

Ref. No.	
Category (Y/N)	
People	
Place	
Corporate	
In Constitution	

# Financial Assessment and Care Contributions Policy

Policy details	
What is this policy for?	Local authorities have a duty to arrange care and support for adults with eligible needs, and a power to meet non-eligible needs. In both cases the local authority has discretion to choose whether or not to charge. This policy sets out how Dorset Council has decided to exercise that discretion, in accordance with the regulations, the statutory guidance and the overarching principle that people should only be asked to pay what they can afford.
Who does this policy affect?	This policy applies to staff who are involved in charging and financial assessment, and service users, carers and their families.
Keywords	Eligible needs. Fair charging. Fair contributions. Financial assessment. Additional payments. Personal Budgets.
Policy owner	Financial Support Manager
Does this policy relate to any laws?	<a href="#">Care Act 2014</a> Sections 14, 17 and 69-70 Care Act 2014: <a href="#">Care and support statutory guidance</a> <a href="#">Care and Support and Aftercare (Choice of Accommodation) Regulations 2014</a>
Is this policy linked to any other Dorset Council policies?	Direct Payments; Recovery of Debts; Deferred Payments; Transport; and Safeguarding. It is also linked to public information on our website.
Equality Impact Assessment (EqIA)	An Equality Impact Assessment (EqIA) was completed for all financial policies that were written to introduce the Care Act in Dorset. A further EqIA (with an action plan to mitigate adverse impacts) was completed in respect of the 'Making Charges Fairer' review carried out in March 2017.  <b>The EQIA will be updated when the policy is reviewed.</b>
Other Impact Assessments	N/A

Status and Approvals			
Status	Live / Under review	Version	V3
Last review date	September 2020	Next review date	January 2022
Approved by (Director)	Director for Adults and Housing	Date approved	July 2017
Member/ Partnership Board Approval	Executive Advisory Panel / Cabinet	Date approved	July 2017

**Adults and Community Services**

# **Financial Assessment and Care Contributions Policy**

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Scope	<p>The scope of this policy covers:</p> <ul style="list-style-type: none"> <li>Introduction</li> <li>Common Issues for Charging;</li> <li>Capital Limits;</li> <li>Carrying out a Financial Assessment;</li> <li>'Light Touch' Financial Assessments;</li> <li>'Deprivation of Assets' and Debts;</li> <li>Charging for Care and Support in a Care Home;</li> <li>Choice of Accommodation;</li> <li>Charging for Care and Support in other Care Settings;</li> <li>Charging for Support to carers;</li> <li>Requesting Support to Meet Eligible Needs;</li> <li>Pension Reforms;</li> <li>Complaints.</li> </ul>								
Areas of responsibility	This policy applies to staff who are involved in charging and financial assessment, and service users, carers and their families.								
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Glossary of Terms / Definitions	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #f2f2f2;"> <th style="text-align: left; padding: 5px;">Term</th> <th style="text-align: left; padding: 5px;">Definition</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">Dorset, the Council, we, ourselves, us</td> <td style="padding: 5px;">Dorset Council (the 'local authority')</td> </tr> <tr> <td style="padding: 5px;">The Care Act</td> <td style="padding: 5px;">The Care Act is a major reform of the law about care and support. It puts people and their carers in control.</td> </tr> <tr> <td style="padding: 5px;">Policy</td> <td style="padding: 5px;">A policy is a set of principles, rules and guidelines that help the Council make decisions and that let people know what they can expect from us.</td> </tr> </tbody> </table>	Term	Definition	Dorset, the Council, we, ourselves, us	Dorset Council (the 'local authority')	The Care Act	The Care Act is a major reform of the law about care and support. It puts people and their carers in control.	Policy	A policy is a set of principles, rules and guidelines that help the Council make decisions and that let people know what they can expect from us.
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	Wellbeing	The wellbeing principle in the Care Act means that when Dorset arranges care and support for someone it must take into account a wide range of things that contribute to their physical, mental and emotional welfare.
	Personalisation	Personalisation means that every person who receives support, whether it is provided by Dorset, or funded by themselves, will have choice and control over the 'shape' of that support in all care settings.
	Eligible needs	'Eligible' needs are those needs for care and support which Dorset is required to meet by the Care Act. Although the Council has powers to meet any other needs, the determination of 'eligible' needs is important in helping people to access care and support.
	Capacity	The Mental Capacity Act protects people who are unable to make decisions for themselves. This could be for reasons such as a <a href="#">mental health condition</a> , a severe <a href="#">learning disability</a> , a <a href="#">brain injury</a> or a <a href="#">stroke</a> .
	Financial assessment	The Council carries out a financial assessment (or 'means-test') to work out how much, if anything, someone will pay for the social care services they receive. The assessment looks at someone's income and capital, compared to the cost of providing the services.
	Capital	Examples of capital include, but are not limited to, property and savings.
	Income	Examples of income include, but are not limited to, money received from work or benefits, or as returns from capital.
	Resources	Capital and income together make up someone's resources.
	Deprivation of assets	Sometimes people deliberately try to avoid or decrease payment of a contribution towards their care and support, by 'depriving' themselves of capital or income.
	Disregards	A disregard is something that is not taken into account in the financial assessment.
Legislation and legal requirements	This policy relates to sections 14, 17 and 69-70 of the Care Act 2014, the Care and Support (Charging and Assessment of Resources) Regulations 2014, and the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014.	

Equality impact assessment	An Equality Impact Assessment (EQIA) was completed for all financial policies that were written to introduce the Care Act in Dorset. A further EQIA was completed in respect of the 'Making Charges Fairer' review carried out in March 2017.
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## 1. Introduction

- 1.1. The Care Act says that if a local authority arranges care and support to meet an adult's needs, it may charge, except where it is required by the law to arrange the care and support free of charge. The law says that people should only be asked to pay what they can afford. So some people are entitled to financial support based on a means-test and some people are entitled to free care and support. Dorset's policy about charging is based on the following principles:
  - a) we will not charge people more than it is reasonably practicable for them to pay;
  - b) we will be comprehensive, to minimise variation in the way people are assessed and charged;
  - c) we will be clear and open, so people know what they will be charged;
  - d) we will promote wellbeing, and social inclusion, and we will support the vision of personalisation, independence, choice and control;
  - e) we will support carers to look after their own health and wellbeing and to care effectively and safely;
  - f) we will be person-focused, reflecting the different care and caring journeys and the different options available to meet people's needs;
  - g) we will apply the charging rules equally so those with similar needs or services are treated the same and to minimise anomalies between different care settings;
  - h) we will encourage and help those who wish to (a) stay in or take up employment, education or training, or (b) plan for the future costs of meeting their needs to do so;
  - i) we will ensure the policy is affordable for Dorset in the long-term.
- 1.2. Alongside this, we will ensure there is sufficient information and advice available in a suitable format for the person's needs, in accordance with the Equality Act 2010, to ensure that they or their representative are able to understand any contributions they are asked to make. We will also make sure that the person, or their representative, is aware of the availability of independent financial information and advice.

## 2. Common Issues for Charging

- 2.1. Dorset has a duty to arrange care and support for adults with eligible needs, and a power to meet non-eligible needs. In both cases, Dorset has the discretion to choose whether or not to charge. This policy sets out how Dorset Council has decided to exercise that discretion, in accordance with the regulations and the guidance. Staff must follow this policy at all times, but if they believe that to do so would be inappropriate in a particular individual case, they should discuss the matter with their manager.
- 2.2. People are assumed to be able to meet the full cost of any care services provided to them, unless they prove that they have insufficient assets with which to meet the full cost of their care. In order to do this, they are expected to undertake a financial assessment, during which they will be expected to provide evidence of their capital, income and expenditure. Normally this will include requesting verification for a 3 to 6 month period prior to the commencement of care services. However, Dorset can request whatever information is deemed necessary to satisfy itself that people are entitled to receive financial assistance with their care costs, which may mean that verification of financial information over a longer period is requested. If the person chooses not to have a financial assessment, or fails to engage with the financial assessment process, they will be charged the full cost of any services they receive from Dorset Council.
- 2.3. If a financial assessment shows that a person has more capital than the 'upper capital limit', the law says that Dorset must not pay towards the costs of a care home. However, the law about charging for

settings other than care homes is different and Dorset has made a decision about what it is reasonable to charge in accordance with the law.

- 2.4. Dorset has no power to assess couples or civil partners according to their joint resources. Each person must therefore be treated individually. However, we will ask people who are part of a couple (this includes being married, being civil partners or living together as a couple) whether they would like to provide details of their partner's capital and income, as this may be to their benefit: we can make additional allowances in the financial assessment where the spouse/partner has income below minimum income limits, and we can seek to ensure the couple is in receipt of all benefits they may be entitled to. Additional allowances can only be considered where the spouse provides evidence of both their income and their capital assets.
- 2.5. Where a person lacks capacity, we may still assess them as being able to contribute towards the cost of their care. We will put in place policies about how we communicate, how we carry out financial assessments and how we collect any debts that take into consideration the capacity of the person as well as any condition they may have. Sometimes it will be useful to consult with and engage with family members; however, family members may not have the legal right to access the person's bank accounts. Where possible, we will work with someone who has the legal authority to make financial decisions on behalf of a person who lacks capacity. If there is no such person, then an approach to the Court of Protection will be made.
- 2.6. There are occasions when it remains to be determined where the responsibilities lie for funding placements and/or providing care and support. On such occasions, Dorset may offer to assist with funding on a 'without prejudice' basis in order that the person's needs will be met. When the determination is made any charges for care and support owing to Dorset will be backdated to the date the care and support commenced, in accordance with the outcome of the financial assessment.
- 2.7. The council expects that a person making an application to be legally appointed to act for another person with needs for care and support, but who lacks capacity to manage their own finances, will apply to the Department for Work and Pensions to become their Appointee, to enable them to receive their welfare benefit income pending the application to the Office of the Public Guardian/Court of Protection. The welfare benefit income can be used to contribute towards the cost of their care.
- 2.8. The council expects that a person who makes an application to the Office of the Public Guardian/Court of Protection will ensure that the Executor named in the person lacking capacity's Will (if they have a Will) is aware of any debt accruing to Dorset Council which must be addressed by the Estate if the person dies before the applicant has been formally appointed.
- 2.9. The Care Act charging rules apply equally to people in prison. Whilst prisoners have restricted access to paid employment and benefits (and earnings in prison are disregarded for the purposes of a financial assessment), any capital assets, savings and pensions will be given specific consideration as set out in this policy and our policy on 'Prisons, approved premises and bail accommodation'.

2.10. Where a person requires care and support in a custodial setting, we will work with HM Prison Service to establish who can assist with completion of the financial assessment. This may be a family member, or someone appointed to act for the person. If the person deals with their own finances, we will carry out a 'benefit check' to establish their past and current entitlement to benefits and, where appropriate, we will visit the person in custody to finalise the information required to complete the assessment.

### 3. Capital Limits

- 3.1. An amount of money called the 'upper capital limit' sets out at what point a person is entitled to access support from Dorset. This limit is set by the Government.
- 3.2. The upper capital limit is £23,250 for the year 2020-21. Below this level, a person can ask for means-tested support from Dorset. This means that we will carry out a financial assessment of the person's assets and will make a charge based on what the person can afford to pay. Where a person has less than the lower capital limit – which is £14,250 – they will not need to contribute to the cost of their long-term care and support from their capital. [Where a person's capital assets are between £14,250 and £23,250, they will be expected to contribute towards the cost of the care from their income, on a sliding scale of £1 for each £250 or part thereof, between the upper and lower capital limits \(see paragraph 4.6\).](#)
- 3.3. A person with more in capital than the upper capital limit can still ask us to arrange their care and support for them. However, they are not entitled to receive any financial assistance from Dorset, and they pay the full cost of their care and support until their capital falls below the upper capital limit.
- 3.4. Dorset must not charge for certain types of care and support which the law says must be arranged free. These are:
  - a) Intermediate care including reablement (for up to six weeks). We will also follow our policy on 'Preventing, reducing or delaying needs' which explains how we may apply our discretion to offer this free of charge for longer than six weeks where there are clear preventative benefits.
  - b) Community equipment (aids and minor adaptations). Aids must be provided free of charge whether they meet or prevent/delay needs. A minor adaptation is one costing £1,000 or less.
  - c) Care and support provided to people with Creutzfeldt-Jacob Disease.
  - d) After-care services/support provided under section 117 of the Mental Health Act 1983.
  - e) Any service or part of service which the NHS is under a duty to provide. This includes Continuing Health Care and the NHS contribution to Registered Nursing Care.
  - f) Any services which Dorset is under a duty to provide through other legislation may not be charged for under the Care Act.
  - g) Assessment of needs and care planning, which do not constitute 'meeting needs'.

### 4. Carrying out a Financial Assessment

- 4.1. When Dorset makes a charge, it will not charge more than the cost that it incurs in meeting the assessed needs of the person and it will not charge any administration fee relating to arranging the care and support. The only exception to that is if a person with eligible needs and assets above the upper capital limit asks us to arrange their care and support for them. When that happens, we may charge an administration fee to cover our costs, but it will not be higher than the cost to us of arranging the care and support. (But see also paragraphs 11.1 – 11.4)

- 4.2. The council's usual method of completing financial assessments is via a telephone call at a pre-arranged date and time. However, we will often undertake a financial assessment via post or email, where the person has a legally appointed representative (i.e. DWP Appointeeship, Enduring or Lasting Power of Attorney, or a Court-Appointed Deputy).
- 4.3. In exceptional circumstances, we will visit the person to carry out a financial assessment. For example, where an elderly or vulnerable person is managing their own finances and is unable to complete a financial assessment over the phone.
- 4.4. When Dorset is making a charge, we will carry out a financial assessment of what the person can afford to pay. When it is finished, we will give a written record of that assessment to the person. We might provide it alongside a person's care and support plan or separately. It will explain how the assessment has been carried out, what the charge will be, and how often it will be made. If the charges are not going to be always the same, it will explain why in a way that the person can easily understand.
- 4.5. Dorset will regularly reassess a person's ability to meet the cost of any charges to take account of any changes to their resources. This is likely to be annually to reflect annual increases in state benefits, but will also take place if there are other changes in circumstances, or at the request of the person.
- 4.6. At the time of the assessment of care and support needs, staff will refer to our policy about 'Independent Advocacy' and make sure that the person has the mental capacity to take part in the care plan and financial assessment. If the person lacks capacity, staff will find out if the person has any of the following, as they would need to be consulted:
- a) Enduring Power of Attorney (EPA);
  - b) Lasting Power of Attorney (LPA) for Property and Affairs;
  - c) Lasting Power of Attorney (LPA), or Deputyship for Health and Welfare;
  - d) Property and Affairs Deputyship under the Court of Protection; or
  - e) Any other person dealing with that person's affairs (e.g. someone who has been given Appointeeship by the Department for Work and Pensions (DWP) for the purpose of benefits payments).
- 4.7. People who lack capacity to give consent to a financial assessment and who cannot rely on any of the above people with authority to be involved in their affairs may require the appointment of a Property and Affairs Deputy. Family members can apply for this to the Court of Protection or we can apply if there is no family involved in the care of the person and the circumstances of the person meet the criteria set by Dorset Council's Service User's Financial Affairs Team (SUFA). While this takes some weeks, it then enables the person appointed to access information about bank accounts and financial affairs. A person with dementia for example should not be 'forced' to undertake a financial assessment, or to sign documents they are unable to understand, and should not be punished for any incomplete information that is elicited from them. We will work with the EPA, a LPA or a Deputy instead. If a family member is prepared to assist with the financial assessment, this will be accepted in order to complete the financial assessment or where there is no relative or friend available to help the individual, we will work with them to assist them with completing the financial assessment.

- 4.8. A person's capital is taken into account in the financial assessment in accordance with Annex B, unless it is subject to one of the disregards described in the Care Act. The main examples of capital are property and savings. Where the person receiving care and support has capital valued at between the lower capital limit of £14,250 and the upper capital limit of £23,250, we will charge them £1 per week for every £250 in capital between the two amounts. This is called 'tariff income'. For example, if a person has £4,000 above the lower capital limit, they are charged a tariff income  $\text{£}4,000/\text{£}250 = \text{£}16$  per week towards their care.
- 4.9. In assessing what a person can afford to pay, Dorset also takes into account their income. However, to help encourage people to remain in or take up employment, with the benefits this has for a person's well-being, earnings from current employment are disregarded when working out how much they can pay. There are different approaches to how income is treated depending on whether a person is in residential care or receiving care and support in their own home. Further details are set out in Annex C on the Treatment of Income.

## 5. 'Light-touch' Financial Assessments

- 5.1. In some circumstances, we will treat a person as if a financial assessment had been carried out. In order to do this, we must be satisfied on the basis of evidence provided by the person that they can afford, and will continue to be able to afford, any charges due. This is known as a 'light-touch' financial assessment.
- 5.2. The main circumstances in which we may consider carrying out a light-touch financial assessment are:
- a) Where a person has significant financial resources and does not wish to undergo a full financial assessment for personal reasons but wishes nevertheless to have our support in arranging their care. In these situations, we may accept other evidence in lieu of carrying out the financial assessment and consider the person to have financial resources above the upper limit;
  - b) Where we charge a small or nominal amount for a particular service (for example, for subsidised services) which a person is clearly able to meet and would clearly have the relevant minimum income left, and carrying out a financial assessment would be disproportionate;
  - c) When an individual is receiving welfare benefits, such as Jobseekers' allowance or Universal Credit, which demonstrate that they would not be able to contribute towards their care and support costs.
  - d) We may be satisfied that a person is able to afford any charges due if there is evidence the person has:
    - e) property clearly worth more than the upper capital limit, where they are the sole owner, or it is clear what their share is;
    - f) savings clearly worth more than the upper capital limit; or,
    - g) sufficient income left following the charge due.
- 5.3. Where Dorset is going to meet the person's needs and we propose to undertake a light-touch financial assessment and, on that basis, to charge the person, we will still make sure that the person concerned is willing to pay all the charges due. We will not charge people more than it is reasonably

practicable for them to pay. Where a person does not agree to the charges that they have been assessed as being able to afford to pay, a full financial assessment may be needed.

- 5.4. When deciding whether or not to undertake a light-touch financial assessment we will consider both the level of charge we propose to make as well as the evidence or other certification the person is able to provide. We will inform the person when a light-touch assessment has taken place and make it clear that they have the right to request a full financial assessment should they so wish, as well as making sure they have access to sufficient information and advice, including the option of independent financial information and advice.

## **6. 'Deprivation of Assets' and Debts**

- 6.1. People with care and support needs are free to spend their income and assets as they see fit including making gifts to friends and family. This is important for promoting their wellbeing and enabling them to live fulfilling independent lives. However, it is also important that people pay their fair contribution towards their care and support costs.
- 6.2. There are some cases where it is reasonable to predict that care costs will be incurred, and a person has chosen to 'deprive' themselves of either capital or income. Where we believe this may be the case, we will follow our policy called 'Deprivation of Assets'. In such cases, we may either charge the person as if they still possessed the asset or, if the asset has been transferred to someone else, seek to recover the lost income by charging that person. However, we cannot recover more than the person gained from the transfer.
- 6.3. Where we decide that a person has deprived themselves of assets with the intention of avoiding or reducing care and support charges, the person has a route to appeal against that decision via the council's statutory Complaints Procedure. The Procedure provides for a review of the decision by a senior manager within the Strategic Finance Service. If the person, or their appointed representative, is not satisfied with the outcome of the review, we will advise the person to approach the Local Government and Social Care Ombudsman and request an independent review. Further details can be found in Dorset Council's Deprivation of Assets policy.
- 6.4. Where a person has accrued a debt to us following a decision that they have deprived themselves of assets with the intention of avoiding or reducing care and support charges, we may use our legal powers to recover that debt. In deciding how to proceed, we will consider the circumstances of the case before deciding a course of action. For example, we will consider whether this was a deliberate avoidance of payment or due to circumstances beyond the person's control.
- 6.5. Ultimately, we may institute court proceedings to recover the debt. However, we will only use this power after other reasonable alternatives for recovering the debt have been exhausted. Further details on how to pursue debts are set out in our 'Debt Management' policy.

## **7. Charging for Care and Support in a Care Home**

- 7.1. This section must be read in conjunction with Annex B on the Treatment of Capital and Annex C on the Treatment of Income.
- 7.2. Where we have decided to charge and have undertaken the financial assessment, we will support the person to identify options of how best to pay any charge. This may include offering the person a deferred payment agreement in accordance with our 'Deferred Payments' policy.
- 7.3. Where we are meeting needs by arranging a care home, we will be responsible for the contractual arrangements with the provider. Even where a contribution is being paid by the person, or a 'top-up' is being paid, we will be responsible for making the payment to the provider of the full amount. Any contributions or top-ups will be invoiced to the individual by Dorset Council.
- 7.4. Where a person is a short-term or temporary resident in a care home, we will charge based on our charging policies as applied in other settings, or in their own home.
- 7.5. People in a care home as long-term residents will contribute most of their income, excluding their earnings, towards the cost of their care and support. However, we will leave the person with a specified amount of their own income so that they have money to spend on personal items such as clothes and other items that are not part of their care. This is known as the Personal Expenses Allowance (PEA) and it is set by the Government. It is in addition to any income the person receives from earnings. Dorset has discretion to apply a higher income allowance in individual cases, for example where the person needs to contribute towards the cost of maintaining their former home, which has been 'disregarded' in the financial assessment.

## **8. Choice of Accommodation**

- 8.1. Where the care planning process shows that a person's needs are best met in a care home we will provide for the person's preferred choice of accommodation, subject to certain conditions. This also applies to 'shared lives', supported living and extra care housing settings. We will determine the right type of accommodation with the adult as part of the care planning process, therefore this choice only applies between providers of the same type.
- 8.2. We will ensure that the person has genuine choice of accommodation and offer at least one option that is affordable and available within a person's personal budget. However, a person will also be able to choose alternative options, including a more expensive setting, where a third party (or in certain circumstances the resident) is willing and able to pay the additional cost ('top-up'). However, an

additional payment will always be a matter of choice for the person. When a third-party top-up is chosen, we will carry out a financial assessment of the third party to confirm that they have the means to pay.

8.3. Where we complete a third-party financial assessment and conclude that the proposed payment is not affordable for a two-year period, we will ask the relevant Locality Team to consider an alternative placement for the person. We will also ask the Locality Team to consider an alternative placement when a third-party top-up is in place, but the third-party says that they can no longer afford the payment.

#### **8.4. Charging for Care and Support in other Care Settings, Including a Person's Own Home**

8.5. These charging arrangements cover any setting for meeting care and support needs outside of a care home, for example, care and support received in a person's own home, in extra care housing, supported living accommodation or 'shared lives' arrangements. This section should be read in conjunction with Annex B on the 'Treatment of Capital' and Annex C on the 'Treatment of Income'.

8.6. Because a person who receives care and support outside a care home will need to pay their daily living costs such as rent, food and utilities, the charging rules ensure they have enough money to meet these costs. After charging, a person will be left with the Minimum Income Guarantee (MIG). The MIG rates are set by the Government annually (usually in April) and set out in a Circular to local authorities. The various rates reflect different people's circumstances and entitlements to welfare benefits. Where a person receives benefits to meet their disability needs that do not meet the eligibility criteria for care and support from Dorset, the charging arrangements will ensure that they keep enough money to cover the cost of meeting these disability-related costs.

8.7. The financial assessment of a person's capital will exclude the value of the property which they continue to occupy as their main or only home. The council will usually consult people with care and support needs when making important decisions about the exercise of discretion in relation to charging. We will also consider how to protect people's income.

8.8. Where a person owns property or land that is additional to the property they continue to occupy as their main or only home, we will include the value of the additional property or land in the financial assessment as capital. If a person's capital exceeds the upper capital limit, we will expect them to meet the full cost of their care.

8.9. The council operates a weekly charging period: Sunday to Saturday. We will charge all of the costs incurred in a week to the person, subject to their assessed ability to pay for that week. Each week will be taken in isolation to the weeks preceding and following, and a full week's ability to pay will be applied to each week, irrespective of the number of days on which care and support have been provided.

- 8.10. The council will calculate an amount below which it is uneconomic to raise a weekly invoice and below which there will therefore be no charge to the person for the care received in that week. The weekly amount from April 2020 is £3.00. We call this the 'minimum invoice allowance'.

## **9. Charging for Support to Carers**

- 9.1. Where a carer has eligible support needs of their own, Dorset has a duty, or in some cases a power, to arrange support to meet their needs. When we meet the needs of a carer by providing a service directly to them, for example a relaxation class or driving lessons, we have the power to charge the carer. However, we will not charge a carer for care and support provided directly to the person they care for under any circumstances.
- 9.2. The law does not say that we must charge a carer for the support that they receive, and in many cases, it would be a false economy to do so. In deciding when to charge, and how much, we have taken into account that we value carers within our local communities as 'partners in care', and that we recognise the significant contribution that carers make. Carers help to maintain the health and wellbeing of the person they care for, support their independence and enable them to stay in their own homes for longer. In many cases carers voluntarily meet eligible needs that we would otherwise be required to meet.
- 9.3. It may be that there are circumstances where a nominal charge may be appropriate, for example to provide for a service which is subsidised, but for which the carer may still pay a small charge, such as a gym class. We will make sure that charges do not negatively impact on a carer's ability to look after their own health and wellbeing and to care effectively and safely. Where we decide to charge carers, we will do so in accordance with the non-residential charging rules. We will usually carry out a financial assessment to ensure that any charges are affordable, except where the carer agrees with us that a full financial assessment would be disproportionate in relation to the charges. In such cases we will carry out 'light touch' financial assessments as described at Section 5.
- 9.4. A carer's assessment may identify that the carer's needs for support could be met by arranging time away from the person they care for, for instance so that they can stay on top of other aspects of their lives, and that in order to achieve this, services need to be provided to support the cared-for person in their absence. Such services would be provided directly to the cared-for person, even though they may meet the needs of both parties and may have been identified through the carer's assessment. The Council may not charge the carer for these services, and any charges should be based on our policy on charging for non-residential care and support.

## **10. Requesting Support to Meet Eligible Needs.**

- 10.1. People with eligible needs and financial assets above the upper capital limit may ask us to meet their needs. This could be for a variety of reasons such as the person finding the system too difficult to navigate or wishing to take advantage of our knowledge of the local market for care and support services. Where the person asks us to meet their eligible needs, and it is anticipated that their needs

will be met by a care home placement, then we may choose to meet their needs, but we are not required to do so. In other cases, where the needs are to be met by care and support of some other type, we will meet those eligible needs.

- 10.2. We will make people aware that they have the right to ask us to meet their needs, in certain circumstances even when they have resources above the financial limits and would not be entitled to financial support with any charges. We will be clear that this right does not extend to needs met by a care home placement, although we may choose to apply the same approach. We will offer support to people in meeting their own needs, including providing information and advice on different options, and we may offer to arrange contracts with providers.
- 10.3. Where the person's resources are above the financial limit, the person's entitlement to our support in meeting their needs may be dependent on the request having been made. Therefore, it is important that the person, and any carer, advocate or other person they wish to involve, are aware of this ability. We will make clear to the person that they may be liable to pay an arrangement fee in addition to the costs of meeting their needs, to cover the costs of putting in place the care and support required.
- 10.4. The arrangement fees we charge will cover only the costs that we actually incur in arranging care. The fees will take account of the cost of negotiating and/or managing the contract with a provider and cover any administration costs incurred. Where we choose to meet the needs of a person with resources above the financial limit who requires a care home placement, we will not charge an arrangement fee. This is because we would be supporting people under our power (rather than our duty) to meet needs and our ability to charge the arrangement fee applies only to circumstances when we are required to meet needs.
- 10.5. We will not charge people for a financial assessment, a needs assessment or the preparation of a care and support plan. We may charge a flat rate fee for arranging care. However, any flat rate will be set at a level which does not exceed the costs that we actually incur.
- 10.6. The information we provide to the person following a financial assessment will include information on their right to request us to meet their needs – and how they would be charged – and the advice and support that is available to help people make arrangements to meet their own needs, whatever type of support they require.
- 10.7. We are under a duty to meet a person's eligible needs when requested to do so and their needs are to be met by care and support other than in a care home. However, where the person has resources above the financial limits, we may charge the person for the full cost of their care and support. In such circumstances, the person remains responsible for paying for the cost of their care and support, but we take on the responsibility for meeting those needs. This means that we may provide or arrange care and support, or make a direct payment, or some combination of these.

- 10.8. We will assure ourselves that, whilst the person remains responsible for paying for their own care, they have enough assets for the arrangements that we put in place to remain both affordable and sustainable. We will also take steps to avoid disputes and additional liabilities by securing a person's agreement in writing to pay the costs that they are responsible for in meeting their needs, including payments to providers. We will make similar arrangements with any third parties that agree to contribute towards these costs.

## **11. Pension reforms**

- 11.1. Reforms to defined contribution pensions came into effect from April 2015. The aim of the reforms is to provide people with much greater flexibility in how they fund later life. The Government expects there to be a range of new products that people will use to manage and access money from their pensions as and when they need it. Where possible, these will be treated similarly to existing drawdown products for charging purposes.
- 11.2. For the purposes of charging, we will follow the guidance set out on the treatment of income and capital in Annexes B and C and treat a person's assets accordingly. Where a person has chosen to withdraw funds from their pension pot and manage it directly, for example combining it with other assets rather than through a pension product, this may be treated as capital under the rules set out in Annex B.

## **12. Complaints**

- 12.1. A person may wish to make a complaint about any aspect of the financial assessment or how we have chosen to charge. We will make clear how our complaints procedure can be used and provide information and advice on how to make a complaint.
- 12.2. Complaints about the level of charge levied by Dorset are subject to the Care and Support complaints procedure as set out in The Local Authority Social Services and NHS Complaints Regulations 2009.

# Capital

This annex covers the treatment of capital when conducting a financial assessment in all circumstances.

## 13. Treatment of Capital

- 13.1. This section of the guidance applies where Dorset has chosen to charge a person for the services it is arranging and therefore must undertake a financial assessment. When doing so, we must assess the income and capital of the person. This Annex covers the treatment of capital and should be read in conjunction with Annex C on the 'Treatment of Income'.
- 13.2. The financial assessment will look across all of a person's assets – both capital and income – decide which is capital and which is income, and assess those assets according to the regulations and guidance. Therefore, staff must also refer to Annex C on the 'Treatment of Income' before conducting a financial assessment. The treatment of income will vary depending on the type of setting a person is receiving care in. The treatment of capital is the same for all settings, except where described.
- 13.3. In assessing what a person can afford to contribute we will apply the upper and lower capital limits. The upper capital limit is currently £23,250 and the lower capital limit is £14,250.
- 13.4. A person with assets above the upper capital limit is deemed to be able to afford the full cost of their care. 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. Any capital below the lower capital limit will be disregarded. Further details are set out in later paragraphs 24 to 28.

## 14. What is capital?

- 14.1. Capital can mean many different things. Staff may need to take advice and consider the individual asset on its merits. In general, it refers to financial resources available for use and tends to be from sources that are considered more durable than money in the sense that they can generate a return.
- 14.2. The following list gives examples of capital. This list is intended as a guide and is not exhaustive.
  - a) Buildings
  - b) Land
  - c) National Savings Certificates and Ulster Savings Certificates
  - d) Premium Bonds
  - e) Stocks and shares
  - f) Capital held by the Court of Protection or a Deputy appointed by that Court
  - g) Any savings held in:

- (i) Building society accounts.
  - (ii) Bank current accounts, deposit accounts or special investment accounts. This includes savings held in the National Savings Bank, Girobank and Trustee Savings Bank
  - (iii) SAYE schemes
  - (iv) Unit Trusts
  - (v) Co-operatives share accounts
  - (vi) Cash
- h) Trust funds

14.3. It is important that people are not charged twice on the same resources. Therefore, resources should be treated as either income or capital but not both. If a person has saved money from their income, then those savings should normally be treated as capital. However, they should not be assessed as both income and capital in the same period. Therefore, in the period when they are received as income the resource should be disregarded as capital.

## 15. Cases where it is not clear whether a payment is capital or income

15.1. In assessing a person's assets, it may not be immediately clear whether a resource is capital or income, particularly where a person is due to receive planned payments. In order to guide our decision, in general, a planned payment of capital is one which is:

- a) Not in respect of a specified period; and
- b) Not intended to form part of a series of payments.

15.2. We will also have regard to the guidance on capital treated as income at paragraph

## 16. Who owns the capital?

16.1. A capital asset is normally defined as belonging to the person in whose name it is held i.e. the legal owner. However, in some cases this may be disputed and/or beneficial ownership argued. Beneficial ownership is where someone enjoys the benefits of ownership, even though the title of the asset is held by someone else or where they directly or indirectly have the power to vote or influence a transaction regarding a particular asset. In most cases the person will be both the legal and beneficial owner.

16.2. 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 obtain evidence of the arrangement, the origin of the capital and intentions for its future use and return to its rightful owner.

### **Example A - capital dispute:**

Arlene has £14,000 in a building society account in her own name. She says that £3,000 is set aside for her granddaughter's education. Unfortunately, there is no deed of trust or other legal arrangement which would prevent Arlene using the whole amount herself. She is therefore treated as the beneficial owner of the whole amount.

**Example B - capital dispute:**

Lisa has £10,000 in a bank account in her own name and shares valued at £6,500. She provides evidence to show that the shares were purchased on behalf of her son who is abroad and that they will be transferred to her son when he returns to the UK. Although Lisa is the legal owner, she is holding the shares in trust for her son who is the beneficial owner. Only the £10,000 is therefore treated as Lisa's capital.

- 16.3. Where a person has joint beneficial ownership of capital the total value should be divided equally between the joint owners and the person should be treated as owning an equal share. Once the person is in sole possession of their actual share, they can be treated as owning that actual amount.
- 16.4. In some cases, a person may be the legal owner of a property but not the beneficial owner of a property. In other words, they have no rights to the proceeds of any sale. In such circumstances the property must not be taken into account.

## 17. Calculating the value of Capital

- 17.1. We will need to work out what value a capital asset has in order to take account of it in the financial assessment. Other than National Savings Certificates, valuation must 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.
- 17.2. 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.
- 17.3. If the person and the assessing officer both agree that after deducting any relevant amounts set out in paragraph 14 that the total value of the person's capital is more than the upper capital limit of £23,250 or less than the lower capital limit of £14,250 then it is not necessary to obtain a precise valuation. If there are any disputes, a precise valuation should be obtained. However, we will bear in mind how close someone is to the upper capital limit when deciding whether to obtain a precise valuation.
- 17.4. Where a precise valuation is required, a professional valuer should be asked to provide a current market valuation. Once the asset is sold, the capital value to be taken into account is the actual amount realised from the sale, minus any actual expenses of the sale.

- 17.5. Where the value of a property is disputed, we will aim to resolve this as quickly as possible. We will try 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. This will enable us to work out what charges a person should pay and enable the person, or their representative, to consider whether to seek a deferred payment agreement.
- 17.6. The value of National Savings Certificates (and Ulster Savings Certificates) is assessed in the same way as other capital assets. To enable an accurate value for the savings certificates the person must provide details of the:
- a) certificate issue number(s);
  - b) purchase price;
  - c) date of purchase.

## **18. Assets held abroad**

- 18.1. Where capital is held abroad and all of it can be transferred to the UK, its value in the other country should be obtained and taken into account less any appropriate deductions under paragraph 14. Where capital is held jointly, it should be treated the same as if it were held jointly within the UK. The detail will depend on the conditions for transfer to the UK.
- 18.2. 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. Examples of acceptable evidence could include documentation from a bank, Government official or solicitor in either this country or the country where it is held.
- 18.3. Where some restriction is in place, we will seek evidence showing what the asset is, what its value is and to understand the nature and terms of the restriction so that should this change, the amount can be taken into account. We will also take into account the value that a willing buyer would pay in the UK for those assets, but be aware that it may be less than the market or surrender value in the foreign country.

## **19. Capital not immediately realisable**

- 19.1. Capital which is not immediately realisable due to notice periods, for example National Savings Bank investment accounts or premium bonds, will be taken into account in the normal way at its face value. This will be the value at the time of the financial assessment. It may need to be confirmed and adjusted when the capital is realised. If the person chooses not to release the capital, the value at the time of assessment should be used and it should be reassessed at intervals in the normal way.

## 20. Upper and lower capital limits

- 20.1. The capital limits set out at what point a person is able to access our support and how much support they receive. The capital limits as at April 2020 are set by the Department of Health and Social Care as follows;
- (i) Upper capital limit: £23,250;
  - (ii) Lower capital limit: £14,250.
- 20.2. If a person clearly has capital in excess of the upper capital limit, there is no need to make a wider assessment. If a person is near the upper capital limit, we will be mindful of the need to plan ahead for when assets have been spent down and the person may therefore fall below the upper capital limit. This will help reduce burdens on both Dorset and the person from needing to repeat the financial assessment within a short timeframe.
- 20.3. The capital which a person has below the lower capital limit must be disregarded in the calculation of tariff income (see below).
- 20.4. 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'.

## 21. Tariff income

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

### **Example C - Tariff income:**

Nora has capital of £18,100. This is £3,850 above the lower capital limit of £14,250. Dividing the £3,850 by £250 produces a figure of £15.40. When calculating tariff income, the amount is always rounded up. This therefore gives a tariff income of £16 per week.

## 22. Notional capital

- 22.1. In some circumstances a person may be treated as possessing a capital asset even where they do not actually possess it. This is called 'notional capital'.
- 22.2. Notional capital may be capital which:
- a) Would be available to the person if they applied for it;
  - b) Is paid to a third party in respect of the person;

c) The person has deprived themselves of in order to reduce the amount of charge they have to pay for their care.

22.3. A person's capital should therefore be the total of both actual and notional capital. However, if a person has actual capital above the upper capital limit, it may not be necessary to consider notional capital.

22.4. 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.

**Example D - diminishing notional capital:**

Hayley is receiving care and support in a care home. She is assessed as having notional capital of £20,000 plus actual capital of £6,000. This means her assets are above the upper capital limit and she needs to pay the full cost of her care and support at £400 per week.

The notional capital should therefore be reduced by £300 per week – the difference between the sum Hayley is paying (£400) and would have paid without the notional capital (£100).

## **23. Capital disregarded**

23.1. The following capital assets will be disregarded:

- a) Property in specified circumstances (see paragraph 34);
- 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.

**Example E - disregarded capital:**

Mr T is a former Far East prisoner of war and receives a £10,000 ex-gratia payment as a result of his imprisonment. He now requires care and support and has a total of £25,000 in capital. When calculating how much capital should be taken into account, we will disregard the first £10,000 – the value of the ex-gratia payment. The normal capital rules are then applied to the remaining £15,000.

In this case, the first £14,250 would be completely disregarded in addition to the £10,000. Tariff income would therefore only be applied to the remaining £750 giving a charge of £3.

- 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;
- bb) 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.

## 24. Property disregards

24.1. In the following 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 residential or nursing care is temporary and they:
  - (i) Intend to return to that property and that property is still available to them; or
  - (ii) 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 below):
  - (i) The person's partner, former partner or civil partner, except where they are estranged;
  - (ii) A lone parent who is the person's estranged or divorced partner;
  - (iii) 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.
- (iv) Where the property is disregarded in the financial assessment because a person described at (1)-(3) above resides in it, it is the responsibility of the person, or their appointed representative, to inform us as soon as that arrangement changes. If we subsequently find that we were not informed of such a change at the time, we will amend the financial assessment and backdate it to take into account the change at the time that it happened.

24.2. 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.

**Example F - emotional attachment to a property:**

Bea is 62 years' old and lives with her family in Kent. Her father Patrick is a widower who has been living in the family home in Dorchester that she and her sister grew up in and where she occasionally stays to help her father. Patrick has been assessed as having eligible care and support needs that are best met by moving into a care home.

Although Bea is over the age of 60, the family home is not her main or only home and the property is therefore not disregarded.

- 24.3. 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.
- 24.4. 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.
- 24.5. 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, and we will undertake a factual inquiry weighing up all relevant factors in order to reach a decision. An emotional attachment to the property is not enough for the disregard to apply.
- 24.6. Circumstances where it may be unclear might include where a qualifying relative has to live elsewhere for the purposes of their employment, for example a member of the armed services or the diplomatic service. Whilst they live elsewhere in order to undertake their employment, the property remains their main or only home. Another example may be someone serving a prison sentence. It would not be reasonable to regard the prison as the person's main or only home and they may well intend to return to the property in question at the end of their sentence. In such circumstances we

**Example G - occupying a property when not physically present:**

Matt is 60 years old and has been living overseas for the past 10 years due to his job in the diplomatic service. When he is in England, he lives at the family home where he grew up. His father Ken has been assessed as having eligible care and support needs that are best met by moving into a care home.

In Ken's financial assessment, the value of his property is disregarded as his son Matt is a qualifying relative that occupies the property as his main or only home. Although Matt is not physically present at the property at the point Ken moves into the care home, his alternative accommodation is only as a result of his employment and the family home is his main home.

may wish to consider the qualifying relative's length of sentence and the likelihood of them returning to the property. Essentially the qualifying relative is occupying the property but is not physically present.

- 24.7. We will need to take account of the individual circumstances of each case; however, it may be helpful to consider the following factors in making a decision:
- a) Does the relative currently occupy another property?
  - b) If the relative has somewhere else to live do they own or rent the property (i.e. how secure/permanent is it?)
  - c) If the relative is not physically present is there evidence of a firm intention to return to or live in the property?
  - d) Where does the relative pay council tax?
  - e) Where is the relative registered to vote?
  - f) Where is the relative registered with a doctor?
  - g) Are the relative's belongings located in the property?
  - h) Is there evidence that the relative has a physical connection with the property?
- 24.8. 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.

**Example H- discretion to apply a property disregard:**

Jayne has the early signs of dementia but wishes to continue living in her own home. She is not assessed as having eligible needs but would benefit from some occasional support. Her best friend Penny gives up her own home to move in with Jayne. At this point, there is no suggestion that Jayne may need care in a care home.

After 5 years Jayne's dementia has reached the point where she needs a far greater level of care and support and following an assessment it is agreed her needs would best be met in a care home. On moving into the care home, we use our discretion to apply the property disregard as this has now become Penny's main or only home.

## **25. Discretionary disregard**

- 25.1. We may also use our discretion to apply the disregard in other circumstances. However, we will balance this discretion with ensuring a person's assets are not maintained at public expense. An example where it may be appropriate to apply the disregard is where it is the sole residence of someone who has given up their own home in order to care for the person who is now in a care home or is perhaps the elderly companion of the person.
- 25.2. A property may be disregarded when a qualifying relative moves into the property after the resident enters the care home. Where this happens, we will need to consider all the relevant factors in deciding whether the property must be disregarded. Factors such as the timing and purpose of the move 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.

- 25.3. We will consider if the principal reason for the move is that it is necessary to ensure the relative has somewhere to live as their main or only home. A disregard would not be appropriate, for example where a person moves into a property solely to protect the family inheritance. We need to ensure that people are not needlessly maintained at public expense. We will take account of the individual circumstances of each case; considering the factors listed above for the mandatory disregard plus the following additional factors in making a decision:
- a) Was the relative occupying another property as their main or only home at the time of the previous financial assessment?
  - b) Could the relative have reasonably expected to have the property taken into account at the time they moved into the property?
  - c) Would failure to disregard the property result in the eligible relative becoming homeless?
  - d) Would failure to disregard the property negatively impact on the eligible relative's own health and wellbeing?

**Example I - discretion to apply a property disregard where the qualifying person moves into the property after the resident entered the care home:**

Fred's family home is unoccupied because his father has died, and his mother is in a care home and Fred and his siblings have their own homes. The property is subject to a deferred payment agreement. Fred has a serious accident and becomes incapacitated. As a result, he is unable to work or pay for his existing home. He has nowhere else to live so he moves into the family home which becomes his only home. In the circumstances, we exercise our discretion to disregard the property.

**Example J - discretion to apply a property disregard:**

Hilda is 63 and lives in a rented flat. Her brother, Stephen, has recently died and his wife, Charlotte, has move into a care home. The property is subject to a deferred payment agreement. Hilda suddenly loses her job and is unable to afford to live in her rented flat. Hilda moves into Stephen and Charlotte's house and this becomes her only home. In the circumstances, we exercise our discretion to disregard the property.

## **26. 12-week property disregard**

- 26.1. An important 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 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 therefore 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 residential care as a permanent resident, [whether or not the council is assisting with the cost of the placement](#);
  - b) When a property disregard other than the 12-week property disregard unexpectedly ends, i.e. Because the qualifying relative has died or moved into a care home.

- 26.2. In addition, we have 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. An example is given below.

**Example K - The end of a property disregard:**

Win and Ern have been married for 60 years and bought a home together. 18 months ago, Win moved into residential care as a result of dementia. During her financial assessment, the value of the home she shared with Ern was disregarded as Ern is her husband, was over 60, and still lived in the property.

Ern has been in good health and there is no reason to anticipate a sudden change in circumstance. Unfortunately, Ern suffers a heart attack and passes away, leaving the property to Win. There is no longer an eligible person living in the property, meaning its value can now be taken into account in what Win can afford to contribute to the cost of her care. Given this was unplanned for, Win and her family need time to consider what the best option might be. The 12-week disregard would therefore be applied.

**Example L - Unexpected change in financial circumstances:**

Harry is a widower who owns his own home. 10 months ago, he moved into residential care as a self-funder. He has been meeting the bulk of his costs from shares he received as part of his redundancy package. Due to an unexpected event, the value of his shares is suddenly reduced by half, meaning he is unable to meet the cost of his care.

Although already in residential care and likely to remain responsible for paying for this care, Harry approaches us for assistance and to seek a deferred payment agreement. During the financial assessment we agree that the circumstances could not have been foreseen and use our discretion to disregard the value of his property for the first 12 weeks. This provides Harry with the space he needs to make arrangements for the deferred payment agreement to be put in place and enable him to continue to meet the cost of his care.

## **27. 26-week disregard**

- 27.1. The following capital assets must be disregarded for at least 26 weeks in a financial assessment. However, we may choose to apply the disregard for longer where we consider this appropriate. For example, where a person is taking legal steps to occupy premises as their home, but the legal processes take more than 26 weeks to complete.
- a) Assets of any business owned or part-owned by the person in which they were a self-employed worker and have stopped work due to some disease or disablement but intend to take up work again when they are fit to do so. Where the person is in residential care, this should 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 should apply from the date the funds were received.
  - c) Premises which the person intends to occupy as their home where they have started legal proceedings to obtain possession. This should be from the date legal advice was first sought or proceedings first commenced.
  - d) Premises which the person intends to occupy as their home where essential repairs or alterations are required. This should apply from the date the person 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 should apply from the date of completion of the sale.
- f) Money deposited with a Housing Association which is to be used by the person to purchase another home. This should apply from the date on which the money was deposited.
- g) Grant made under a Housing Act which is to be used by the person to purchase a home or pay for repairs to make the home habitable. This should apply from the date the grant is received.

## 28. 52-week disregard

28.1. The following payments of capital must 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) Special payments to pre-1973 war widows.

As the above payments will be paid for specific periods, they should 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, should 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

### **Example M - A disregard for 52 weeks:**

During his financial assessment it is identified that Colin is eligible for Pension Credit but is not currently claiming the support. He is therefore assessed as being able to pay £75 per week towards the cost of his care.

Colin tells us that he will apply for Pension Credit. It is explained to him that the level of what he can afford to contribute will be reassessed once he started receiving the additional support. If the payments are backdated, his contributions to the cost of his care will also be backdated and he may therefore need to make an additional payment to meet any arrears. Colin therefore chooses to pay £90 per week.

After six weeks, arrears of Pension Credit at £35 per week (£210) are received. What Colin can afford to contribute is reassessed and he is now asked to pay £110 per week. As Colin has been paying £15 a week more than required, he only owes £120 rather than the full £210 of Pension Credit arrears. The remaining £90 of arrears payments should therefore be treated as capital and disregarded.

## **29. 2-year disregard**

29.1. We will disregard payments made under a trust established out of funds by the Secretary of State for Health in respect of CJD to:

- a) The victim's parent (or guardian) 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.

## **30. Other disregards**

30.1. In some cases a person's assets may be tied up in a business that they own or part-own. Where a person is taking steps to realise their share of the assets, these should be disregarded during the process. However, the person should be required to show that it is their clear intention to realise the asset as soon as practicable.

30.2. 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.

30.3. 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 we consider 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.

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

## **31. Treatment of investment bonds**

31.1. The treatment of investment bonds is currently complex. This is in part because of the differing products that are on offer. As such, we may wish to seek advice from our legal service.

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

## **32. Capital treated as income**

32.1. The following capital payments should be treated as income. We will therefore consider Annex C on the 'Treatment of Income' before conducting an assessment:

- 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 we 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.

## **33. Earnings**

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

## **34. Income treated as capital**

34.1. 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; any holiday pay payable by an employer more than 4 weeks after the termination or interruption of employment;
- 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 bounty payment paid at intervals of at least one year from employment as:
  - (i) A part time fireman
  - (ii) An auxiliary coastguard
  - (iii) A part time lifeboat man
  - (iv) A member of the territorial or reserve forces.
- e) 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;
- 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 residential accommodation;
- g) Any payments of arrears of contributions by us or another local authority to a custodian towards the cost of accommodation and maintenance of a child.

## **35. Capital available on application**

35.1. In some instances, a person may need to apply for access to capital assets but has not yet done so. In such circumstances this capital should 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.

35.2. 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 should be treated as notional capital.

35.3. 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.

35.4. April 2015 saw 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 could be available if the person had taken out an annuity.

# 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 detailed guidance on how to apply to the Care and Support (Assessment of Resources) Regulations 2014, in terms of how to treat different types of income when calculating what a person can afford to contribute to the cost of their eligible care needs.*

## **36. Treatment of Income**

- 36.1. This section of the guidance only applies where we have chosen to charge a person for the services we are arranging and therefore we must undertake a financial assessment. When doing so, we must assess the income and capital of the person.
- 36.2. There are differences in how income is treated in a care home and in all other settings. Charging a person in a care home is provided for in a consistent national framework, set out in this policy. When charging a person in all other settings, we have more discretion.
- 36.3. This annex covers the treatment of income and should be read in conjunction with Annex B on the treatment of capital. The detail of the sources of income which we must disregard are set out in the regulations which accompany this guidance.

## **37. Common issues for all care settings**

- 37.1. Only the income of the cared-for person can be taken into account in the financial assessment of what they can afford to pay for their care and support. Where a cared-for 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.
- 37.2. Income is net of any tax or National Insurance contributions.
- 37.3. 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.
- 37.4. In all cases, irrespective of setting, employed and self-employed earnings are fully disregarded.

37.5. 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.

37.6. Earnings in relation to an employed earner do not include:

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

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

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

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

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

## **38. Benefits**

38.1. Alongside the financial assessment, we aim to offer every person free advice to help them claim all of the benefits they are entitled to. We will take most of the benefits that people receive into account. The benefits we will disregard are listed below. We will ensure that in addition to the minimum guaranteed income, or personal expenses allowance, people retain enough of their benefits to pay for things that meet needs that are not being met by Dorset.

38.2. We will disregard any income from the following sources:

- a) Direct payments;
- b) Guaranteed Income Payments made to veterans under the Armed Forces Compensation Scheme;
- c) The mobility component of Disability Living Allowance and the mobility component of Personal Independence Payments.

38.3. 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) Carer's 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 Payments
- l) State Pension
- m) Universal Credit

38.4. Working Tax Credit will be taken into account when considering what a person can afford to pay from their income towards the cost of their care in a care home. However, it will be disregarded in the calculation of income for care and support arranged other than in a care home.

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

## **39. Annuity and pension income**

39.1. An annuity is a 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 must be taken fully into account except where it is:

- a) Purchased with a loan secured on the person's main or only home; or
  - b) A gallantry award such as the Victoria Cross Annuity or George Cross Annuity.
- 39.2. 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.
- 39.3. Where a person is in a care home and paying half of their occupational pension, personal pension or retirement annuity to their spouse or civil partner, we will disregard 50% of its value.
- 39.4. 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 have jointly purchased an annuity and only one of them has moved into a care home. If this is not the case, the disregard must not be applied.
- 39.5. Where the disregard is applied, only the following aspects may be disregarded:
- a) The net weekly interest on the loan where income tax is deductible from the interest; or
  - b) The gross weekly interest on the loan in any other case.
- 39.6. 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 annuitants where there are more than one) must have reached the age of 65 at the time the loan was made;
  - e) The loan was secured on a property in Great Britain and the person who obtained the loan (or one of the other annuitants) owns an estate or interest in that property; and
  - f) The person who obtained the loan or one of the other annuitants occupies the property as their main or only home at the time the interest is paid.
- 39.7. 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.
- 39.8. 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 we will 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, or choosing not to draw income, then we may apply notional income. This will be the maximum income that could be drawn under an annuity product. If we apply 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.

#### **40. Mortgage protection insurance policies**

- 40.1. We will usually take into account any income from an insurance policy. 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.
- 40.2. 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.
- 40.3. It should be remembered that Income Support and Pension Credit may be adjusted to take account of the income from the policy.

#### **41. Other income that will be fully disregarded**

- 41.1. 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, except where the accommodation is arranged under the Care Act in which the adult and child both live;
  - c) Child Tax Credit
  - d) Council Tax Reduction Schemes where this involves a payment to the person;
  - e) Disability Living Allowance (Mobility Component) and Mobility Supplement
  - f) Christmas bonus
  - g) Dependency increases paid with certain benefits
  - h) Discretionary Trust
  - i) Gallantry Awards
  - j) Guardian's Allowance
  - k) Guaranteed Income Payments made to Veterans under the Armed Forces Compensation Scheme
  - l) 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 widow 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) 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.

## **42. Savings Credit**

- 42.1. For people receiving care and support other than in a care home, the savings credit the adult receives should be fully disregarded.

## **43. Charitable and voluntary payments**

- 43.1. Charitable payments are not necessarily made by recognised charities 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.

- 43.2. Charitable and voluntary payments that are made regularly are fully disregarded.

## **44. Partially disregarded income**

*The following income is partially disregarded:*

- 44.1. The first £10 per week of War Widows and War Widowers pension, survivor's 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).

- 44.2. A savings disregard based on qualifying is made to people as follows:

a) For individuals:

- (i) Where a person is in receipt of qualifying income of less than the weekly pension age entitlement to Pension Credit there will be no savings disregard made.
- (ii) Where a person is in receipt of qualifying income between the lower weekly pension credit entitlement and the upper weekly pension credit entitlement the savings credit disregard is made,

which will equal the actual amount of the savings credit received or a sum as set annually by the Department of Health and Social Care, whichever is less.

- (iii) Where a person is in receipt of qualifying income in excess of the upper weekly pension credit entitlement, and a savings credit reward is in payment, a flat rate savings disregard as determined annually by the Department of Health and Social Care will be made irrespective of how much the savings credit payment is.
- (iv) Where a person has qualifying income above the limit for receiving a savings credit reward a flat rate savings disregard as determined annually by the Department of Health and Social Care is made.

b) For couples

- (i) Where a person is part of a couple (including a civil partnership) and is in receipt of qualifying income of less than the couple's basic weekly pension credit entitlement there will be no savings disregard made.
- (ii) Where a person who is part of a couple (including a civil partnership) and is in receipt of qualifying income between the lower weekly pension credit rate and the upper weekly pension credit rate the savings disregard will be made, which will equal the actual amount of the savings credit received, or a sum set annually by the Department of Health and Social Care, whichever is less.
- (iii) Where a person who is part of a couple (including a civil partnership) and is in receipt of qualifying income in excess of the upper weekly pension credit rate, and a savings credit reward is in payment, a flat rate savings disregard of a sum set annually by the Department of Health and Social Care will be made irrespective of how much the savings credit payment is.
- (iv) Where a person who is part of a couple (including a civil partnership) and has qualifying income above the upper weekly pension credit limit depending on their individual circumstances a flat rate savings disregard as determined by the Department of Health and Social Care annually is made.
- (v) [The annual Minimum Income Guarantee rates are set annually by the Department of Health and Social Care. They are based on standard rates of pension credit and income support and are increased where individuals and couples qualify as severely disabled, or as carers, because of receipt of qualifying benefits.](#)

## 45. Notional income

- 45.1. In some circumstances a person may be treated as having income that they do not actually have. This is known as 'notional income'. This might include for example income that would be available on application but has not been applied for, income that is due but has not been received or income that the person has deliberately deprived themselves of for the purpose of reducing the amount they are liable to pay for their care. See our policy 'Deprivation of Assets' for further guidance. In all cases we will satisfy ourselves that the income would or should have been available to the person.
- 45.2. Notional income will also be applied where a person has reached retirement age and has a personal pension plan but has not purchased an annuity or arranged to draw down the maximum income available from the plan. Estimates of the notional income will be sought received from the pension provider or the Government Actuary.
- 45.3. 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.

**Example N - Notional income:**

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

**Example O - Notional income in relation to new pension flexibilities:**

Ben has a pension fund worth £30,000. he has taken the opportunity to access this flexibly and as a result is only drawing down £5 a week as income at the point he begins to receive care and support.

The equivalent maximum annuity income would be £120 per week. For the purpose of the financial assessment, we can assume an income of £120 per week.

45.4. 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 aware of the possibility and take account of any time limits which may limit the period of arrears.

45.5. 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

45.6. The council expects a person to claim their full entitlement to welfare benefits in order to maximise their income. If the person chooses not to maximise their income by claiming all of the benefits they are likely to be entitled to, then we may include the benefit income they are expected to be entitled to receive as notional income in the financial assessment, and the person's charge may increase, even though they are not actually receiving the benefit.

## **46. Backdated Financial Assessments**

46.1. Once we have completed a financial assessment, it is the responsibility of the person or their authorised representative to inform us of any changes in their income. If we subsequently become aware of changes to a person's income that we were not informed about, we may backdate the

financial assessment to include the change. This includes, for example, where the person stops receiving Disability Living Allowance (DLA) and applies for Personal Independence Payment (PIP).

- 46.2. Under previous legislation, where a person was in receipt of DLA, but was not in receipt of night-time services from the council, then the night-time element of DLA was disregarded in the financial assessment. Following the implementation of the Care Act 2014, the rules changed and both DLA and PIP are now included in full in the financial assessment. PIP is no longer split into day and night-time elements. Dorset Council made the decision to only amend the statutory disregard from the point of the changeover from DLA to PIP, to ensure that people receiving the same benefit are not treated differently. However, we will amend the person's financial assessment when they begin to receive PIP and we will remove the statutory disregard at that point.

## **47. Support for Mortgage Interest loans**

- 47.1. Following changes to Department for Work & Pensions (DWP) rules regarding payment of mortgage interest, some people are entitled to apply for financial assistance with their mortgage in the form of a Support for Mortgage Interest (SMI) loan. Under a SMI loan agreement the mortgage interest is paid and recovered by the DWP from the sale of the property later.
- 47.2. The council expects people to apply for a Support for Mortgage Interest loan where they may be entitled to do so, either themselves or via their legal representative. Where a person is acting as a Court-Appointed Deputy, we expect them to ask the Court for permission to apply for a SMI loan, and to do so if permission is granted. Only on receipt of evidence that an application for the SMI loan has been made and declined, will we consider making an allowance in the financial assessment for a mortgage payment.

## **48. Payment of Existing Debts**

- 48.1. No allowance will be made in the financial assessment for existing debts.

## **49. Disability-related expenditure**

- 49.1. Where disability-related benefits may be taken into account under the Regulations, we will make an individual assessment and allow the person to keep enough benefit to pay for necessary disability-related expenditure to meet any needs which are not being met by us.
- 49.2. In assessing disability-related expenditure, we will include the following:
- a) Payment for any community alarm system.
  - b) The costs of any privately arranged care services required, including respite care.
  - c) The costs of any specialist items needed to meet the person's disability needs, for example:
  - d) day or night care which is not being arranged by us;

- (i) specialist washing powders or laundry;
  - (ii) additional costs of special dietary needs due to illness or disability (the person may be asked for permission to approach their GP in cases of doubt). However, we will not usually allow the costs of diabetic and coeliac diets if these are not required to meet the person's disability needs. And where we use our discretion to allow the costs associated with these diets, we may not consider it necessary to meet them in full and we may restrict the allowance to staple food items. For example, flour, pasta and bread for a coeliac diet;
  - (iii) 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. Where we make an allowance it will only be for clothing and footwear needs that are additional and we will price those needs on the basis of the cheapest serviceable options available;
  - (iv) additional costs of bedding, for example, because of incontinence. Where we make an allowance, it will be for costs that are in addition to normal household expenditure and we will calculate the costs on the basis of the cheapest serviceable options available;
  - (v) 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;
- e) reasonable costs of basic garden maintenance, cleaning, or domestic help, if necessitated by the individual's disability and not met by social services;
- f) purchase, maintenance, and repair of disability-related equipment, including equipment or transport needed to enter or remain in work; this may include IT costs, where necessitated by the disability; reasonable hire costs of equipment may be included, if due to waiting for supply of equipment from a local authority;
- g) personal assistance costs, including any household or other necessary costs arising for the person;
- h) internet access. For example, for blind and partially sighted people;
- (i) other transport costs necessitated by illness or disability, including costs of transport to day centres, over and above the mobility component of DLA or PIP, if in payment and available for these costs. In some cases, it may be reasonable for us 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. We will usually consider transport for daily living and general medical appointments as normal expenditure;
  - (ii) in other cases, it may be reasonable for us not to allow for items where a reasonable alternative is available at lesser cost. For example, we would not allow for the private purchase cost of continence pads, where these are available from the NHS.
- i) Specialist support costs during a holiday. Holidays are a choice for everyone so the cost of an annual holiday will not be considered as DRE. However, where specialist support has to be provided, these costs will be considered as DRE allowance.
- j) Personal assistance costs, including any household or other necessary costs arising for the person
- k) Exercise is a choice but where it is required for health needs there are usually options available for free rather than activities which have to be paid for e.g. gym, swimming etc. No allowance will be considered for health and fitness unless it is clear that those needs could not be met via activities which are free. Where there is no free option available, then we will calculate the costs on the basis of the cheapest serviceable options available;
- l) Costs incurred for personal assistance dogs

### **Example P - Disability-related expenditure**

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

The internet is also a portal into shopping. For example, without the internet if Zach wanted to shop, he would have to wait until a friend or family member could accompany him on a trip out. He would be held by their schedule and they would have to explain what goods were on offer, and what an item looked like.

A sighted person would be able to go into a shop when their schedule suits and consider what purchase to make on their own. The internet provides Zach with the freedom and independence to do these things on his own.

- 49.3. The care plan completed by a social work professional will be used as the starting point for considering what is necessary disability-related expenditure. However, DRE will not be limited to what is necessary for care and support. When else would we consider it?
- 49.4. The council takes into account the standard Disability-Related-Expenditure allowances for equipment, heating and metered water as calculated annually by the National Association of Financial Assessment Officers (NAFAO) and set out in Dorset Council's annual 'DRE Guidelines' document.

## **50. Personal expenses allowance in care homes**

- 50.1. We must leave the person with a minimum amount of income. This is known as the Personal Expenses Allowance (PEA) and the amount is set annually by the Department of Health and Social Care and updates sent via a local authority circular. Anything above this may be taken into account in determining charges.
- 50.2. The PEA is not a benefit but the amount of a person's own income that they should be left with after charges have been deducted. However, where a person has no income, we are not responsible for providing one. However, we should support the person to access any relevant state benefits or independent advocacy service.
- 50.3. The purpose of the PEA is to ensure that a person has money to spend as they wish. It must not be used to cover any aspect of their care and support that we have contracted for and/or assessed as necessary to meet the person's eligible needs. This money is for the person to spend as they wish and any pressure from us or a provider to do otherwise is not permitted.
- 50.4. There may be some circumstances where it would not be appropriate for us 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. This

does not automatically apply to unmarried couples although we may exercise our discretion in individual cases.

- 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. We will also consider disregarding other costs related to maintain the couple's home (see below).
- d) Where a person's property has been disregarded, we will consider whether the PEA is enough to enable the person to meet any resultant costs. For example, allowances should 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's situation has changed so that they are now supported by us and they have a deferred payment arrangement in place, we will ensure they have sufficient resources to maintain and insure the property in accordance with the disposable income allowance.

## **51. All other settings**

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

## **52. Minimum income guarantee**

- 52.1. We will ensure that a person is left with a minimum level of income after charges have been deducted. The amounts are set out in the Care and Support (Charging and Assessment of Resources) Regulations annual Local Authority Circular. This approach will maintain consistency between the charging framework and established income protections under the income support rules.
- 52.2. The purpose of the minimum income guarantee is to promote independence and social inclusion and ensure that people have enough funds to meet basic needs such as purchasing food, utilities costs and insurance. This will be after any housing costs such as rent and council tax (net of any benefits to support meeting these costs) and any disability related expenditure.
- 52.3. Where a non-dependent adult who is receiving services from the local authority is living with a family member e.g. with parents or with adult children in their home, the service user does not normally have any legal responsibility towards payments of the rent or council tax on the property in which they live. However, Dorset Council accepts that those people will be expected to contribute towards rent and council tax payments for the property in which they live. Allowances will be made in the financial assessment for rent and council tax contributions in line with the 'non-dependant deduction' applied for Housing Benefit and Council Tax Support purposes. These rates are set by central Government annually and are detailed in Dorset Council's annual 'DRE Guidelines' document. Any additional contribution(s) towards rent and council tax made between the service user and their family member should be met from the MIG.
- 52.4. Separate guidance applies when determining an appropriate contribution from income under a deferred payment agreement.

## **53. Appeals Process**

The Care Act 2014 gives you access to a statutory complaints' procedure.

However, if you simply wish to appeal against a decision we have made about your financial assessment, or your charges for care, because you think we have made a mistake, then we encourage you to use our fast-track appeal process in the first instance.

You will find it quicker and easier to make an appeal – and you still have the option of using the statutory complaints procedure later, if you are not satisfied with the outcome of your appeal. Both the fast-track appeal process and the statutory complaints procedure will mean that the decision(s) we have made are reviewed by senior members of staff.

Document control	
Policy lead	Service Manager for Finance (Adults & Housing)
Author	Financial Support Manager
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