where a couple has jointly purchased an annuity and only one of them has moved into a care home. If this is not the case, the disregard will not be applied.

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.

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 annuitant occupies the property as their main or only home at the time the interest is paid.

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, we will disregard the net interest. Otherwise, we will disregard the gross interest.

Reforms to defined contribution pensions come 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. 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 will be treated according to the rules for that product;
- (b) If a person is only drawing a minimal income, then we will apply notional income choosing not to draw income, or according to the maximum income that could be drawn under an annuity product. When applying maximum notional income, the actual income will 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 will be taken into account.

4. Mortgage protection insurance policies

Any income from an insurance policy will be taken into account. 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. However, the income must be being used to meet the repayments on the loan. The amount of income from a mortgage protection insurance policy that will 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.

5. Other income that will be fully disregarded

Any income from the following sources will be fully disregarded:

- (a) Armed Forces Independence Payments and Mobility Supplement
- (b) Child Support Maintenance Payments and Child Benefit
- (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) Income frozen abroad
- (m) Income in kind
- (n) Pensioners Christmas payments
- (o) Personal Independence Payment (Mobility Component) and Mobility Supplement
- (p) Personal injury trust, including those administered by a Court
- (q) Resettlement benefit
- (r) Savings credit disregard
- (s) Social Fund payments (including winter fuel payments)
- (t) War widows and widowers special payments

- (u) Any payments received as a holder of the Victoria Cross, George Cross or equivalent
- (v) Any grants or loans paid for the purposes of education; and
- (w) Payments made in relation to training for employment.
- (x) Any payment from the:
 - (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

6. Charitable and voluntary payments

Charitable payments are not necessarily made by a recognised charity, but could come from charitable motives. The individual circumstances of the payment will be taken into account before making a decision. In general, a charitable or voluntary payment which is not made regularly is treated as capital.

Charitable and voluntary payments that are made regularly will be fully disregarded.

7. War Pensions

The Council will fully disregard War Widows and War Widowers pension, survivors Guaranteed Income Payments from the Armed Forces Compensation Scheme, Civilian War Injury pension, War Disablement pension and payments to victims of National Socialist persecution (paid under German or Austrian law).

8. Partially disregarded income

The following income is partially disregarded:

A savings disregard based on qualifying income is made to people as follows:

For individuals

- Where a person is in receipt of qualifying income of less than £126.50 per week there will be no Savings Disregard made.
- Where a person is in receipt of qualifying income between £126.50 and £151.20 per week, the savings disregard is made, which will equal the actual amount of the savings credit received or a sum of £5.75, whichever is less.
- Where a person is in receipt of qualifying income in excess of £151.20 per week, and a savings credit award is in payment, a flat rate savings disregard of £5.75 per week is made, irrespective of how much the savings credit payment is.

- Where a person has qualifying income above the limit for receiving a savings credit award (if the person is severely disabled, has caring responsibilities or certain housing costs) a flat rate savings disregard of £5.75 is made.

For couples

- Where a person is part of a couple (including a civil partnership) and is in receipt of qualifying income of less than £201.80 per week, there will be no savings disregard made.
- Where a person who is part of a couple (including a civil partnership) and is in receipt of qualifying income between £201.80 and £230.85 per week, the savings disregard is made, which will equal the actual amount of the savings credit received or a sum of £8.60, whichever is less.
- Where a person who is part of a couple (including a civil partnership) and is in receipt of qualifying income in excess of £230.85 per week, and a savings credit award is in payment, a flat rate savings disregard of £8.60 per week is made irrespective of how much the savings credit payment is.
- Where a person who is part of a couple (including a civil partnership) and has qualifying income above the limit for receiving savings credit (if the person is severely disabled, has caring responsibilities or certain housing costs) a flat rate savings disregard of £8.60 is made.

The values of £151.20 and £230.85 above represent the standard minimum guarantee for an individual and couple respectively. These amounts are increased to an appropriate minimum guarantee where individuals and couples qualify as severely disabled or as carers because of receipt of qualifying benefits.

9. Notional income

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 information on how we will consider deprivation of assets, see Annex E.**

Notional income will also be applied where a person who has reached retirement 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 will be sought from the pension provider or from estimates provided by the Government Actuary's Department.

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.

Notional income will be calculated from the date it could be expected to be acquired if an application had been made. In doing so, we will assume the application was made when it first became possible and we will take account of any time limits which may limit the period of arrears.

However, there are some exemptions and the following sources of income will 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; or
 - (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.

10. Disability-related expenditure

In all cases where a person receives benefits to meet their disability, such as the care component of Disability Living Allowance, Severe Disability Premium or the daily living component of Personal Independence Payments, the first 10% of that benefit will be disregarded.

Any other disability related needs identified as part of the care assessment but that do not meet the eligibility criteria for local authority care and support, may be disregarded where the customer can evidence the amount and frequency.

The total disregard will be either the standard 10% or the total value of disability related expenditure, whichever is the highest.

In assessing disability-related expenditure, we will consider reasonable additional expenditure directly related to a person's disability, examples of which are detailed below. However, it should be noted that this list is not intended to be exhaustive, it is illustrative of the type of expenditure that may be taken into consideration.

- (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:

- specialist washing powders or laundry and/or additional costs of bedding, for example, because of incontinence;
- 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;
- any heating costs, or metered costs of water, above the average levels for the area and housing type, occasioned by age, medical condition or disability;
- reasonable costs of basic garden maintenance, cleaning, or domestic help, if necessitated by the individual's disability and not met by social services;
- other transport costs necessitated by illness or disability, including costs of transport to day centres, over and above the mobility component of Disability Living Allowance or Personal Independence Payment, if in payment and available for these costs. In some cases, it may be reasonable for the local authority not to take account of claimed transport costs – if, for example, a suitable, cheaper form of transport, e.g. council- provided transport to day centres is available, but has not been used.

In addition to Disability Related Expenditure an allowance will be made for day or night care which is included in the care plan but not being arranged by the Council;

11. Care homes

The following section deals with those who are receiving care and support in a care home only.

11.1 Personal expenses allowance

We will leave the person with a minimum amount of income. This is known as the Personal Expenses Allowance (PEA) and the amount is set out in regulations and updates sent via a local authority circular. Anything above this will be taken into account in determining charges.

There may be some circumstances where it would not be appropriate for the Council to leave a person only with the personal expenses allowance after charges. For example:

(a) Where a person has a dependent child, we will consider the needs of the child in determining how much income a person should be left with after charges. This applies whether the child is living with the person or not.

(b) Where a person is paying half their occupational or personal pension or retirement annuity to a spouse or civil partner who is not living in the same care home, we will disregard this money.

(c) Where a person is temporarily in a care home and is a member of a couple – whether married or unmarried – we will disregard any Income Support or Pension

Credit awarded to pay for home commitments and will consider the needs of the person at home in setting the personal expenses allowance. We will also consider disregarding other costs related to maintaining the couple's home (see below).

(d) Where a person's property has been disregarded, we will consider whether the PEA is sufficient to enable the person to meet any resultant costs. For example, allowances will be made for fixed payments (like mortgages, rent and Council Tax), building insurance, utility costs (gas, electricity and water, including basic heating during the winter) and reasonable property maintenance costs.

(e) Where a person has moved to local authority support and has a deferred payment agreement (DPA) in place, we will ensure the person retains sufficient resources to maintain and insure the property in line with the disposable income allowance (DIA).

12. All other settings

As all earnings will be disregarded, this leaves other sources of income such as benefits, pensions and payments from other products.

13. Minimum income guarantee

We will ensure that a person's income is not reduced below a specified level after charges have been deducted. This will be at least the equivalent of the value of Income Support, Income Based Employment Support Allowance or the Guaranteed Credit element of Pension Credit plus a minimum buffer of 25%.

ANNEX D: PAYMENT AND RECOVERY OF CLIENT CONTRIBUTIONS

The Council's Debt Recovery Strategy is the overarching policy covering all aspects of the recovery of council fees and charges, including contributions towards the cost of care.

The Financial Assessment process calculates the contribution towards the cost of someone's care as a weekly amount. The way in which the contribution should be paid by the client or their representative depends upon how the care is provided.

1. Paying for care at home and in supported accommodation

People receiving care at home or in supported accommodation either identify and organise their own care provider as they receive a Direct Payment from the Council, or the Council commissions the care on their behalf.

Where the Council arranges and pays for home care on someone's behalf, an invoice is sent for the assessed contribution amount. The invoice details the weekly assessed charge and requests payments in monthly instalments. Payment will be accepted at any frequency but is required to be made before the monthly instalment becomes due.

Payment can be made by Direct Debit, cash at any Council One Stop Shop, by debit or credit card to make a telephone payment, through the internet, by Standing Order or bank transfer.

The invoice follows the recovery process set out overleaf:

Activity	Timescale and Actions
Invoice raised	Issued within 2 working days of notification of the assessed contribution. Details weekly charge, methods of payment and contact details
Telephone Call	21 days after the instalment due date if payment is not received. To ascertain if there are any issues paying the contribution or confusion regarding the amount due or ways to pay.
Reminder Notice	21 days after the instalment due date if unable to reach by telephone or obtain a payment arrangement. Details the weekly amount due, the overdue amount, methods of payment and contact details
Telephone Call	Between 21 and 35 days after the instalment due date. To gain contact, ascertain issues, request payment
Referral to Knowsley Visiting Team	After 36 days if no response. To visit the customer at home, with their family/representatives present if appropriate to re-explain charges, reassess contribution if necessary and ascertain any issues preventing payment
Referral to Adult Social Care	If unable to engage customer, unable to visit or if any potential safeguarding issues are identified

Direct Payment recipients are paid the total cost of their care less their assessed contribution. They/their representative are required to pay the amount of their assessed contribution into their dedicated Direct Payment bank account in order to pay for their care.

If they do not pay the required amount into their dedicated account, identified by the Council's internal auditors or the Council's partner, Knowsley Disability Concern (KDC), and fail to engage with KDC or the Council to bring their account up to date, the outstanding contribution will be referred for collection by invoice. The customer's suitability for a Direct Payment will also be reviewed by the Council's Adult Social Care Service.

The recovery cycle for the outstanding contribution will follow the same process as for commissioned home care.

2. Paying for care in residential accommodation

Residential care providers receive payment from the Council for the cost of residents' care in 4 weekly cycles. Payment is net of residents' assessed contributions towards the cost of their care.

If a Deferred Payment Agreement (DPA) is in place, contributions are not required to be made until the agreement ends. If there is no DPA, each provider arranges payment of the resident's contribution and any top-up amount directly with the resident or their family/representative.

The Provider's responsibilities in relation to non-payment of assessed contributions and/or top-up payments are set out in the terms of each contract.

If the Provider satisfies the prescribed procedure, the Council will compensate the Provider for the unpaid contribution and will pursue the amount due from the resident/their representative.

If the customer/their representative continually fails to pay the provider the amount due, the Council will pay the residential care provider the gross care cost on an ongoing basis, and pursue the amount due directly from the customer/their representative.

The recovery cycle for the outstanding contribution will follow the same process as for home care.

3. Enforcement of debt

Every effort will be made to engage residents who are not paying their assessed contribution. The Sundry Debt, Visiting and Adult Social Care teams will work in collaboration to identify any issues that may have resulted in the non-payment that may also affect the customer's ability to pay their daily living costs.

Extended payment plans will be put into place where appropriate, and where financial hardship is cited as a reason for non-payment, or the customer provides information confirming why they are unable to pay the amount due, consideration will be made to utilising the Council's discretion to apply a charge.

If the amount due remains unpaid once the recovery process has been completed, there are no outstanding appeals or reviews and no reasons for non-payment identified, the outstanding debt will be referred to the Council's Legal Services.

Legal Services will review the information provided by the Sundry Debt, Visiting and Adult Social Care teams and issue a "Letter Before Action" to the customer or their representative to confirm that the case will be referred to the County Court for judgment if contact is not made to discuss the debt and arrange repayment.

A claim through the County Court will be made for the total sum due, including any costs incurred by the Council. The charges made by the County Court depend upon

the amount of debt claimed by the Council and are set annually by Her Majesty's Court Service. Details of current charges can be found at <https://www.gov.uk/make-court-claim-for-money/court-fees>

The Council's claim may also include a charge for interest which is usually 8%.

If the County Court agrees the amount is due and payable, judgment will be made and becomes enforceable. There are a number of enforcement options available; however, the options taken in relation to unpaid contributions will be restricted to:

- A third party debt order to freeze the judgment debtor's bank account; or
- A charging order on land or property owned by the debtor.

If the customer or representative responsible for paying the contribution amounts dies and a debt remains, the Council will make an application to the deceased's estate through the Executor, unless there appears to be no available funds to recover the amount due.

If the estate has not been finalised, and the Council has reason to believe there is sufficient funds to repay the amount due, or the deceased owned property and title has not been transferred, we will request an Executor to be appointed, through application to the court if deemed necessary.

It is intended that these enforcement measures will only become necessary in exceptional circumstances, following repeated mediation attempts.

ANNEX E: DEPRIVATION OF ASSETS

This annex covers:

- The deprivation of capital and/or income in order to avoid or reduce care and support charges.

1. What is meant by deprivation of assets?

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.

2. Has deprivation of capital occurred?

It is up to the person to prove to the Council that they no longer have the asset. If they are not able to, we will 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.

Questions of deprivation will only be 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.

We will 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;
- (b) 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; and,
- (c) Did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs?

3. Has deprivation of income occurred?

It is up to the person to prove to the Council that they no longer have the income. Where we consider that a person may have deprived themselves of income, we will treat them as possessing notional income.

We will take the following into consideration:

- (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?

In some circumstances the income may have been converted into capital. We will 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.

4. What happens where deprivation of assets has occurred?

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

If the person in depriving themselves of an actual resource has converted that resource into another of lesser value, we will treat the person as notionally possessing the difference between the value of the new resources and the one which it replaced.

5. Recovering charges from a third party

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

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

As with any other debt, the Council may use the County Court process to recover debts, but this will only be used after other avenues have been exhausted.

ANNEX F: TEMPORARY AND SHORT TERM RESIDENTS IN CARE HOMES

This annex covers:

- Financial assessment for someone who is temporarily placed in a care home.

1. Setting the context

Following an assessment of a person's eligible care and support need, a decision may be taken that the person would benefit from a temporary stay in a care home. This could be for a number of reasons such as providing respite care to a carer or to provide a period of more intense support owing to an additional, but temporary, care need.

However we will give regard to any partner or spouse remaining at home and ensure they are left with a basic level of income support or pension credit to which they may be entitled in their own right.

2. Who is a temporary resident?

A temporary resident is defined as a person whose need to stay in a care home is *intended* to last for a limited period of time and where there is a plan to return home. The person's stay should be unlikely to exceed 52 weeks, or in exceptional circumstances, unlikely to substantially exceed 52 weeks.

A decision to treat a person as a temporary resident must be agreed with the person and/or their representative and written into their care plan.

In some cases a person may enter a care home with the intention of a permanent stay but a change in circumstances could result in it being temporary. In such cases we will treat the person as temporary from the date of admission for the purposes of charging.

Similarly a stay which was initially intended to be temporary could become permanent. In such cases, the financial assessment of the person as a permanent resident will only be from the date that the care plan is amended and agreed with the person and/or their representative.

3. Charging

For Respite Care and for the first 8 weeks of their temporary stay in a care home the Council will charge a flat rate fee based on the minimum income guarantee.

From week 9, a financial assessment will be completed and charges will be based on the provision of care in a care home.

4. Assessing ability to pay

4.1 Capital

The person's *main or only* home will be disregarded where the person:

- (a) Intends to return to that property as their main or only home and it remains available to them; or
- (b) Has taken steps to dispose of the home in order to acquire one that is more suitable and intends to return to that property.

Any other capital assets will be treated in the same way as for permanent residents. Guidance is set out in Annex B.

4.2 Income and earnings

Both income and earnings will be treated in the same way as for permanent residents, as set out in Annex C "Treatment of income".

Any additional amounts the person may need so they can maintain their home during their temporary stay, so that it is in a fit condition for them to return to, will be disregarded. Such expenses may include, but are not limited to, ground rent, service charges, water rates or insurance premiums.

We will also take into account the following additional points:

- Where Attendance Allowance or Disability Living Allowance is being received, these will be completely disregarded. Eligibility for both these benefits ceases after 4 weeks of local authority support.
- Where a stay in a care home is temporary, the amount of Income Support or Pension Credit a person receives will usually remain the same as they will be treated as normally residing in their own home. However, any severe disability premium or enhanced disability premium that may have been included will no longer be paid if the Disability Living Allowance or Attendance Allowance has ceased. There are special rules for Income Support and income related Employment Support Allowance where one member of a couple enters a care home for a temporary period. This will be taken into account in considering what a person can afford to pay.
- If Housing Benefit is paid to the person, this will be disregarded as they will still be responsible for meeting any costs associated with their main or only home.
- We will disregard any other payment the person receives in order to meet the cost of their housing and/or to support independent living. For example, this may include payments to provide warden support, emergency alarms or the meeting of cleaning costs where the person or someone in the household is unable to do this themselves.

- We will also consider whether any payments to support the cost of housing and/or independent living are sufficient to cover the person's commitments during their temporary stay. This might be as these costs were met from earnings, which are disregarded, that are not being accrued during the temporary stay. In such cases, we will calculate the additional cost and disregard this amount.
- Where a person is sub-letting their property, this will be disregarded where the person occupies the property as their main or only home as they intend to return to the property.
- Alternatively a person may have a boarder living in their property. A boarder is someone for whom at least one cooked meal is provided. Where a person has income from a boarder, the first £20 of the income will be ignored, plus half of any balance over £20.

ANNEX G: DEFERRED PAYMENT AGREEMENTS

KMBC Deferred Payments Policy

April 2015

Contents

1. Introduction
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11. The Council's Responsibilities
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1. Introduction

The Care Act 2014 establishes a universal deferred payment scheme to allow flexibility for when and how someone pays for their care and support.

A Deferred Payment Agreement (DPA) is a consensually-accruing debt to the local authority. It is a loan against the value of property which has to be repaid by the individual, or by a third party on their behalf.

By entering into a DPA, a person can 'defer' or delay paying the costs of their care and support until a later date. Deferring payment can help people to delay the need to sell their home, and provides peace of mind during a time that can be challenging as they make the transition into residential or nursing home care.

This scheme supersedes the existing Deferred Payment scheme and eligibility criteria currently used as the Care Act 2014 provides national guidance on eligibility. Local authorities are **required** to offer a Deferred Payment Arrangement (DPA) to anyone meeting the criteria who can provide adequate security.

The principles that underpin Knowsley Council's Deferred Payment Agreement scheme are:

1. The DPA will be consistent with the relevant legislation and statutory guidance.
2. Those that are assessed as needing care should not have to sell their home against their wishes to pay for care during their lifetime
3. Those who can afford to pay a contribution towards their care should do so
4. We will provide information and advice about eligibility to ensure residents are fully informed if agreeing to a DPA
5. We will endeavour to assess and complete any contract covered by the DPA scheme within a 12 week period, once a long term stay in a residential or nursing care home has been agreed within the person's care plan.

This document details the Deferred Payment Scheme for Knowsley Borough Council and should be read in conjunction with the Care Act 2014 Regulations and Statutory Guidance.

2. Eligibility Criteria

To be eligible for a deferred payment, a person must meet all of the following criteria at the point of applying for a DPA:

- (a) Their needs are to be met by the provision of care in a care home. This is determined when someone is assessed as having eligible needs which the Council decides should be met through a residential or nursing care home placement; and
- (b) They have no more than the upper capital limit (£23,250 for the financial year 2015/16, to be updated by regulations for future years) in assets excluding the value of their home (i.e. in savings and other non-housing assets); and
- (c) Their home is not disregarded within the financial assessment, for example it is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support.

The Council has discretion to defer payments in respect of care charges for residents of Supported Accommodation and Independent Living Schemes. These cases will be reviewed on an individual level to determine suitability.

The scheme applies to those who are ordinarily resident in Knowsley as defined by the relevant provisions of the Care Act (sections 39-41) and accompanying statutory guidance.

3. Grounds for Refusing a Deferred Payment Agreement

The regulations state that a DPA must be offered to those who are eligible for the scheme and who are able to provide adequate security for the debt.

The Council may refuse a DPA despite someone meeting the eligibility criteria if:

- (a) We are unable to secure a first charge on the person's property; and / or
- (b) Someone is seeking a top up to the existing arrangements; and/or
- (c) A person does not agree to the terms and conditions of the agreement.
- (d) The asset is uninsurable.

In any of the above circumstances, the Council will consider whether to exercise its discretion to offer a deferred payment.

The Council can refuse a request for deferred payment. In such circumstances the decision will be notified in writing to the applicant and/or their personal representative. The decision will set out the grounds for refusal and provide information on how to appeal.

4. Information and Advice

To allow people to make well-informed choices, information and advice will be provided during the 12 week property disregard period and at other stages during the care and financial assessment process.

The information provided will explain:

- The eligibility criteria for a DPA
- That the care fees are being deferred but must be paid back at a later date, for example when the property is sold;
- That homes used as security may need to be sold at a later date to repay the amount due;
- That the total amount they can defer will be governed by an equity limit which may change if the value of their security changes;
- The circumstances in which we may cease to defer further amounts (such as when the person qualifies for the Council's support in paying for their care), and the circumstances where the Council has to stop deferring further amounts (such as when the person reaches their equity limit);
- How interest will be charged on any amount deferred;
- That they will be liable to pay all administrative charges;
- How the loan repayment must be made at the end of the agreement;
- The consequences of not repaying the total amount due;
- Recommendations to seek independent financial advice before entering into an agreement.

Where a person lacks capacity to request a deferred payment, a Deputy or Attorney (a person with a relevant Enduring Power of Attorney or Lasting Power of Attorney) may request a deferred payment on their behalf.

If a family member requests a deferred payment and they do not have the legal power to act on behalf of the person, then the person and the family member will be provided with information on how to obtain this through Lasting Power of Attorney and Deputyships and be encouraged to apply immediately.

Where the Council is the Deputy for a person, we will apply a DPA where this is in the best interests of the person.

The Council will not enter into a DPA with a person lacking mental capacity unless the proper arrangements are in place.

5. Arranging a Deferred Payment Agreement

The DPA will only take effect upon the applicant or his / her duly appointed representative signing the Deferred Payment Agreement. A certified copy of the appointment of a Power of Attorney or order from the Court of Protection appointing a Deputy will be accepted as evidence of authorisation to sign on behalf of the applicant.

The person entering into the DPA will also be required to evidence that they abide by a number of conditions:

- That the property is maintained in a reasonable standard of repair and condition.
- All outgoings associated with the property (e.g. Council Tax, service charges, ground rent, insurance) are paid.
- That any net rental income derived from letting the property during the period of the scheme will be assessed in accordance with Department of Health statutory guidance.
- That the person receiving care and/or their representative acknowledges that they have received the Council's advice that they should seek independent financial advice before committing themselves to this agreement.
- That the client and/or their representative provides any evidence required by the Council in support of the application.
- Where the property is jointly owned, the co-owners as well as the applicant must agree to the Council's form of charge.
- That the applicant and/or their representative notify the Council of any change in circumstances which would affect their financial assessment, the value of the property or the sustainability of the deferred payment.
- The property is insured throughout the length of the DPA term until the debt to the Council is paid.

6. Deferred Amount

In normal circumstances, a person will be able to defer all of their care costs; however, the Council has to consider whether adequate security can be provided for the deferred payment agreement.

If the person is considering a top-up, the Council will also consider whether the amount or size of the deferral requested is sustainable given the equity available from their property.

Three elements will dictate how much a person can defer:

- (a) The amount of equity a person has available in their property
- (b) The amount a person is contributing to their care costs from other sources, including income and (where they choose to) any contribution from savings, a financial product or a third-party
- (c) The total care costs a person will face, including any top-ups the person might be seeking.

These are explained in more detail as follows:

(a) The amount of equity a person has available in their property;

When considering the *equity available*, the equity limit will be set at the value of the property less 10% (ten percent), minus £14,250 (for financial year 2015/16, this is in line with the lower capital limit, to be updated in future years for changes set out in any new regulations) and the amount of any encumbrance secured on it.

This limit provides some protection to the Council against the risk that we will not be able to recoup the full amount owed and changes in the value of the security, such as possible house price fluctuations. It also means that people will qualify for local authority support if they deplete the equity available in their home.

A valuation of the property will be used to establish the equity available and will be undertaken by the Council's Asset Management Team on the person's behalf; the cost of which will be included within the administration charge. If the person disagrees with the valuation, the person or their representative may supply a valuation at their own cost for consideration, but this must be a recent valuation sought from an independent source.

The Council will attempt to agree the applicable valuation if there is any significant variation. If the dispute continues, the Council may apply to the Valuation Office Agency for a valuation which will be binding on both parties.

When calculating progress towards the equity limit, the Council will include any interest or fees to be deferred.

The Council will not allow additional amounts to be deferred beyond the equity limit. However, interest and administrative charges will still accrue beyond this point.

(b) The amount a person is contributing to their care costs from other sources, including income and (where they choose to) any contribution from savings, a financial product or a third-party;

A person may meet the costs of their care and support from a combination of any of 4 primary sources:

- Income, including pension income;
- Savings or other assets they might have access to, which might include any contributions from a third party;
- A financial product designed to pay for long-term care; or
- A deferred payment agreement which enables them to pay for their care at a later date out of their property asset.

The share of care costs that someone defers will depend on the amount they will be paying from the other sources listed above. The Council will require a contribution towards care costs from a person's income, but the person has a right to retain a proportion of their income (the 'disposable income allowance').

The Disposable Income Allowance is a fixed amount of a person's income which the Council must allow the person to retain, if the person wants to retain it. **For 2015/16 the Disposable Income Allowance is set at £144 per week.**

If a person decides to rent out their property during the course of their DPA, the Council can permit that person to retain a proportion of any rental income from the property. The proportion that can be retained will be dependent upon the costs of insuring and maintaining the property and any managing agent fees which need to be evidenced as part of the financial assessment process.

(c) The total care costs a person will face, including any top-ups the person might be seeking;

At a minimum, the Council will allow someone to defer their 'core' care costs. To ensure sustainability of the deferral, the Council has discretion over the amount people are permitted to top up. The Council will accept any top-up deemed to be reasonable given considerations of affordability, sustainability and available equity.

The Council will consider:

- The likely period the person would want a DPA for, that is if they intend to use it as a 'bridging loan';
- The equity available;
- The sustainability of any contributions from their savings;
- The flexibility to meet future care needs; and
- The period of time a person would be able to defer their care costs for.

Once a person has reached their equity limit, the Council may no longer fund the top-up, and the person may need to find other ways to pay for it or be prepared for a change in their care package.

7. Interest Rate and Administration Charges

The Care Act is clear that the Council is able to recover any reasonable costs it may incur in setting up a DPA. Administration charges and interest will be added to the total amount deferred as they are accrued, although a person may request to pay these separately if they choose. Full details of the charges and interest will be included in the agreement document and published on the Council's website.

The interest will accrue on a compound basis in line with the recommendations of the Act and will be charged at a rate equalling the gilt yield rate plus the default component of 0.15%.

The interest rate will not exceed the maximum amount specified in the Care Act Regulations on Deferred Payments. This states the national maximum interest rate will be updated every six months on 1st January and 1st July to track the conventional gilts rate specified.

Interest will continue to accrue on the amount deferred even once someone has reached the 'equity limit' and will also continue to accrue after someone has died, up to the point at which the deferred amount is repaid in full. If the amount due is not paid, and the Council is forced to pursue it as a civil debt through the County Court system, we will charge the higher County Court rate of interest under Section 64 of the County Courts Act 1984.

The Council will set its administration charges at a level which does not exceed the actual costs incurred in provision of the Deferred Payment Scheme, as set out in the Care Act Regulations. Relevant costs may include, but are not limited to, the costs incurred by the Council whilst:

- Registering a legal charge with the Land Registry against the title of the property including Land Registry search charges and any identity checks required;
- Undertaking relevant postage, printing and communications;
- Cost of time spent by those providing the service;
- Cost of valuation and re-valuation of the property;
- Cost for removal of charges against property;
- Overheads, including where appropriate (a proportion of) Council overheads such as payroll, audit, management costs and legal services.

8. Ending a Deferred Payment Agreement

There is an expectation that the DPA will remain in existence for the duration of the stay in a care setting. The Council does, however, have the power to end the arrangement.

A DPA will cease if:

- (a) Total assets fall below the means tested level and the person becomes eligible for Council support
- (b) There is no longer the need for care in a care home
- (c) The terms of the contract are breached and all reasonable attempts to resolve the matter have been unsuccessful
- (d) If, under the charging regulations, the property becomes disregarded
- (e) The person reaches the equity limit as defined in the original agreement.

If the Council exercises discretion to end a DPA, at least 30 days written notice will be provided of the termination and details of how care costs will need to be met in the future will be supplied.

Depending on their circumstances, the person may either receive local authority support in meeting the costs of their care, or may be required to meet their costs from their income and assets.

9. Obtaining Security

The Council must have adequate security in place when entering into a DPA. If a property is offered that enables the Council to place a first legal mortgage charge as security, we will accept the property.

There are cases where the Council will consider a second legal charge or restriction as adequate security, but this will be at its discretion.

In cases where an agreement is to be secured with a jointly-owned property, the Council will seek all owners' consent and agreement to a charge being placed on the property.

All owners will need to be signatories to the charge agreement, and the co-owners will need to sign agreement that they will not object to the sale of the property in the future, for the purpose of repaying the debt due to the Council. This is consistent with the procedure to be followed in cases where an individual is the sole owner of a property.

The Council will obtain similar consent to a charge being created against the property from any other person who has a beneficial interest in the property.

The Council has full discretion in individual cases to refuse a DPA if it is not satisfied that adequate security is in place.

10. Drawing up the Deferred Payment Agreement

Where establishing a DPA, the Council will aim to complete the process within 12 weeks whenever possible, once a long stay has been agreed in the care plan.

In order to complete the process, the Council and the person receiving care (or their representative) will sign an agreement that lays out the terms and conditions covering both parties' responsibilities.

The Council will provide a hard copy of the Deferred Payment Agreement to the person or their representative, and they will be provided with reasonable time to read and consider the agreement, including time for the individual to query any clauses and discuss the agreement further with the Council.

The agreement will clearly set out all terms, conditions and information necessary to enable the person to ascertain his or her rights and obligations under the agreement, including:

- (a) The interest rate determination
- (b) Administration costs
- (c) Each party's powers to cancel or refuse the agreement
- (d) The person's responsibilities to maintain the asset's value for the period of the DPA
- (e) The Council's legal power to secure their charge against the property

The Council will follow the model agreement made available by the Department of Health.

The individual or their legally appointed representative must sign to confirm they have received information on options for paying for their care, that they have been given the opportunity to ask questions about the contract and they understand the DPA.

11. The Council's Responsibilities

The Council will, at a minimum, provide the individual and /or their representative with the following information in writing at six monthly intervals:

- The amount of fees deferred,
- Interest and administrative charges accrued to date,
- The total amount due
- The equity remaining in the property.

The Council will use information available on the internet to reassess the value of the property once the amount deferred exceeds 50% of the value of the security and periodically thereafter. We will also adjust the equity limit and review the amount deferred if the value has changed.

When someone is approaching or reaches the point at which they have deferred a substantial proportion of the equity available in their property, the Council will:

- Review the cost of their care with the person,
- Discuss when the person might be eligible for any means tested support,
- Discuss the implications for any top-up they might currently have; and
- Consider jointly whether a deferred payment agreement continues to be the best way for the person to meet these costs.

The Council will not offer any direct services regarding maintenance, letting, insuring or receipt of income from the property offered as security.

12. Decision Making

Individual decisions on Deferred Payment Agreements will be made on behalf of the Council by the Head of Exchequer Services, the Revenues and Benefits Manager or the Principal Revenues and Benefits Manager.

13. Monitoring the Deferred Payment Agreement

The amount being deferred will be reviewed on a regular basis by the Financial Assessment Team, reporting to the Financial Management Service to ensure the deferred amount does not exceed the equity limit with particular regard to the amount deferred as it approaches the equity limit.

14. Terminating the Deferred Payment Agreement

A DPA can be terminated in 3 ways:

- At any time by the individual, or someone acting on their behalf, by repaying the full amount due. This can happen during a person's lifetime or when the agreement is terminated through the DPA holder's death; or
- When the property is sold and the Council is repaid; or
- When the person dies and the amount is repaid to the Council from their estate.

On termination, the full amount due, including care costs, any interest accrued and any administration fees charged, must be paid to the Council.

If a person decides to sell their home, they must notify the Council during the sale process, prior to completion. They will be required to pay the amount due to the Council from the proceeds of the sale, and the local authority will relinquish the charge on their property once payment in full has been received.

A person may decide to repay the amount due to the local authority from another source, or a third party may elect to repay the amount due on behalf of the individual. In either case, the Council must be notified of the person's/the third party's intention in writing and the local authority will relinquish the charge on the property on receipt of the full amount due.

If the deferred payment is terminated due to the person's death, the amount due to the Council must be either paid out of the estate or paid by a third party. A person's family or a third party may wish to settle the debt to the Council by other means of repayment, and the Council will accept an alternative means of payment in this case, provided this payment covers the full amount due to the Council.

The Executor of the will or Administrator of the estate can decide how the amount due is to be paid; either from the person's estate, via the sale of the property, or by other means.

The Council will wait at least two weeks following the person's death before approaching the Executor with a full breakdown of the total amount deferred, but a family member or the Executor can approach the Council to resolve the outstanding amount due prior to this point.

Responsibility for arranging for repayment of the amount due in the case of payment from the estate falls to the Executor of the will. Interest will continue to accrue on the amount owed to the Council after the individual's death and until the amount due to the Council is repaid in full.

If terminated through a person's death, the amount owed to the Council under a deferred payment agreement falls due 90 days after the person has died. After this 90 day period, if the Council concludes active steps to repay the debt are not being taken, for example if the sale is not progressing and the Council has actively sought to resolve the situation, or if the Council concludes the Executor is wilfully obstructing the sale of the property, then the Council may enter into legal proceedings to reclaim the amount due to it.

If an Executor has not been appointed, and the Council concludes that the time taken to appoint an Executor to organise the affairs of the deceased is unreasonable, we may apply to the County Court to appoint an Executor to finalise the estate. Any costs incurred will be recoverable from the estate.

Every attempt will be made to avoid legal action and the Council will contact affected parties before any action is brought.

In whichever circumstance an agreement is terminated, the full amount due to the Council must be repaid to cover all costs accrued under the agreement, and the person, their legally appointed representative and/or the third party where appropriate, will be provided with a full breakdown of how the amount due has been calculated.

Once the amount has been paid, the Council will provide the individual with confirmation that the agreement has been concluded, and confirm (where appropriate) that the charge against the property has been removed.

15. Process for Appeals

The decision on the outcome of the application for a deferred payment can be appealed. Requests for an appeal should be made within 14 days of being notified of the outcome of the application for a DPA. This period can be extended if there are exceptional circumstances, which must be detailed at the time of the appeal.

The appeal will be considered by the Revenues & Benefits Manager and decided within 28 days of the date of all supporting evidence giving grounds of appeal is received.

If the person remains dissatisfied with the outcome of the appeal, the matter will be dealt with under the Council's complaint procedure.

16. Definitions

Care costs – All costs charged to a person by a care provider including any top-ups and core care costs. This includes where appropriate the costs associated with the provision of extra care.

Top ups – The amount of care home fees above Knowsley's contractual rate. A person can choose to pay a "top-up" towards the cost of their accommodation through a third party, or in certain circumstances by the person receiving care.

Personal Expenses Allowance – The weekly amount we must assume care home residents need for personal expenses such as toiletries and hairdressing. The Personal Expenses Allowance (PEA) is an amount set annually by the Department of Health.

Capacity – Ability to understand and make decisions without impairment.

Equity Limit – The maximum amount that can be deferred leaving some equity as a buffer.

First Legal Mortgage Charge – A legal charge secured on the property which takes priority on the property sale or transfer, as there are no other charges when placed.

Second Legal Mortgage Charge – A legal charge secured where a charge, such as a mortgage, already exists but there remains equity available to defer payment.

Disregarded Property – A property value that is excluded from the financial assessment because it is occupied by a spouse, partner, relative aged over 60 or who is incapacitated, a former partner (lone parent) with a child under 18 or a child aged under 18. The value is also excluded if jointly owned and the other owner (s) does not wish to sell their share in the property.