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## **1. Definitions used in this policy:**

<b>Attorney:</b>	Enduring Power of Attorney or Lasting Power of Attorney. A legal process that lets the Service User appoint one or more people (known as attorneys) to help them make decisions or make decisions on their behalf.
<b>Deferred Payment Scheme:</b>	A national scheme whereby people can delay paying for their care and support, or part of it, until a later date (often after their death), provided they meet the eligibility for the scheme.
<b>Deferred Payment Agreement:</b>	The formal mechanism where the Council and the Service User agree to them delaying paying for their care and support, or part of it.
<b>Deputy:</b>	Deputy authorised by the Court of Protection to manage the affairs of someone who lacks the mental capacity to manage their own affairs.
<b>Eligible Needs:</b>	When the Service User's or Carer's needs meet the Council's criteria for council-funded care and support.
<b>Extra Care:</b>	The Service User's own home, in a development with other older people, but with additional care and support available.
<b>Guidance:</b>	Care and Support Statutory Guidance issued under the Care Act 2014 by the Department of Health.
<b>Legal Charge:</b>	A legal document held by the Land Registry showing that the Council has a claim on the Service User's property.
<b>Light touch assessment:</b>	In some circumstances, the Council may choose to treat a person as if a financial assessment had been carried out. This might be where the Council is satisfied that the Service User can afford, and will continue to be able to afford, any charges due.

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<b>Main home:</b>	A Service User can have only one main home at any one time. This is the home where the Service User normally lives.
<b>Personal Budget:</b>	Money that is allocated to a Service User or Carer by the Council to pay for care or support to meet their eligible needs.
<b>Provider:</b>	Organisation or person providing care services to the Service User.
<b>Representative:</b>	Person nominated by the Service User to assist them with the financial assessment process.
<b>Service User:</b>	Person receiving care services provided under the Care Act 2015.
<b>Supported Living:</b>	An alternative to residential care or living with family that enables adults with disabilities to live in their own home, with the help they need to be independent.
<b>The Council:</b>	Leicestershire County Council.
<b>Top-up fee:</b>	The difference between the actual costs of the preferred Provider and the amount that the Council has set in a Personal Budget to meet the Service User's eligible needs.
<b>3<sup>rd</sup> Party:</b>	Someone who agrees to pay the top-up fee for the Service User. This may be a relative, friend or charity.

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## **2. Introduction**

1. The Charging Policy for Social Care and Support sets out how the Council charges people who receive care and support services. This policy is based on the requirements of the Care Act 2014 and replaces the previous charging policies for both residential care (previously known as CRAG) and non-residential care (previously known as Fairer Charging Policy) services.
2. This charging policy covers all care services arranged by the Council for people who live at home, in prison, or in a care home. The contents of this policy apply to all care settings unless otherwise specified.
3. For the purposes of this policy; “residential services” refers to services in a care home. “Non-residential services” refers to services in the community, in a Service Users / Carer’s home or in prison.
4. The policy is based on the legal framework for charging set out in the Care Act 2014. Should there be any confusion or dispute as to the application of this policy clarification will be sought from the primary and secondary legislation and associated statutory guidance.
5. This updated policy will be applied from 1<sup>st</sup> April 2015 for all new financial assessments and from the next financial review for all existing financial assessments.
6. This policy should be read in conjunction with the associated procedures.

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## **3. Policy Scope**

1. The policy covers charging arrangements for adults aged 18 or over, who receive care and support services that are arranged by the Council under the Care Act 2014.
2. This includes both care provided to people living in a residential setting and to people who live in their own home in the community or in prison. The majority of the charging policy applies to both settings but the detail of how to charge in each setting is different and is set out in the sections below.
3. 1st and 3rd Party “top-up” financial assessments and agreements are included in this policy.
4. Deferred Payment agreements are included in this policy.

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#### **4. Core Principles of the Policy**

1. The policy adopts the following principles for charging, which are set out by the Department of Health in the Care and Support Statutory Guidance (October 2014) issued under the Care Act 2014. The policy will:
  - a. Ensure that people are not charged more than it is reasonably practicable for them to pay;
  - b. Establish who will be entitled to financial support based on a means-test and who will be entitled to free care;
  - c. Be comprehensive, to reduce variation in the way people are assessed and charged;
  - d. Be clear and transparent, so people know what they will be charged;
  - e. Promote wellbeing, social inclusion, and support the vision of personalisation, independence, choice and control;
  - f. Support Carers to look after their own health and wellbeing and to care effectively and safely;
  - g. Be person-focused, reflecting the variety of care and caring journeys and the variety of options available to meet their needs;
  - h. Apply the charging rules equally so those with similar needs or services are treated the same and minimise anomalies between different care settings;
  - i. Encourage and enable those who wish to stay in or take up employment, education or training or plan for the future costs of meeting their needs to do so; and
  - j. Be sustainable for the Council in the long-term.

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#### **5. Care and support for which the Council will not charge.**

1. Intermediate care, including reablement, which will be provided free of charge for up to six weeks.
2. Community equipment (aids and minor adaptations). Minor adaptations are those costing £1000 or less.
3. Care and support provided to people with Creutzfeldt-Jacob Disease.
4. After care services / support provided under section 117 of the Mental Health Act 1983.
5. Any service or part of service which the NHS is under a duty to provide. This includes Continuing Healthcare and the NHS contribution to Registered Nursing Care.

6. Carers One Off Personal Budgets

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**6. Consent to share financial information**

1. Under the Welfare Reform Act 2012, and associated regulations, the Council will share financial information with the Department for Work and Pensions and with District Councils for the purposes of completing a benefits check and to assist with accurate financial assessment calculations.

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**7. Start date of care charges**

1. The Council has the power to charge for meeting a person's care and support needs from the moment it starts to meet those needs.
2. Where the financial assessment has not been completed at the time that care starts the Council will backdate any outstanding charges to the date when it started meeting the person's care and support needs.

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**8. Financial Representatives & Mental Capacity**

1. The Service User or Carer can request that the Council liaise with another person who will act as their financial representative for the financial assessment and charging process.
2. Whilst the Council will consider any request to liaise with a financial representative the legal responsibility for any invoice payment and associated debt recovery will remain with the Service User or Carer.
3. If a Service User or a Carer lacks capacity to consent to a financial assessment or to take part in the financial assessment process the Council will liaise with the person who has legal responsibility to make financial decisions on behalf of the Service User or Carer.
4. The Mental Capacity Act 2005 Code of Practice states: If the person who lacks capacity has no property or savings and their only income is social security benefits there will usually be no need for a deputy to be appointed. If the person has assets or savings from other sources an attorney or deputy should be appointed.

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## **9. Financial Assessment overview**

1. A financial assessment will be undertaken for all Service User / Carers in receipt of chargeable services.
2. Service Users and Carers can decide to have a light touch financial assessment rather than a full financial assessment. However, this may result in them contributing the maximum charge for their care.
3. The financial assessment will be calculated on the basis that the Service User / Carer is receiving all the means tested benefits that they have been identified as being entitled to, i.e. if the Service User / Carer is entitled to receive income support, income-related employment and support allowance or pension credit, but is not claiming those benefits, the financial assessment will assume that those benefits are in payment at the correct amount. The amounts assumed will be those payable based on the known circumstances of the individual and will not take into account claims for Disability Living Allowance, Personal Independence Payment or Attendance Allowance which have not yet been approved.
4. Where a Service User is receiving residential care services the high rate of the care component of Disability Living Allowance, daily living component of Personal Independence Payment or Attendance Allowance will be assumed to be in payment until the Service User is no longer entitled to claim due to being in local authority funded residential care.
5. The collection of information for the financial assessment may be undertaken by phone, by post, by a visit or by any other reasonable means deemed appropriate or effective by Leicestershire County Council.
6. Financial assessments will be reviewed at regular intervals as directed by Leicestershire County Council or when significant variations arise in Service User / Carers / 3rd Parties financial situations.

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## **10. Refusal to co-operate with a financial assessment**

1. If a Service User or Carer refuses to co-operate with a financial assessment they will be required to pay the maximum charge applicable from the date of the refusal to undertake the assessment unless information as to their capital and income is already available to the Council in which case those figures may be used to inform the assessment. If subsequently the Service User / Carer does provide the required information the charge payable will be reassessed.

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## **11. Non-Disclosure of Financial Details**

1. Service Users / Carers have the right to choose not to disclose their financial details for example where they can afford, and will continue to be able to afford, any charges due. If this right is exercised they will be required to pay the maximum charge applicable at the time that the service was delivered.

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## **12. Where a financial assessment would be detrimental to the Service User / Carer's health**

1. Although the financial assessment process aims to ensure that Service Users / Carers are charged only what they can afford to pay, there may be cases when it is believed that a financial assessment would be detrimental to the Service Users / Carers health.
2. In these circumstances the requirement to contribute towards the cost of care may be waived. Waiving of on-going charges may be reviewed periodically.
3. Any decision to waive the charge will be taken by the appropriate managers in line with the Council's Scheme of Delegation.

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## **13. Benefits Information**

1. A benefits check will be offered to all Service Users or Carers who are subject to a financial assessment. The benefits check may be undertaken during the financial assessment process, during a phone call, by post, by a visit or by any other reasonable means deemed appropriate and effective by Leicestershire County Council.
2. The benefits check will consider the Service User's / Carer's actual income and calculate whether the Service User / Carer may be entitled to any means tested or non-means tested benefits based on their individual circumstances. The benefits check will only consider the Service Users / Carer's circumstances at the time of the benefits check; the accuracy of the advice given will be dependent on the information given by the Service User / Carer.
3. Service Users / Carers will be advised of their possible entitlement to benefits and encouraged to make appropriate claims. Information on how to make a claim will be given to the Service User / Carer. In some cases assistance to make appropriate claims may be offered.

4. Service Users / Carers must notify the Council's Community Care Finance Section of any changes in benefit income as soon as they occur. The Service User / Carer's financial assessment will then be reviewed to take into account the changes in benefit income; the revised calculation will be backdated to the start of the change in benefit payment or the date of the first financial assessment, whichever is the later.

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#### **14. Benefits Information - Residential services**

1. Where Service User are entitled to means tested benefits they will be deemed to be in receipt of those benefits from the date that residential care starts.
2. If under-claiming of benefits is identified the Service User will be notified in writing and advised of the potential benefit entitlement based on financial information provided to the Council and signposted to the appropriate part of the DWP / District Council.

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#### **15. Benefits Information- Non-residential services**

1. Where Service Users / Carers have been advised that they are entitled to means tested benefits they will be deemed to be in receipt of those benefits from four weeks after the benefits check was completed.
2. If a benefit overpayment is identified the Service User / Carer will be advised of the probable overpayment. Information on organisations who may be able to assist with resolving the overpayment and agreeing any repayment figures will be offered and the Service User / Carer will be advised to contact the relevant part of the DWP / District Council to correct the overpayment.

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#### **16. Treatment of Capital**

1. The local authority has no power to assess couples or civil partners according to their joint resources. Each person must therefore be treated individually.
2. Only the capital of the Service User will be taken into account in the financial assessment of what they can afford to contribute towards their care and support.
3. Where the Service User / Carer has a beneficial interest in capital held in someone else's name, e.g. their partner, the Service User's share will be

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

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## **17. Capital Limits**

1. Capital limits are set nationally by central government. The current capital limits can be found on the Council's website.
2. The financial limit, known as the "**upper capital limit**" exists for the purposes of the financial assessment. If a person has capital below this limit they can seek means-tested support from the Council.
3. A person with more than the upper capital limit can ask the Council to arrange their care and support for them. However, they are not entitled to receive any financial assistance from the Council and must pay the full cost of their care and support until their capital falls below the upper capital limit or they request a deferred payment agreement.
4. If a person clearly has capital in excess of the upper capital limit the Council will undertake a "light touch" financial assessment.
5. If a person has capital below the "**lower capital limit**" their capital is disregarded in their financial assessment and they will not need to contribute to the cost of their care and support from their capital.
6. Where a person has assets between the upper and lower capital limits the Council will apply **tariff income**. This assumes that for every £250 of capital, or part thereof, a person has £1 per week additional income.
7. In some circumstances a person may be treated as possessing a capital asset even where they do not actually possess it. This is called **notional capital**. Notional capital may be capital which:
  - a. Would be available to the person if they applied for it (see Chapter 28):
  - b. Is paid by someone else to a 3rd Party in respect of the person;
  - c. The person has deprived themselves of in order to reduce the contribution they have to pay for their care (see Chapter 38).
8. Where a person has been assessed as having notional capital the value of this will be reduced over time. The value of notional capital will be reduced weekly by the difference between the weekly rate the person is

paying for their care and the weekly rate they would have paid if notional capital was not applied.

9. 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 make top-up payments.

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## **18. Disregarded Capital**

1. The following capital assets will be disregarded:
  - a. Property in specified circumstances – see Disregarded Property section.
  - 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

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- 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.
- 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 / Council tax reduction.
- 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 1<sup>st</sup> 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 62(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.

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## **19. Disregarded Property**

1. In the following circumstances the value of the person's **main or only** home must be disregarded.
  - a. Where the person is receiving care in a setting that is not a residential care home
  - b. If the person's stay in a care home 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
    - 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 of the person or member of the person's family who is:
      - Aged 60 or over, or
      - Is a child of the resident aged under 18, or
      - Is incapacitated
2. 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.

3. For the purposes of the disregard the meaning of “incapacitated” is not closely defined. However, the Council will consider that a relative is incapacitated if either of the following conditions apply:
  - a. The relative is receiving one (or more) of the following benefits; employment and support allowance, 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.
4. In determining whether the property is occupied the Council will consider the following factors:
  - a. Does the relative currently occupy another property?
  - b. If the relative has somewhere else to live do they own or rent the property
  - 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?
5. A property will be disregarded where the relative meets the qualifying conditions and has occupied the property as their main or only home since before the resident entered the care home.
6. A property can also be disregarded where there are exceptional circumstances and the Council considers it reasonable to do so.

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## **20. 12-week property disregard**

1. The Council will disregard the **value** of a person's **main or only** home when the value of their non-housing assets is below the upper capital limit for 12 weeks in the following circumstances:
  - a. When they first enter a care home, Extra Care services or supportive living services as a permanent resident; or



- b. When a property disregard other than the 12-week property disregard unexpectedly ends because the qualifying relative has died or moved into a care home.
2. The 12-week property disregard can also be applied when there are exceptional circumstances and the Council considers it reasonable to do so.

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## **21. 26-week Capital disregard**

1. The following capital assets will be disregarded for at least 26 weeks in a financial assessment.
  - a. Assets of any business owned or part-owned by the person in which they were a self-employed worker and has stopped work due to some disease or disablement but intends to take up work again when they are fit to do so. Where the person is in a care home, this 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. The 26-weeks will apply from the date the funds were received.
  - c. Premises which the person intends to occupy as their home where they have started legal proceedings to obtain possession. This will be from the date legal advice was first sought or proceedings first commenced.
  - d. Premises which the person intends to occupy as their home where essential repairs or alterations are required. The 26-weeks will apply from the date the person takes action to effect the repairs.
  - e. Capital received from the sale of a former home where the capital is to be used by the person to buy another home. The 26-weeks will apply from the date of completion of the sale.
  - f. Money deposited with a Housing Association which is to be used by the person to purchase another home. The 26-weeks will apply from the date on which the money was deposited.
  - g. Grant made under a Housing Act which is to be used by the person to purchase a home or pay for repairs to make the home habitable. The 26-weeks will apply from the date the grant is received.
2. A longer disregard may be applied where the Council considers it reasonable to do so, i.e. where a person is taking legal steps to occupy premises as their home but the legal processes take more than 26 weeks to complete. Any extension of the disregard period will be reviewed periodically

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## **22. 52-week Capital disregard**

1. The following payments of capital will be disregarded for a maximum of 52 weeks from the date they are received.
  - a. The balance of any arrears of or any compensation due to non-payment of:
    - i. Mobility supplement
    - ii. Attendance Allowance
    - iii. Constant Attendance Allowance
    - iv. Disability Living Allowance / Personal Independence Payment
    - v. Exceptionally Severe Disablement Allowance
    - vi. Severe Disablement Occupational Allowance
    - vii. Armed forces service pension based on need for attendance
    - viii. Pension under the Personal Injuries (Civilians) Scheme 1983, based on the need for attendance.
    - ix. Income Support / Income-related Employment and Support allowance / Income-based Jobseeker's Allowance / Pension Credit
    - x. Minimum Income Guarantee
    - xi. Working Tax Credit
    - xii. Child Tax Credit
    - xiii. Housing Benefit
    - xiv. Universal Credit
    - xv. Special payments to pre-1973 war widows
  - 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

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## **23. 2-year Capital disregard**

1. The Council will disregard payments made under a trust established out of funds by the Secretary of State for Health in respect of vCJD to:
  - a. A member of the victim's family for 2 years from the date of death of the victim (or from the date of payment from the trust if later); or
  - b. A dependent child or young person until they turn 18.

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## **24. Other Capital disregards**

1. In some cases a person's assets may be tied up in a business that they own or part-own. Where a person has ceased to be engaged as a self-employed earner and is taking steps to realise their share of the assets, these will be disregarded during the process. However, the person will be required to show that it is their clear intention to realise the asset as soon as practicable. The Council will, therefore, 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.
2. Where the person has provided this information to show that steps are being taken to realise the value of the asset, the Council will disregard the value for a period that it considers to be reasonable. In deciding what is reasonable the Council will take into account the length of time of any legal processes that may be needed.
3. Where the person has no immediate intention of attempting to realise the business asset, its capital value will be taken into account in the financial assessment. Where a business is jointly owned, this will only apply to the person's share.

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## **25. Treatment of investment bonds**

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

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## **26. Capital treated as income**

1. The following capital payments will be treated as income:
  - 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, and
- ii. The amount of other capital held by the person is over £16,000. If it is £16,000 or less, each instalment will be treated as capital.

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## **27. Income treated as capital**

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. 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.
  - c. Any advance of earnings or loan made to an employed earner by the employer if the person is still in work. This is because the payment does not form part of the employee's regular income and would have to be repaid.
  - d. Any bounty payment paid at intervals of at least one year from employment as:
    - i. A part time fireman
    - ii. An auxiliary coastguard
    - iii. A part time lifeboat man
    - iv. A member of the territorial or reserve forces
  - e. Charitable and voluntary payments which are neither made regularly nor due to be made regularly, apart from certain exemptions such as payments from AIDS trusts. Payments will include those made by a 3rd Party to the person to support the clearing of charges for accommodation.
  - f. Any payments of arrears of contributions by a local authority to a custodian towards the cost of accommodation and maintenance of a child.

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## **28. Capital available on application**

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

- b. Capital held in a trust derived from a payment in consequence of a personal injury
  - c. Capital derived from an award of damages for personal injury which is administered by a court
  - d. Any loan which could be raised against a capital asset which is disregarded, for example the home.
2. The Council will distinguish between
- a. Capital already owned by the person but which in order to access they must make an application for. For example:
    - i. Money held by the persons' 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 and unclaimed Premium Bond win. This will be treated as notional capital.
3. Where the Council treats capital available on application as notional capital it will do so only from the date at which it could reasonably be acquired by the person.
4. When applying notional income to a defined contribution pension the Council will calculate this as the maximum income that would be available if the person had taken out an annuity.

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## **29. Treatment of Income**

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## **30. Common issues**

1. Only the income of the Service User will be taken into account in the financial assessment of what they can afford to contribute towards their care and support.
2. Where the Service User receives benefit income as one of a couple this will be apportioned to each member of the couple, the starting presumption is that the cared-for person has an equal share of the income, in accordance with his/her other individual income and adjusted to the means tested benefit level.
3. Income is net of any tax or National Insurance contributions.

4. Employed and self-employed earnings are fully disregarded. More details can be found in the statutory guidance

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### **31. Benefits Income**

1. Any income from the following sources will be fully disregarded:
  - a. Direct Payments
  - b. Guaranteed Income Payments made to Veterans under the Armed Forces Compensation Scheme
  - c. The mobility components of Disability Living Allowance and Personal Independence Payments and mobility supplement.
  - d. Armed Forces Independence Payments and Mobility Supplement
  - e. Child Benefit
  - f. Child Tax Credit
  - g. Council Tax Reduction Schemes where this involves a payment to the person
  - h. Mobility Supplement
  - i. Christmas bonus
  - j. Dependency increases paid with certain benefits
  - k. Guardian's Allowance
  - l. Guaranteed Income Payments made to Veterans under the Armed Forces Compensation Scheme.
  - m. Social Fund payments (including winter fuel payments)
  - n. War widows and widowers special payments
  
2. Any income from the following benefits will be taken into account:
  - a. Attendance Allowance, including Constant Attendance Allowance and Exceptionally Severe Disablement Allowance
  - b. Bereavement Allowance
  - c. Carers Allowance
  - d. The care component of Disability Living Allowance
  - 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. The daily living component Personal Independence Payment
  - l. State Pension
  - m. Universal Credit
  - n. Working Tax Credit

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

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

1. Any income from the following sources will be fully disregarded:
  - a. Child Support Maintenance Payments
  - b. Discretionary Trust
  - c. Gallantry Awards
  - d. Income frozen abroad
  - e. Income in kind
  - f. Personal injury trust, including those administered by a Court
  - g. Resettlement benefit
  - h. Savings credit disregard
  - i. Any payments received as a holder of the Victoria Cross, George Cross or equivalent
  - j. Any grants or loans paid for the purposes of education; and
  - k. Payments made in relation to training for employment
  - l. Any payment from the:
    - i. Macfarlane Trust
    - ii. Macfarlane (Special Payments) Trust
    - iii. Macfarlane (Special Payment) (No 2) Trust
    - iv. Caxton Foundation
    - v. The Fund (payments to non-haemophiliacs infected with HIV)
    - vi. Eileen Trust
    - vii. MFET Limited
    - viii. Independent Living Fund (2006)
    - ix. Skipton Fund
    - x. London Bombings Relief Charitable Fund

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### **33. Partially disregarded income**

1. The following income is partially disregarded;
  - a. The first £10 per week of War Widows and War Widowers pension, survivors Guaranteed Income Payments from the Armed Forces Compensation Scheme, Civilian War Injury pension, War Disablement pension and payments to victims of National Socialist persecution (paid under German or Austrian law).

- b. A savings disregard based on qualifying is made to people in line with the statutory guidance.

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### **34. Annuity and pension income**

1. The Council will take **fully** into account any income from an annuity 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.
2. Where the Service User is in a care home and paying half of the value of their occupational pension, personal pension or retirement annuity to their spouse or civil partner the Council will disregard 50% of its value.
3. In order to qualify for this disregard one of the annuitants must still be occupying the property as their main or only home. This may happen where a couple has jointly purchased an annuity and only one of them has moved into a care home. If this is not the case the disregard will not be applied.
4. Where the disregard is applied only the following aspects will be disregarded:
  - a. The net weekly interest on the loan where income tax is deductible from the interest; or
  - b. The gross weekly interest on the loan in any other case.
5. For the disregard to be applied the following conditions must be met:
  - a. The loan must have been made as part of a scheme that required that at least 90% of that loan be used to purchase the annuity;
  - b. The annuity ends with the life of the person who obtained the loan, or where there are two or more annuitants (including the person who obtained the loan), with the life of the last surviving annuitant;
  - c. The person who obtained the loan or one of the other annuitants is liable to pay the interest on the loan;
  - d. The person who obtained the loan (or each of the annuitant where there are more than one) must have reached the age of 65 at the time the loan was made;
  - e. The loan was secured on a property in Great Britain and the person who obtained the loan (or one of the other annuitants) owns an estate or interest in that property; and



- f. The person who obtained the loan or one of the other annuitants occupies the property as their main or only home at the time the interest is paid.
6. Where the person is using part of the income to repay the loan, the amount paid as interest will be disregarded. If the payments the person makes on the loan are interest only and the person qualifies for tax relief on the interest they pay the net interest will be disregarded. Otherwise the gross interest will be disregarded.
  7. The Council will assess pension income for the purposes of charging in the following way:
    - a. If a person has removed the funds and placed them in another product or savings account the funds will be treated according to the rules for that product.
    - b. If a person is only drawing a minimal income, then the Council will apply notional income according to the maximum income that could be drawn. When the maximum notional income is applied the actual income will be disregarded to avoid double counting.
    - c. If a person is drawing an income that is higher than the maximum available under an annuity product the actual income will be taken into account.

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### **35. Mortgage protection insurance policies**

1. Where the income from a mortgage protection policy 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.
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.

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### **36. Charitable and voluntary payments**

1. A charitable or voluntary payment which is not made regularly is treated as capital.

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

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### **37. Notional income**

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 may 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.
2. In all cases the Council will satisfy itself that the income would or should have been available to the person.
3. Notional income will also be applied where a person who has reached retirement age and has a personal pension plan but has not purchased an annuity or arranged to draw down the equivalent maximum annuity income that would be available from the plan.
4. Notional income will be calculated from the date it could reasonably be expected to be acquired if an application had been made.
5. The following are exemptions and 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.
6. When the Council determines whether deliberate deprivation of income has occurred it will consider:
  - a. Whether it was the person's income?
  - b. What was the purpose of the disposal of the income?

- c. The timing of the disposal of the income? At the point the income was disposed of could the person have a reasonable expectation of the need for care and support?
7. If the income has been converted into capital the Council will consider what tariff income may be applied to the capital and whether the subsequent charge is less or more than the person would have paid without the change.

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### **38. Deprivation of Assets**

1. The Council may identify circumstances that suggest that a person may have deliberately and intentionally deprived themselves of, or decreased, their assets in order to avoid or reduce the level of their contribution towards their care.
2. The Council will consider deprivation where the person ceases to possess assets that would have otherwise been taken into account for the purposes of the financial assessment or has turned the asset into one that is now disregarded.
3. In deciding whether deprivation or the purpose of avoiding care and support charges has occurred the Council will consider:
  - a. Whether avoiding the care and support charge was a significant motivation.
  - b. The timing of the disposal of the asset. At the point the capital was disposed of could the person have a reasonable expectation of the need for care and support?
  - c. Whether the person had a reasonable expectation of needing to contribute to the cost of their eligible care needs?
4. Where the council has reasonable grounds to suspect someone has deprived themselves of an asset in order to avoid or reduce the level of their contribution towards their care the Council will require proof of the reasons why they no longer have the asset. If the reasons are not acceptable, the Council will assess the person as if they still had the asset.
5. For capital assets, acceptable evidence of their disposal would be:
  - a. A trust deed
  - b. Deed of gift
  - c. Receipts for expenditure
  - d. Proof that debts have been repaid

- e. A person can deprive themselves of capital in many ways, but common approaches may be:
  - f. A lump-sum payment to someone else, for example as a gift.
  - g. Substantial expenditure has been incurred suddenly and is out of character with previous spending.
  - h. The title deeds of a property have been transferred to someone else.
  - i. Assets have been put in to a trust that cannot be revoked.
  - j. Assets have been converted into another form that would be subject to a disregard under the financial assessment, for example personal possessions.
  - k. Assets have been reduced by living extravagantly, for example gambling.
  - l. Assets have been used to purchase an investment bond with life insurance.
6. The Council may decide to conduct its own investigations into whether deprivation of assets has occurred rather than relying solely on the declaration of the person. If this is the case the Council will have regard to the Regulation of Investigatory Powers Act 2000 and associated guidance and legislation.
7. If the Council decides that a person has deliberately deprived themselves of assets in order to avoid or reduce a charge for care and support, the Council will seek to charge the person as if the deprivation had not occurred, i.e. assume that the person still owns the asset and treat it as notional capital.
8. Where a resource has been converted into another of lesser value the Council will treat the person as notionally possessing the difference between the value of the new resources and the one which it replaced.
9. Where a person has transferred the asset to a third party to avoid the charge, the third party is liable to pay the local authority the difference between what it would have charged and did charge the person receiving care. As with any other debt, the Council will use the County Court process to recover debts when other avenues have been exhausted.

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### **39. Residential Care financial assessment**

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#### **40. Personal expenses allowance (PEA)**

1. The Council will leave the Service User with a minimum amount of income. The amount is set nationally each year. Anything above this will be taken into account in determining charges.
2. If the Service User has no income the Council is not responsible for providing one but will support the Service User to access any relevant state benefits or independent advocacy service.
3. Where a Service User's property has been disregarded the Council will consider whether the PEA is sufficient to enable the person to meet housing expenses.
4. Where a Service User has a deferred payment agreement (DPA) the Council will ensure that the Service User retains sufficient resources to maintain and insure the property through the disposable income allowance. The maximum disposable income allowance is set nationally.

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#### **41. Temporary or respite care in care home financial assessment**

1. A temporary resident is defined as a person whose need to stay in a care home is intended to last for a limited period of time and where there is a plan to return home. The person's stay should be unlikely to exceed 52 weeks, or in exceptional circumstances, unlikely to substantially exceed 52 weeks.
2. If a temporary stay becomes permanent the "temporary care financial assessment" will apply until the date that the care plan is amended and agreed with the person or their representative at which time the "permanent care financial assessment" will apply.
3. A temporary resident will never have their income reduced to less than the Government minimum personal needs allowance.
4. This allowance will be increased by any additional amounts the person may need so that they can maintain their home during their temporary stay so that it is in a fit condition for them to return to. These may include but are not limited to, ground rent, service charges, water rates or insurance premiums.
5. The person's main or only home will be disregarded where the person:

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- a. Intends to return to that property as their main or only home and it remains available to them.
  - b. Has taken steps to dispose of the home in order to acquire one that is more suitable and intends to return to that property.
6. Any other capital assets will be treated in the same way as for permanent residents.
  7. Where Attendance Allowance, the care component of Disability Living Allowance or the daily living component of Personal Independence Payment is being received it will be completely disregarded. However, any additional amounts included in means-tested benefits associated to these payments will be taken into account whilst they remain in payment.
  8. Other income and earnings will be treated in the same way as for permanent residents.
  9. Where one member of a couple enters a care home and one remains in the main home the Council will ensure that the partner remaining at home is left with at least an weekly income equal to basic Income Support/Pension Credit for a single person and any premiums/additions to which they may be entitled in their own right. This may involve a voluntary agreement by the partner to disclose the required information to achieve this.
  10. The Council will also disregard any other payment the person receives in order to meet the cost of their housing and / or to support independent living. This may include payments to provide warden support, emergency alarms or the meeting of cleaning costs where the person or someone in the household is unable to do this themselves.

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## **42. Top-up payments: 1st and 3rd Parties**

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## **43. Introduction: 1<sup>st</sup> and 3<sup>rd</sup> Parties**

1. Where care and support is provided in an accommodation setting, i.e. residential / nursing care, extra care or supportive living, the Council must ensure that at least one option is available that is affordable within a person's Personal Budget.
2. Only when a person has chosen a more expensive accommodation alternative can a top-up payment be sought. The use of top-ups is optional and cannot be as a result of the Council being unable to commission suitable accommodation at a lower price.

3. A first party top-up (Service User) can **only** apply in the following circumstances:
  - a. Service User is subject to 12-week property disregard
  - b. Service User has a deferred payment agreement (DPA) in place with the Council. The DPA agreement must reflect 1st party top-up arrangement.
  - c. Service User is receiving accommodation provided under S117 for mental health aftercare.
4. The top-up payment or additional cost is the difference between the actual costs of the preferred Provider and the amount that LCC would have set in a Personal Budget.
5. For the purposes of agreeing a top-up the Council will consider what Personal Budget it would have set at the time care and support is needed. It will not automatically default to the cheapest rate or to any other arbitrary figure.
6. The Council will provide information to the individual in accessible formats as required so that the total amount of charges paid is clear, and the link to the Personal Budget amount is understood.
7. When a Service User lacks capacity to express a choice for themselves, the Council will arrange for the involvement of an advocate and act on the choices expressed by the person's advocate, Carer or legal guardian in the same way they would on the person's own wishes, unless in the local authority's opinion it would be against the best interests of the person.
8. Should the 3rd Party wish to make a complaint about the top-up arrangement this will be considered by the Council under the Council's statutory complaints procedure.

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#### **44. Top-up agreement(s)**

1. The Service User may meet the additional costs of their care and support from contributions from themselves and/or one or more 3rd parties. A top-up arrangement can only be implemented with a written agreement between LCC and the 1st/3rd Party(ies).
2. The Council will provide the 3rd Party(ies) with sufficient information and advice to support them to understand the terms of the proposed written agreement before entering in to it.

3. The 1st/3rd Party(ies) is/are also recommended to take appropriate independent advice prior to entering into the top-up agreement.
4. Where more than one party are responsible for the top-up payment an individual agreement will be completed for each 3rd Party. By signing this agreement the 3rd Party undertakes to continue the top-up payment for the likely duration of the residential placement, recognising that this may be for some time into the future.
5. The Council can only enter into a top-up arrangement if it is satisfied that the 1st/3rd Party(ies) are able and willing to pay the additional cost of the preferred accommodation for the period during which the local authority expects to meet the Service User's needs by providing or arranging for the provision of that accommodation, recognising that this may be some time into the future. Each 1st/3rd Party will need to assure the local authority of this.
6. 3rd parties are encouraged to complete a financial self-assessment before agreeing to the 3rd Party payment.

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#### **45. Operation/review of the agreement(s)**

1. The Council will pay the Provider for all top-up payments and will reclaim the fee from the 1st / 3rd Party. The payments will be due 4-weekly in arrears unless a 1st party top-up arrangement is in place. 1st party top-up arrangements will be included in the Deferred Payment Agreement unless the Service User wishes to pay the 1st party top-up as it accrues in order to reduce accruing debt. The Council's preferred payment mechanism is direct debit.
2. The top-up agreement will usually be reviewed annually. The review will usually take place at the same time as the Service User's annual care review. If a change in the Service User's circumstances triggers a review earlier then the top-up agreement will also be reviewed. The 3rd Party can request a review of the agreement at any time.
3. The 3rd Party must inform LCC of any change in their circumstances which will mean that they are unable to continue to meet the agreement as soon as they are aware of the change.
4. Where the Service User has a change in circumstances that requires a new financial assessment and this results in a change in the level of contribution the Service User makes, this may not reduce the need for a 'top-up' payment.



5. The Council will consider increases in the cost of the residential accommodation commissioned for Social Care by way of the annual Fee Review process, details of which are published on the Council's website.
6. Where the Service Provider wishes to vary the amount of a 3rd Party contribution then the Service Provider should apply in writing to the Council setting out the details surrounding the proposed variation and the Council will, following consultation with the Service User and the 3rd Party contributor undertake to inform the Service Provider of the decision of the 3rd Party as to the proposed variation.
7. Where there is an agreed change to the contribution of a 3rd Party, a revised agreement will be completed or the agreed variation will be recorded on the schedule attached to the 3rd Party agreement.
8. If the 3rd Party wishes to terminate the agreement they should give as much notice as possible to the Council and not less than three months in order to provide the Council with sufficient time to undertake a review of the Service User's care needs and to make alternative arrangements to meet the Service User's needs. If less than three months' notice is received LCC may seek to recover up to three months payments under the agreement.

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#### **46. Failure of the agreement(s)**

1. As the Council has entered into a contract to provide care in a setting that is more expensive than the amount identified in the Personal Budget the Council is responsible for the total cost of the placement.
2. Therefore, if there is a break down in the arrangement of the top-up, i.e. the person making the top-up ceases to make the agreed payments, then the Council is liable for the fees until it has either recovered the additional costs it incurs or made alternative arrangements to meet the cared for person's needs.
3. If there is a break down in the arrangement to meet the cost of the top-up the Council may move the Service User to an alternative accommodation which would be suitable to meet their needs and affordable within the Personal Budget.
4. The Council will undertake a new assessment before considering this course of action, including consideration of a requirement for an assessment of health needs, and have regard to the person's wellbeing. The Council will also seek to recover any outstanding debt through its debt collection strategy.

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5. Each 3rd Party agreement forms a part of the total top-up agreement for the Service User's care placement; should any one 3rd Party notify the Council of their wish to terminate their agreement or default on their agreement then the local authority will undertake a Service User care review, as detailed in paragraph 21 above.

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**3rd Party financial self-assessment form**

£ monthly

**Household Income**

Wages - after tax and national insurance  
Occupational Pension  
State Pension  
Other Benefits (inc. child benefit)  
Income from self-employment (net)  
Income from savings and investments  
Other significant income

**Total Household Income per month**            **0**

**Household Expenditure**

Council tax  
Mortgage payment  
Rent  
Gas / Electric  
Water  
Buildings & Contents Insurance  
Mortgage life insurance  
Ground Rent / Service Charge  
Phones - mobile & landline  
TV, Internet & Broadband  
Food & groceries  
Loan / HP repayments  
Credit card repayments  
Childcare costs  
Child maintenance or child support  
Public transport  
Fuel  
Vehicle running costs  
Other significant expenditure

**Total Household Expenditure per month**            **0**

**Household Disposable Income per month**            **0**

Proposed **weekly** third party top-up amount

Proposed **monthly** third party top-up amount

## **47. Deferred Payment Agreements**

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## **48. Introduction – Deferred Payment Agreements**

1. The Council operates a Deferred Payment Scheme (DPS); the DPS means that people should not be forced to sell their home in their lifetime to pay for their care. By entering into a deferred payment agreement (DPA) a person can “defer” or delay paying the costs, or part of, their care and support until a later date.
2. Before entering into a DPA the Council will provide information regarding the Council’s DPA scheme to the Service User and will also recommend that Service Users or their representatives seek appropriate independent advice.
3. Service Users, who are eligible for, and receiving or going to receive, residential care services, extra care services (support and care services element) or supportive living services can apply for a deferred payment agreement.
4. In exceptional circumstances other Service Users may be considered as eligible for the scheme. Service Users who do not meet the above criteria but who wish to access the scheme should contact the Council to discuss their circumstances.
5. A DPA can last until the Service User’s death; however it can also be used as a “bridging loan” to give the Service User time and flexibility to sell their home when they choose to do so.
6. The Council will disregard the value of the Service User’s home for the first twelve weeks after entering Council supported care in a care home, supportive living or shared lives setting (see Chapter 20).
7. If a Service User does not want to sell their property and also chooses not to take advantage of the DPA scheme the property will be included as capital in their financial assessment as detailed above. Any failure to pay the resulting charge for their care and support will be subject to the Council’s debt collection strategy.

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## **49. Capacity to request a deferred payment**

1. The Council cannot enter into a deferred payment agreement with a person who lacks the requisite mental capacity.

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2. Where a Service User lacks capacity to request a deferred payment, a person who has a relevant Enduring Power of Attorney, Lasting Power of Attorney or a Deputy may request a deferred payment on their behalf. The Power of Attorney must be registered with the Office of the Public Guardian.
3. When discussing the DPA with the Service User the Council will bear in mind that people may lose capacity to make decisions over time so as part of the process the Council may suggest that people take appropriate advice about whether to appoint an Attorney who would make decisions on their behalf should they become unable to do so in the future.
4. If the Service User loses capacity during the period of the DPA the family or other Service User representative must apply for a Deputy.
5. If there is no one able or willing to apply for a Deputy, in a reasonable period of time, the Council will apply for a Deputy to be appointed. The Council will consider the risk of a conflict of interest where it applies to take on a property and financial affairs deputyship itself, particularly if there is a DPA in place or being considered.
6. Until the deputyship order is granted and the DPA is finalised the Council will continue to invoice the full amount of the assessed charge for care to the Service User. When the DPA is finalised it will be backdated to the start of the care service.

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## **50. Amount Deferred**

1. The Service User may meet the costs of their care from a combination of any of four primary sources:
  - a. Income, including pension income
  - b. Savings or other assets they might have access to, this might include any contributions from a 3<sup>rd</sup> Party.
  - c. A financial product designed to pay for long-term care.
  - d. A DPA
2. The amount being deferred will depend on the amount the Service User will be paying from the other sources. At a minimum the Service User will be allowed to defer their “core care costs” (Personal Budget amount).
3. If a Service User is contributing to care costs from savings the Council will consider the length of time that the savings will last. This will include a consideration of the impact on their care if the savings are depleted.

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## **51. 1<sup>st</sup> Party top-up arrangements**

1. Where the Service User chooses a more expensive accommodation alternative they can seek to implement a top-up arrangement paid for by them. They can do this as detailed in Chapter 42 above.
2. If a top-up is in place when the equity limit is reached the Service User will need to pay for it in other ways or be prepared for a change in their package.

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## **52. Setting up the DPA Agreement**

1. The Council must ensure that adequate security is in place for the amount being deferred so that it can be confident that the amount deferred will be repaid in the future.
2. The Council must be able to place a first legal charge on the Service User's property to secure the deferred amount; the property must, therefore, be registered with the Land Registry. If it is not registered with the Land Registry the Service User must register the property at their own expense prior to the DPA being agreed. The Council may also require written waiver(s) from any joint owners which places the debt owed to the Council above any interest they may accrue in the property.
3. If it is not possible to secure the debt by way of a legal charge on a property the Council will consider whether it is able to obtain any other type of security.
4. Other forms of security will be considered only in exceptional circumstances. If adequate security is not available the Council will not be able to agree a DPA.
5. There will be a formal written agreement between the Service User and the Council.
6. The Council will aim to have a DPA finalised and in place by the end of the 12-week disregard period (where applicable) or within 12 weeks of the person approaching the council regarding a DPA in other circumstances. Should the agreement not be finalised within the 12 week period the DPA will not commence and the full amount of the assessed charge will be payable on invoice unless there are extenuating circumstances as to why more time is required. A further request for a DPA can be submitted by the Service User or their representative.

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7. If a DPA is to be secured with a jointly-owned property the Council will seek all legal and beneficial owners' consent (and agreement) to a charge being placed on the property. All owners will need to be signatories to the charge agreement and the co-owners will need to agree not to object to the sale of the property for the purpose of repaying the debt due to the Council.
8. Interest and Administrative costs can be added onto the total amount deferred as they are accrued although a person may request to pay these separately if they choose. The Council will notify the Service User in writing whenever they are liable for an administration charge.
9. The council will charge a fee to cover the setup costs of the DPA. The Service User can choose to pay this amount on demand or add the fee to the deferred amount. Should the DPA not be finalised the Council will require the Service User to pay the costs incurred to the point that the Council is informed that the Service User does not wish to complete the DPA.
10. The Council will charge an annual fee to cover the ongoing administration costs of the DPA. The Service User can choose to pay these amounts on demand or add them to the deferred amount.
11. Compound interest is payable on the DPA from the first day of the agreement. The interest will be calculated daily and added to the debt weekly. The Service User can choose whether to pay the interest monthly or whether to add this amount to the deferred amount.
12. The Council interest rate will be the nationally-set maximum interest rate published in the Economic and Fiscal Outlook which is usually published twice-yearly alongside the Budget and Autumn Statement. The interest rate may change from time to time.
13. The Council will arrange to value the property as part of the DPA process. If the Service User wishes they can request an independent valuation in addition to the Council valuation at their own cost. If this is substantially different to the Council valuation the Council and the Service User will discuss and agree an appropriate valuation figure prior to proceeding with the agreement.
14. If there is an economic downturn it is possible that property values will go down, possibly significantly, and this could impact on the term of the DPA and the deferred payment period. Should this be the case the property will be revalued and the Service User will be advised of the consequential impact on the deferred payment period.

15. The value of the asset to be deferred will be set at the current market, or surrender, value of the asset and adjusted to reflect the Service User's share in the asset.
16. The maximum amount which can be deferred is: House (or other asset secured) value – 10% - lower capital limit.

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### **53. Operating a DPA**

1. There must be appropriate arrangements in place to maintain the property (or other asset secured) for the duration of the DPA.
2. The Service User should obtain the Council's consent before allowing someone to occupy the property after the agreement has been made. In these circumstances, the Council may require a written waiver from the occupier(s) which places the debt owed to the Council above any beneficial interest they may accrue in the property.
3. The Service User should inform the council of any change in their circumstances which will affect the terms of the DPA.
4. The Council will provide the Service User written statements at six-monthly intervals. The Council will also provide the Service User, or their representative, a statement on request within 28 days. The statement(s) will show:
  - a. Amount of fees deferred
  - b. Interest and admin charges accrued to date
  - c. Total amount due
  - d. Equity remaining in home
  - e. Amount deferred during previous period.
  - f. Total amount deferred to date
  - g. Projection of how quickly equity will be depleted up to equity limit.
5. The Council will reassess the value of the security when the amount deferred exceeds 50% of the value of the security and periodically thereafter.
6. When the amount deferred approaches and / or / reaches 70% of the chosen security value the Council will advise the Service User and will jointly consider:
  - a. Their eligibility for means tested support
  - b. The implications for any top-up in place.
  - c. Whether a DPA continues to be the best way to meet the costs of the care.



7. Interest will continue to accrue on the amount deferred even after the equity limit has been reached and/or after the Service User has died up until the point at which the deferred amount is repaid to the Council. If the Council cannot recover the debt and seeks to pursue this through the County Court the Council will charge the higher County Court rate of interest.
8. The Council may refuse to defer further fees if:
  - a. The Service User becomes eligible for Council support in paying for care.
  - b. There is no longer a need for care in a care home / supported living accommodation.
  - c. If the property becomes disregarded
  - d. If the deferred amount has reached the equity limit.
9. The charge will be removed when payment of the accrued debt and any outstanding payments to the Council have been paid in full.

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#### **54. Insurance requirements**

1. The Service User must keep the Property (or other asset secured) insured with a reputable insurance office against loss or damage by the insured, risks of fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave, impact, terrorism, bursting or overflowing of water tanks and pipes, damage by aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, labour disturbance, malicious damage and damage caused in the course of theft subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters for a sum representing the full Reinstatement Value of the Property. The insurance must be appropriate to whether the property is empty or occupied by others.
2. The Service User must have the legal interest of Leicestershire County Council noted in the policy.
3. The Service User must promptly pay the premiums for insurance as they become due and comply with the other terms and conditions of the insurance policy.
4. Following the incidence of damage to or destruction of the Property the Service User must apply the proceeds of the policy of insurance in rebuilding and reinstating the Property (subject to receipt of all necessary consents, licences, permissions and the like) OR pay the total amount due to the Council.

5. The Service User must produce to the Council a copy of the current insurance policy in force whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount and period of cover (but no more often than once in any period of 12 months in both cases).

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## **55. Renting out the property**

1. The Service User may decide to rent out their property during the course of the DPA. Should the property be rented the Council requires that a formal Assured Shorthold Tenancy Agreement is in place for the period of the rental agreement. A copy of the Tenancy Agreement should be produced for the Council on request.
2. The Service User must ensure that appropriate Landlord insurance is in place.
3. If there is a mortgage outstanding on the property the Service User must ensure that the mortgagor is advised / agrees, where required, that the property is being rented.
4. The Council will permit the Service User to retain 50% of the gross rental income attributable to the Service User's share in the property in addition to their Disposable Income Allowance (DIA). If there is a contract for a letting agent in place the rental income amount will be reduced by any reasonable letting agent fees. The remaining percentage must be used to contribute towards the Service User's care fees where the Service User's income exceeds the DIA.
5. For the period of the DPA and whilst the property is rented out the Service User will be required to pay a contribution towards their care and support equal to "Personal income plus 50% gross rental income(after letting agent fees) less disposable income allowance".
6. In exceptional circumstances the Council will consider disregarding a higher percentage of the gross rental income.

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## **56. Disposable income allowance (DIA)**

1. The Service User has a right to retain a proportion of their income (the "disposable income allowance". The maximum amount is fixed and is set nationally by central government.

2. The property must be maintained in a habitable condition for the period of the DPA. The costs of maintaining the property must be met by the Service User. No additional allowance on top of the DIA will be made for the property maintenance costs.
3. The DIA will revert to the national personal expenses allowances if the DPA is terminated or frozen.

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## **57. Terminating the DPA**

1. The DPA can be terminated in at any time by the individual, or someone acting on their behalf, by repaying the full amount due. This can happen during a person's lifetime or when the agreement is terminated through the Service User's death.
2. On termination the full amount due (including care costs, any interest accrued and any administrative or legal fees charged) must be paid to the Council.
3. In the event of the Service User's death, responsibility for arranging for repayment of the amount due falls to the executor of the estate.
4. Interest will continue to accrue on the amount owed to the Council after the Service User's death and until the amount due to the Council is repaid in full.
5. If the DPA is terminated through the person's death the amount owed to the Council under the DPA falls due 90 days after the person has died. After the 90 day period the Council may enter into legal proceedings to reclaim the amount due.
6. The Council will wait at least two weeks following the person's death before approaching the executor with a full breakdown of the total amount deferred although a family member or executor / agent can approach the Council to resolve the outstanding amount due prior to this point.

## **58. Continuing Health Care funding**

1. Should the Service User become eligible for full continuing health care funding the Council will continue to defer the amount outstanding to date even though no additional care fees will accrue. The Council will continue to charge interest and administration costs until the debt is cleared.

2. The Council will ask for voluntary payments wherever possible as this will reduce the amount of the accrued debt set against the value of the property.

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## **59. Non-residential Care financial assessment**

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## **60. Minimum Income Guarantee (MIG)**

1. The Council will ensure that a person's income is not reduced below the equivalent of the value of Income Support or the Guaranteed Credit element of Pension Credit plus a minimum buffer of 25%. The amounts are set out in the Care and Support (Charging and Assessment of Resources) Regulations 2014.
2. The MIG will be calculated after housing costs such as rent and Council Tax (net of any benefits provided to support these costs) and after any disability related expenditure, see Chapter 62.

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## **61. Couples**

1. Couples include married, registered civil partners and co-habiting couples which would be treated as such by the DWP for benefits purposes. If a couple maintain separate financial arrangements and are not treated by the DWP as a couple then they will be treated as individuals for the purpose of the financial assessment.
2. Only the Service Users / Carer's income and capital will be taken into account for the financial assessment. The financial assessment will ensure, as far as possible, that the Service Users / Carers partner's income is protected to:
  - a. All of his / her income 125% of (half the couple's basic Pension Credit / Income Support level + any extra premiums applied individually to the partner, e.g. Carer's Premium).
  - b. Where the Service User / Carer has a beneficial interest in capital held in someone else's name, e.g. their partner, the Service User's share will be included in the assessment of their capital.
  - c. Where a person has joint beneficial ownership of capital, except where there is evidence that the person owns an unequal share, the total value will be divided equally between the joint owners and the person should be treated as owning an equal share.

3. Further protection of a couple's income is ensured by calculating a secondary (non-statutory) 'Couple's Assessment' and applying the lower of the two assessments. The 'Couples Assessment' will only be applied where this gives a lower charge than the statutory assessment.
4. The 'Couples Assessment' is calculated using the following guidelines:
  - a. Minimum income guarantee is 125% of (couple's basic Pension Credit / Income Support including any extra premiums applied individually to either partner, e.g. Carer's Premiums).
  - b. Income and capital is aggregated together.

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## **62. Disability Related Expenditure (DRE)**

1. Disability Related Expenditure (DRE) is expenditure which Service Users / Carers incur in addition to their day to day living costs where the cost is more than normal expenditure and incurred due to disability rather than choice.
2. The amount of DRE is deducted from the chargeable income amount when determining the Service Users / Carers charge.
3. The general principles for DRE allowances are that:
  - a. They should be considered in conjunction with the individual's support plan and the Council's eligibility criteria.
  - b. They should be the lowest cost alternative
  - c. Exceptional circumstances will be considered.
  - d. Evidence of payment will normally be requested during the financial assessment and can be requested at any time.
  - e. Expenses are not allowed where the Council provides commissioned services or Personal Budgets in order to meet the need.
  - f. "Normal" expenditure limits are used to indicate the expenses incurred before disability.
  - g. All allowable costs will be divided by the number of adults in the household who receive a benefit from the purchased item or service.

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## **63. Calculation of Actual Charge for non-residential care services**

1. The actual charge for each Service User will be the lower of:

- a. The individual assessed weekly amount calculated from the financial assessment and
- b. The agreed Personal Budget.

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#### **64. Absences**

Section to be included later

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#### **65. Exceptional Circumstances**

1. If a Service User / Carer feels that they are unfairly disadvantaged by the Charging policy because of their exceptional circumstances they can request that their individual circumstances are reviewed by a panel of Council officers.

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#### **66. Cancellation of service due to the charging policy**

1. If a Service User / Carer wishes to cancel their service due to the level of the charge an operational worker will contact the Service User / Carer to discuss the matter.

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#### **67. Right to appeal**

1. If the Service User / Carer disagrees with their assessed contribution calculation, or feels that they have insufficient funds to pay the charge, they have the right to appeal against the amount of their assessed contribution.
2. The Service User / Carer or their authorised representative have 30 days from the date that the charge is advised to them in which to start the appeal. They can start the appeal process by contacting the Community Care Finance section or their commissioning worker.

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#### **68. Complaints**

1. If the Service User / Carer wishes to complain about this policy this will be considered by the Council under the Council's statutory complaints procedure.
2. All disagreements and concerns about the assessed contributions will be dealt with through the appeals process.

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3. Should the 3rd Party wish to make a complaint about the top-up arrangement this will be considered by the Council under the Council's statutory complaints procedure.
4. Any complaints should be addressed to the Customer Relations Manager, Corporate Resources Department, County Hall, Glenfield, Leicester, LE3 8RL. Tel: 0116 305 7422. Email [complaints@leics.gov.uk](mailto:complaints@leics.gov.uk)

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