



BRIEFING PAPER

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Social care: paying for care home places and domiciliary care (England)

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Summary

This House of Commons Library briefing paper sets out how individuals are assessed for local authority funding support towards the costs of their social care for 2019/20.

Below are some of the key metrics for the social care means-test for 2019/20:

Upper capital limit	£23,250
Lower capital limit	£14,250
Personal Expenses Allowance (care home residents only)	£24.90 per week
Minimum Income Guarantee (settings other than a care home)	set according to circumstances (e.g. single, disabled) – see the Annex to this note for a list of the rates

The Department of Health and Social Care's "Care and Support Statutory Guidance" sets rather rigid means-test rules for care home residents with little scope for local authority discretion. For people receiving social care in non-care home settings, local authorities design their own charging policies which can be more generous than those for care home residents e.g. an upper capital limit higher than £23,250.

In order to determine eligibility for local authority funding support towards social care costs, someone's capital is assessed against the upper limit. For care home residents only, their capital can include the value of their home but this has to be disregarded from the means-test if certain conditions are met or if a local authority decides to exercise its discretion to disregard it.

Those recipients of social care with capital below the upper limit are eligible for local authority funding support toward the cost, but they are still required to contribute any income they receive (except disregarded income, such as earnings). There is no limit of the amount of income someone has to contribute over their lifetime. They are allowed to retain a certain amount each week for personal expenses and (if applicable) household bills.

A deferred payments agreement may be offered by a local authority, which can avoid the need for a care home resident to sell their home during their lifetime. In addition, third (or in some limited cases, first) party top-ups can be used to finance a more expensive care home setting than a local authority would normally fund.

This note applies to England only.

A list of other House of Commons Library briefing papers on adult social care and relating matters can be found at the end of this note.

1. The Government guidance and local authority discretion

From April 2015 following the implementation of the Care Act 2014, the rules on paying for social care have been set out in the “Care and Support Statutory Guidance” (CASS) published by the Department of Health and Social Care (previously called the Department of Health).

Although this single document covers both care home residents and recipients of care in other settings, the CASS notes that “the detail of how to charge is different depending on whether someone is receiving care in a care home, or their own home, or another setting” although “they share some common elements”.

In short, the rules regarding paying for a care home place are pretty rigid, with local authorities mostly required to follow the CASS. There is some room for flexibility in some areas, such as local authorities being able to allow a person’s home to be disregarded from the means-test in circumstances other than those set out in the CASS (see section 5.2).

In contrast, for settings other than a care home, such as domiciliary care, local authorities have to “develop and maintain” their own charging policies with the proviso that they must be at least as generous as that set out in the CASS. As the charity Disability Rights UK notes:

Local authorities have discretion to have more generous charging rules [for non-residential care, i.e. non-care home] than those set out in the regulations. Local authorities will ... draft their own domiciliary charging policies subject to the Guidance [CASS].¹

For example, the CASS says that “for adults receiving care and support in locations other than in a care home the [upper and lower capital] limits of £23,250 and £14,250 are simply minimums and local authorities have discretion to set their own higher capital limits if they wish, provided they are no lower than £23,250 for the upper limit and £14,250 for the lower limit”.²

The CASS explains that:

The different approaches exist to reflect that the delivery model for care homes is relatively uniform across the country and it is therefore sensible to provide a single model for charging purposes. However, other models of care generally see a greater variety of approaches and innovation that we wish to continue.³

The CASS states that “where a local authority has decided to charge [for social care] ... it must carry out a financial assessment of what the person can afford to pay”. The assessment must be shared with the person once it is completed.⁴

¹ Disability Rights UK, [Non-Residential Charges: Paying towards the cost of your care and support at home](#), factsheet F3, 6 February 2019

² Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, para 8.12

³ As above, paras 8.4–8.7 (original emphasis)

⁴ As above, para 8.16

There are, however, specified exceptions from undertaking a means-test: the “light-touch financial assessment” applies where:

- it is apparent the person has significant financial resources that will mean they fail the means-test;
- the person is claiming certain benefits (for example, means-tested benefits); or
- where the local authority charges a small or nominal amount for a particular service which a person is clearly able to meet and would clearly have the relevant minimum income left.⁵

In terms of undertake a further review of a person’s resources against the means-test, the CASS states that “a local authority must 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 on an annual basis, but may vary according to individual circumstances” which may include “if there is a change in circumstance or at the request of the person”.⁶

Box 1: The previous approach: different guidance for care homes and other settings

Prior to the publication of the CASS, the Department of Health published two sets of guidance on charging for social care, depending on the setting:

For **care home residents**, the then Department of Health (DH) published the “Charging for Residential Accommodation Guide” (CRAG)⁷ – the CRAG was quite prescriptive.

For **those receiving care in non-care home settings**, the DH’s guidance “Fairer Charging Policies for Home Care and other non-residential Social Services” was applicable to local authorities with social services responsibilities. The guidance set out minimum standards for local authorities upon which they developed their own home care charging policies (should they have decided to charge).⁸

Even when someone passes the means-test and qualifies for local authorities funding support for social care, they are still required to pay their income (less any disregarded income, and any income retained for personal expenses and (if applicable) household bills) towards the cost of that care.

Box 2: Is social care ever free at the point of use?

If someone is eligible for local authority funding support towards the cost of, for example, their domiciliary care but has a weekly income that is less than the applicable rate of the Minimum Income Guarantee, then they would not have to contribute any income toward the cost of their care.

Alternatively, if someone qualifies for NHS Continuing Healthcare (NHS CHC), then the NHS will meet the full cost of both health and social care needs (including accommodation costs in a care home, if applicable) irrespective of a person’s means. The person does not have to contribute any income towards the cost. A person is only eligible for NHS CHC if their need for care is assessed as being primarily due to health needs. For more information, see the Library briefing paper [NHS Continuing Healthcare in England](#).

⁵ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, paras 8.22–8.26

⁶ As above, para 8.17

⁷ The last edition was Department of Health, [Charging for Residential Accommodation Guide](#), April 2014.

⁸ The last edition was Department of Health, [Fairer Charging Policies for Home Care and other non-residential Social Services](#), June 2013.

2. Determining eligibility for local authority funding support

2.1 The capital limit that determines eligibility

There are two capital limits:

- an upper limit of £23,250; and
- a lower capital limit of £14,250.⁹

The upper limit determines if someone is eligible for local authority funding support towards the cost of their social care.

The upper capital limit is rigid for people receiving social care in a care home setting.¹⁰

However, for someone receiving social care in a non-care home setting e.g. domiciliary care, then “a local authority can relax this rule if it wishes”¹¹ e.g. set a higher upper limit threshold.¹²

As noted above, the CASS states that:

for adults receiving care and support in locations other than in a care home the [upper and lower capital] limits of £23,250 and £14,250 are simply minimums and local authorities have discretion to set their own higher capital limits if they wish, provided they are no lower than £23,250 for the upper limit and £14,250 for the lower limit.¹³

The upper and lower capital limits were last increased by the Government on 12 April 2010

Box 3: If someone qualifies for social care funding assistance if they has capital less than the upper limit, then why is there also a lower capital limit?

If someone is eligible for local authority funding support towards their social care (i.e. they have capital below the upper limit), then the lower limit determines how much of their capital they have to contribute each week towards the cost of their social care.

For every full or part £250 above the lower limit, they are charged an additional £1 of “tariff income” per week which they have to pay towards the cost of their care.¹⁴

⁹ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex B, para 3

¹⁰ As above, para 8.7

¹¹ AgeUK, [Paying for care and support at home](#), April 2019, Factsheet 46, p12

¹² Department of Health and Social Care, [Social care – charging for care and support](#), Local authority circular – LAC(DHSC)(2019)1, Annex to the Circular, p3, para 2.1

¹³ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, para 8.12

¹⁴ For example, if a care home resident has capital of £15,150 i.e. £900 above the lower limit, they pay £4 in tariff income each week.

3. When capital diminishes to below the upper limit

3.1 Informing the local authority as declining capital approaches the upper limit

Although a person may not initially meet the means-test criteria when they first start needing social care support, over time as they spend their capital and income to pay for social care (and other) bills, their capital may reduce to below the upper limit. At this point, they would become eligible for local authority funding support.

Box 4: The risk of “catastrophic” social care costs

While there is an upper capital limit which determines the point at which someone becomes eligible for social care funding support from their local authority, there is no limit – in terms of time or cost – that a person can spend on social care in their lifetime. This can lead to some recipients of social care facing what are often referred to as “catastrophic” costs, although there is no common definition of how this is measured.¹⁵

For example, the charity Independent Age highlights that the cost of a “typical” two-year stay in a care home is around £64,000, including both social care and the “hotel” costs (e.g. room, food).¹⁶

While proposals have been put forward by the Government – and indeed legislation placed on the statute book (albeit not brought into force to date) – for a cap on lifetime social care charges, at present there is no cap in force.¹⁷

As AgeUK explains in respect of care home residents (although it applies equally to those paying for their own social care in other settings when the approach their local authority’s upper limit):

If you self-fund in a care home but your capital falls towards the upper capital limit (£23,250), ask your local authority for an assessment of your care needs, to see if you are now eligible for funding assistance. This may take time to arrange so it is worth asking a few months before your capital reduces to £23,250.

Your local authority must undertake a requested needs assessment and related financial assessment as soon as reasonably possible, taking into account the urgency of your needs. Once aware of your situation, they should seek to ensure you are not inappropriately forced to use up your capital as a result of an assessment delay. If this happens, you can complain, which can include a request for financial compensation.¹⁸

¹⁵ For example, for a discussion on this topic see Independent Age’s briefing paper, [Free personal care: how to eliminate catastrophic costs](#), April 2019, in particular the box on page 5.

¹⁶ Independent Age, [Free personal care: how to eliminate catastrophic costs](#), April 2019, p9

¹⁷ For more information, see the relevant Library briefing papers listed at the end of this note.

¹⁸ AgeUK, [Paying for permanent residential care](#), Factsheet 10, June 2019, p22

3.2 Possible changes to how needs are met when a self-funder becomes eligible for local authority funding support

Although someone who self-funds their social care can become eligible for local authority funding support (once their capital is less than the upper limit), it is not a given that the local authority will match the level of social funding that an individual had been paying for. For example, someone might be staying in a care home which is more expensive than the local authority would usually budget for.¹⁹

The CASS notes that, when determining how to meet the care and support needs of someone who is eligible for local authority funding support:

the local authority must take into consideration the individual's preferences. The authority should consider the person's goals in approaching the authority for support, and the level or nature of support desired. Where the person wishes to take more control over their own care and support, this should be reflected in the route taken. Similarly, where the person asks for more local authority support (for example, because they lack the skills or confidence to engage with the provider market and do not have family or friends who are willing and/or able to support them with this), the authority should respond accordingly in the decision taken about how needs will be met.²⁰

However, this is not without limit: the CASS adds that, while a local authority should also consider the relationship with other services (e.g. NHS, housing) and needs met by a carer, it:

may also take into reasonable consideration its own finances and budgetary position, and must comply with its related public law duties. This includes the importance of ensuring that the funding available to the local authority is sufficient to meet the needs of the entire local population. The local authority may reasonably consider how to balance that requirement with the duty to meet the eligible needs of an individual in determining how an individual's needs should be met (but not whether those needs are met).²¹

But on the other hand, the CASS states that this does not permit a local authority to "set arbitrary upper limits on the costs it is willing to pay to meet needs through certain routes", as "doing so would not deliver an approach that is person-centred or compatible with public law principles".

¹⁹ However, self-funders tend to pay more – on average, 41% more for the same care home place in a "larger care home provider" according to the Competitions and Markets Authority in a November 2017 report, for example – than local authorities for the same care home place due to local authorities' greater negotiating power. As such, it is important to consider the actual cost of social care to the local authority rather than simply the cost that a self-funder had been paying [see Competition and Markets Authority, [Care homes market study – Final report](#), 30 November 2017, p40, para 2.40].

²⁰ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, para 10.20

²¹ As above, para 10.27

Rather, a local authority “may take decisions on a case-by-case basis which weigh up the total costs of different potential options for meeting needs, and include the cost as a relevant factor in deciding between suitable alternative options for meeting needs. This does not mean choosing the cheapest option; but the one which delivers the outcomes desired for the best value”.²²

As AgeUK explains in respect of care homes, for example, this may mean that a former self-funding resident is required to move to a different care home:

If the home in which you have been self-funding costs more than the local authority is prepared to pay, this can cause difficulties if you apply for local authority [funding] assistance. They may require a third party to make up the difference. If none is available, they may conclude you need to move to a cheaper care home.

For more information on third party top-ups and when they can, and cannot, be requested to make up the difference, see section 9.2.

If a local authority is proposing that a person should move to a cheaper care home, AgeUK notes that an assessment can be requested:

ask the local authority to carry out an assessment of all your needs including your physical or psychological wellbeing and your social and cultural needs. They should look at the risk to your wellbeing of moving you.

If your existing care home is found to be the only one that can meet your assessed eligible needs, the full cost should be met by the local authority. The statutory guidance states local authorities ‘should not have arbitrary ceilings’ to their personal budget calculations.²³

Similarly, a local authority may propose funding fewer hours of domiciliary care than someone who had been self-funding had been paying for. Again, it could be possible to challenge a local authority on the basis that the reduction would mean that a person’s care and support needs would not be adequately met.

²² Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, para 10.27

²³ AgeUK, [Paying for permanent residential care](#), Factsheet 10, June 2019, pp22–23

4. What is (and isn't) classed as capital

The CASS does not provide a definitive definition of capital but rather provides a general explanation that capital “refers to financial resources available for use and tends to be from sources that are considered more durable than money in the sense that they can generate a return”.²⁴

Examples cited in the CASS include buildings, land, stocks and shares, bank and building society accounts and trust funds whether held in the UK or abroad (subject to any restrictions in repatriating the capital).²⁵ In addition, interest paid on savings accounts or dividends paid from shares, among other things, are treated as capital.²⁶ The value of a care home resident's home may also be treated as capital (see section 5)

A number of capital assets are specified in the CASS as being disregarded (i.e. not included) from the capital means-test, including the surrender value of any life assurance policy or annuity, payments in kind from a charity and any social fund payment, for example.²⁷

4.1 Legal and beneficial ownership

The key distinction is between the “legal owner” and the “beneficial owner”.

In terms of the difference between legal and beneficial ownership, the CASS explains that:

A capital asset is normally defined as belonging to the person in whose name it is held, the legal owner. However in some cases this may be disputed and/or beneficial ownership argued. 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.²⁸

The CASS provides the following example:

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.²⁹

²⁴ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex B, para 5

²⁵ As above, Annex B, paras 5–6 and Annex B, paras 20–22

²⁶ As above, Annex B, para 57

²⁷ A full list can be found in paragraph 33 in Annex B of the CASS.

²⁸ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex B, para 10

²⁹ As above, Annex B, para 11

4.2 Shared capital

Sometimes capital is not owned wholly by the recipient of social care, but may be jointly owned with their spouse, or a relative (for information on joint ownership of homes, see section 5.3).

In a situation where there is more than one beneficial owner, the CASS states that “the total value should be divided equally between the joint owners and the person [i.e. social care recipient] should be treated as owning an equal share”. An exception to this applies “where there is evidence that the person own an unequal share”. It adds that “once the person is in sole possession of their actual share, they can be treated as owning that actual amount”.³⁰

As AgeUK notes, “local authorities cannot generally assess joint resources of couples” – either capital or income (see section 7.1).³¹ This point is stated in the CASS:

The local authority has no power to assess couples or civil partners according to their joint resources. Each person must therefore be treated individually.³²

4.3 How capital is valued

The valuation of capital is usually the current market value (i.e. “the price a willing buyer would pay to a willing seller”) or surrender value of the capital asset.

Where there are “expenses connected with the actual sale”, such as legal fees to sell a house, then 10% of the capital value is deducted.

Also, any outstanding debts secured on an asset are offset against its valuation.³³

4.4 What capital can be disregarded from the means-test for a limited period

Certain types of capital are excluded from the means-test for a fixed period of time:

- “at least” a 26-week disregard (or longer at the discretion of the local authority), including for business assets owned or part-owned by the person (who was self-employed) requiring social care after disease or disablement where they intend to resume business when fit again;³⁴
- a maximum 52-week disregard from the date they were received for certain capital including, for example, arrears of or compensation due to non-payment of certain social security benefits, and personal injury payments;³⁵

³⁰ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex B, para 12

³¹ AgeUK, [Paying for permanent residential care](#), Factsheet 10, June 2019, p6

³² Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, para 8.8

³³ As above, Annex B, paras 14 and 15

³⁴ A full list can be found in paragraph 47 in Annex B of the CASS.

³⁵ A full list can be found in paragraph 48 in Annex B of the CASS.

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- a 2-year disregard for payments to relatives to a victim of vCJD (Variant Creutzfeldt-Jakob disease) for 2 years from the date of death of the victim (or from the date of payment from the trust if later), or to a dependent child or young person until they turn 18, where such payments were made under a trust established out of funds by the Secretary of State for Health.³⁶

The CASS also allows a local authority to disregard the assets that are tied up in a business that someone owns or part-owns, but only where the person “is taking steps to realise their share of the assets”. In determining the length of time of the disregard, the local authority “must disregard the value for a period that it considers to be reasonable ... tak[ing] into account the length of time of any legal processes that may be needed”.³⁷

³⁶ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex B, para 49

³⁷ As above, Annex B, paras 50–51

5. Property and the means-test – care home residents only

When someone is a resident in a care home, it might be the case that their property is included in the capital part of the means-test. If this is the case, they might wish to enter into a deferred payment agreement which means that the property need not be sold until their death, although there are additional costs to this agreement – for more information, see section 9.1.

In some cases, however, the value of the home is disregarded from the means-test, because of a time-limited disregard, a mandatory disregard stated in the CASS, or at the discretion of a local authority.

It should be noted that the value of the home is always excluded from the means-test for those receiving social care in a setting other than a care home.

5.1 When property is excluded from the means-test (short-term)

The value of a property can be disregarded from the means-test for 12 weeks:

- when a person first enters a care home as a permanent resident; or
- when a property disregard (other than the 12-week disregard) unexpectedly ends because the qualifying relative living at the home has died or moved into a care home; or
- at the discretion of the local authority, if there is a sudden and unexpected change in the person's financial circumstances.³⁸

5.2 When property is permanently excluded from the means-test

There are three circumstances in which a care home resident's home should be disregarded from the means-test.

Firstly, if a person's stay in a care home is temporary and they intend to return to their home, or are in the process of selling it in order to buy a new home that is more suitable to their needs.³⁹

Secondly, if the home has been continuously occupied (in part or whole as their "main or only home") since before the person went into a care home by:

- the person's partner, former partner or civil partner, except where they are estranged;
- a lone parent who is the person's estranged or divorced partner;

³⁸ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex B, paras 45–46

³⁹ As above, Annex B, para 34

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- a “member of the person’s family” or a “relative” of the person who is:
 - aged 60 or over, or
 - is a child of the resident aged under 18, or
 - is “incapacitated”.

The term “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.

The term “relative” is quite broad and includes parent, children (including adopted and step-children), son- or daughter-in-law, uncle, aunt, nephew or niece, and (for some relatives) their spouse, civil partner or unmarried partner.⁴⁰ A full list can be found in this footnote.⁴¹

The term “incapacitated” is, as the CASS states, “not closely defined”, although it adds that “it will be reasonable to conclude that a relative is incapacitated” if they are in receipt of a disability-related benefit (such as Personal Independence Payment), or their disability is such that they would qualify (although medical or other evidence may be needed).⁴²

Finally, for cases that do not fall into one of the above exemptions, local authorities have a discretion to exclude the value of a home from the means-test (a “discretionary disregard”). The CASS advises that “the local authority will need to balance this discretion with ensuring a person’s assets are not maintained at public expense”.

The CASS gives the example that “it may be appropriate to apply the disregard ... 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”.⁴³

5.3 Shared ownership of a home

As noted in section 4.2 above, when a local authority is determining the value of capital – which can include the value of a home – there are rules in the CASS in regard to shared ownership.

For a jointly owned property, the actual share or beneficial interest must always be taken into account.⁴⁴

As for other types of capital, the CASS notes that “the current market value will be the price a willing buyer would pay to a willing seller”.⁴⁵ In

⁴⁰ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex B, paras 34–35

⁴¹ The term “relative” includes: (a) Parent (including an adoptive parent); (b) Parent-in-law; (c) Son (including an adopted son); (d) Son-in-law; (e) Daughter (including an adopted 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.

⁴² Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex B, para 37

⁴³ As above, Annex B, para 42

⁴⁴ AgeUK, [Paying for permanent residential care](#), Factsheet 10, June 2019, p6

⁴⁵ As above, Annex B, para 15

terms of acquiring someone's share of a home, there could be a question mark over its market value.

AgeUK explains that:

The guidance says that if you jointly own property or land, the local authority must base its valuation on the sale value of your beneficial interest to a 'willing buyer', on the open market, at the time of your financial assessment.

They should not simply assess the value of your property as a whole (or equivalent properties), divide up the shares owned and say this is the true value of your beneficial interest. The value of your beneficial interest depends on how attractive it is to purchase. This can include a nil value.

The joint property ownership trust purpose

When property is jointly owned, it is owned in trust in legal terms – each owner holds it in trust for the other owners. For your beneficial interest in a jointly owned property to have a value to a willing buyer on the open market, they must be able to realise its value. This relates to their potential ability to apply to a Court to enforce sale of the whole property.⁴⁶

⁴⁶ AgeUK, [Property and paying for residential care](#), August 2018, factsheet 38, pp10–11

6. “Deliberate deprivation” of capital

Where someone who anticipates, or is in receipt, of social care reduces their capital with the intention of gaining eligibility for local authority funding support, then they can be found to have “deliberately deprived” themselves of that capital.

Annex E of the CASS is entitled “Deprivation of assets” and explains that:

deprivation of assets means where a person has intentionally deprived or decreased their overall assets in order to reduce the amount they are charged towards their care. This means that they must have known that they needed care and support and have reduced their assets in order to reduce the contribution they are asked to make towards the cost of that care and support.⁴⁷

There are no hard and fast rules about how long an asset has been disposed of (e.g. a certain number of years), although the timing of the disposal should be taken into consideration (among other factors):

There may be many reasons for a person depriving themselves of an asset. A local authority should therefore consider the following before deciding whether deprivation for the purpose of avoiding care and support charges has occurred:

- a) whether avoiding the care and support charge was a significant motivation in the timing of the disposal of the asset; at the point the capital was disposed of could the person have a reasonable expectation of the need for care and support?
- b) did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs?

For example, it would be unreasonable to decide that a person had disposed of an asset in order to reduce the level of charges for their care and support needs if at the time the disposal took place they were fit and healthy and could not have foreseen the need for care and support.⁴⁸

AgeUK notes that “your intention to avoid your care charges must be a significant factor, or the only reason, you have transferred an asset elsewhere, in order to be found to have deprived yourself. Your local authority must prove this if they intend to take a transferred asset into account”.

AgeUK add that “the local authority must use discretion when considering deprivation issues in your financial assessment. This means they must genuinely take all relevant facts and explanations into account and clearly explain why they have reached their decision. Based on this, you can then challenge the decision if you disagree with it”.⁴⁹

⁴⁷ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex E, para 6

⁴⁸ As above, Annex E, paras 11 and 12

⁴⁹ AgeUK, [Deprivation of assets in social care](#), September 2018, Factsheet 40, p7

A local authority can conduct its own investigations into deliberate deprivation using powers under the Regulation of Investigatory Powers Act 2000.⁵⁰

Where a local authority finds that deliberate deprivation has occurred, then a local authority “may either charge the person as if they still possessed the asset [i.e. they possess “notional capital”] or, if the asset has been transferred to someone else, seek to recover the lost income from charges from that person”.⁵¹

In terms of recovering charges from a third party who a local authority has determined has benefitted from the deliberate deprivation, the CASS states:

Where the 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. However, the third party is not liable to pay anything which exceeds the benefit they have received from the transfer.

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

As with any other debt, the local authority can use the county court process to recover debts, but this should only be used after other avenues have been exhausted.⁵²

If someone is considering undertaking a step which might be construed as deliberate deprivation then, as is the case for other matters in this note, they should seek appropriate advice for their particular circumstances.

⁵⁰ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex E, para 17

⁵¹ As above, para 8.28

⁵² As above, Annex E, paras 21-23

7. Income to be contributed towards the cost of social care

When someone is eligible for local authority funding support towards the cost of their social care – because their capital is less than the applicable upper limit – they are required to contribute their income towards the cost, subject to any disregards.

This requirement is without limit – either in terms of cost or time.

In terms of what is defined as income for these purposes, the CASS notes that, again, there are differences in how this issue is addressed for care home residents and recipients of social care in other settings:

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. When charging a person in all other settings, a local authority has more discretion to enable it to take account of local practices and innovations.⁵³

Income is considered net of any tax or National Insurance contributions.

7.1 Shared income

The CASS states that “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”. It adds that:

Where this person receives income as one of a couple, the starting presumption is that the cared-for person has an equal share of the income. A local authority should also consider the implications for the cared-for person’s partner.⁵⁴

7.2 What is (and isn’t) classed as income

The CASS sets out which types of income are fully or partially disregarded – and therefore do not have to be used to pay towards the cost of local authority funded social care – and what types of income are taken into consideration in full (and therefore have to be paid).⁵⁵

Earnings from employment

Earnings, including self-employed earnings, are fully disregarded where such earnings are “any remuneration or profit from employment”.

Some payments are not classed as earnings for these purposes: for example, “any payment made by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment”.⁵⁶

⁵³ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex C, para 2

⁵⁴ As above, Annex C, para 5

⁵⁵ As above, Annex C, para 7

⁵⁶ As above, Annex C, paras 4–13

Occupational and state pensions

Pensions (both occupational and state, including Pension Credit) should be counted as income. This includes income flowing from an annuity unless an exclusion applies (although the capital of the annuity itself is excluded from the means-test).⁵⁷

Consistent with the rules on shared income set out above, the CASS states that “where a person is in a care home and has a spouse or civil partner who is not living in the same care home and is paying half of the value of their occupational pension, personal pension or retirement annuity to their spouse or civil partner, the local authority **must** disregard this payment”.⁵⁸

Social security benefits

When including welfare benefits as income, the CASS states that local authorities “need to ensure that in addition to the minimum guaranteed income or personal expenses allowance [see section 8] people retain enough of their benefits to pay for things to meet those needs not being met by the local authority”.⁵⁹ This includes disability-related expenditure in particular (see section 7.3).

Income from welfare benefits specified in the CASS must be taken into account for a care home resident, including Attendance Allowance (including Constant Attendance Allowance and Exceptionally Severe Disablement Allowance), Disability Living Allowance (Care component) or Personal Independence Payment (Daily Living component), and Universal Credit.⁶⁰

However, income from a number of welfare benefits and tax credits are fully disregarded from the definition of income for social care purposes, including:

- Guaranteed Income Payments made to veterans under the Armed Forces Compensation Scheme, and War Pension Scheme payments made to veterans with the exception of Constant Attendance Allowance payments (different rules apply to non-veterans); and
- the mobility components of either Disability Living Allowance (DLA) or Personal Independence Payments (PIP);⁶¹

In addition, “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, any War

⁵⁷ The two exclusions are that: the annuity is purchased with a loan secured on the person’s main or only home; or a gallantry award such as the Victoria Cross Annuity or George Cross Annuity [Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex C, para 19].

⁵⁸ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex C, para 20 (original emphasis)

⁵⁹ As above, Annex C, para 14

⁶⁰ A full list can be found in Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex C, para 16.

⁶¹ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex C, paras 15 and 29

Disablement pension paid to non-veterans and payments to victims of National Socialist persecution (paid under German or Austrian law)".⁶²

Pension credit savings disregard

As AgeUK notes, "qualifying income for Pension Credit Savings Credit equivalent to the amount of Savings Credit received is disregarded up to a maximum of £5.75 per week (£8.60 for a couple)".

For individuals or couples whose income is too high to claim Pension Credit Savings Credit, "a flat-rate disregard of £5.75/£8.60 per week is applied".⁶³

Notional income

The CASS also includes the concept of "notional income" i.e. "in some circumstances a person may be treated as having income that they do not actually have". As noted above, someone with capital between the lower and higher limits is treated as having £1 notional income ("tariff income") per week for every full or part £250 of capital in excess of the lower capital limit.

The CASS provides further examples of 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.⁶⁴

Paragraph 38 in Annex C lists the sources of income that must not be treated as notional income.

7.3 Disability-related expenditure

In addition to the PEA and MIG (see section 8), the CASS states that "where disability-related benefits are taken into account [as income], the local authority should make an assessment and allow the person to keep enough benefit to pay for necessary disability-related expenditure to meet any needs which are not being met by the local authority.

Examples of such expenditure are set out in the CASS and include the costs of any privately arranged care services required, including respite care, and the costs of any specialist items needed to meet the person's disability needs, for example, any heating costs, or metered costs of water, above the average levels for the area and housing type, and also special clothing or footwear including additional wear and tear.⁶⁵

⁶² As above, Annex C, para 33(a)

⁶³ AgeUK, [Paying for permanent residential care](#), Factsheet 10, April 2019, p10, see Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex C, para 33(b)

⁶⁴ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex C, para 34

⁶⁵ As above, Annex C, paras 39–40

8. Income retained for personal expenses and household bills

While someone eligible for local authority funding support is expected to contribute their income towards the cost of their care (less any fully or partially disregarded income, see section 7), for both care home residents and also people receiving social care in other settings the CASS specifies the minimum levels of income which they should retain to spend on themselves (and household bills, if applicable) – these are called:

- for care home residents, the Personal Expenses Allowance (PEA) and – for those with a deferred payments agreement (see section 9.1) – the Disposable Income Allowance (DIA); and
- the Minimum Income Guarantee (MIG) for people in other settings.

However, as noted in section 7.3 for example, the CASS states that local authorities have discretion to be more generous than either the PEA or MIG:

[T]hey [local authorities] need to ensure that in addition to the minimum guaranteed income or personal expenses allowance ... people retain enough of their [social security] benefits to pay for things to meet those needs not being met by the local authority.

[...]

Where disability-related benefits are taken into account, the local authority should make an assessment and allow the person to keep enough benefit to pay for necessary disability-related expenditure to meet any needs which are not being met by the local authority.⁶⁶

8.1 Care home residents

Personal Expenses Allowance (PEA)

The CASS explains that “the PEA is not a benefit but the amount of a person’s own income that they must be left with after charges have been deducted”. Because PEA is not a benefit, “where a person has no income, the local authority is not responsible for providing [a PEA]”.⁶⁷

The CASS states that:

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 have been contracted for by the local authority 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 a local authority or provider to do otherwise is not permitted.⁶⁸

The weekly Personal Expenses Allowance for 2019/20 is £24.90, unchanged since 2015/16

⁶⁶ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex C, paras 14 and 39

⁶⁷ As above, Annex C, para 44

⁶⁸ As above, Annex C, para 45

Examples of where a local authority should allow a person to be left with income in excess of the PEA set out in the CASS include where a care home resident has a dependent child, or where the care home resident is paying half their occupational pension to their spouse or civil partner who is not living in the same care home.⁶⁹

The current rate of the PEA is £24.90 per week.⁷⁰

Disposable Income Allowance (for those with a deferred payment agreement)

For care home residents who have a deferred payment agreement or DPA (see section 9.1), in addition to the PEA an amount called the Disposable Income Allowance (DIA) is also retained.

The DIA is to allow a care home resident to “maintain and insure the property” that is subject to the DPA.⁷¹ The maximum amount of the DIA is £144 per week “which the local authority must allow the person to retain (if the person wants to retain it)”.

The CASS notes that:

A person may choose to keep less of their income than the disposable income allowance. This might be advantageous to the person as they would be contributing more to the costs of their care from their income, and consequently reducing the amount they are deferring (and accruing less debt to their local authority overall). However this must be entirely at the individual’s decision and the local authority must not compel someone to retain less than the disposable income allowance if the person wants to retain the full amount.⁷²

8.2 Non-care home settings – Minimum Income Guarantee (MIG)

The CASS explains that “the purpose of the minimum income guarantee is to promote independence and social inclusion and ensure that they have sufficient funds to meet basic needs such as purchasing food, utility costs or insurance. This must be after any housing costs such as rent and council tax net of any benefits provided to support these costs – and after any disability related expenditure [see section 7.3]”.⁷³

The exact rates of the MIG depend on the age and circumstances of the person and can be found in regulation 7 of the Care and Support (Charging and Assessment of Resources) Regulations 2014 (SI 2014/2672) as amended by the Care and Support (Miscellaneous Amendments) Regulations 2015 (SI 2015/644).

The MIG weekly rates depend on circumstance – see the Annex for a list of rates. They are all unchanged since 2015/16

⁶⁹ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex C, para 46

⁷⁰ Department of Health and Social Care, [Social care – charging for care and support](#), Local authority circular – LAC(DHSC)(2019)1, p2, para 1.1

⁷¹ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex C, para 46

⁷² As above, paras 9.48–9.49

⁷³ As above, Annex C, para 49

The CASS notes that “this is only a minimum and local authorities have discretion to set a higher level if they wish”.⁷⁴

For example, the MIG is set at the following rates for 2019/20:

- a single person older than 25 years but not old enough to be eligible to claim Pension Credit – £91.40 per week;
- a single person who has attained the age at which they could claim Pension Credit (if eligible) – £189.00 per week;
- the adult concerned is a member of a couple and one or both are aged 18 or over – £71.80 per week;
- the adult concerned is a member of a couple and one or both have attained pension credit age – £144.30 per week.

A full list of the MIG rates for 2019/20 can be found in the Annex to this note.

⁷⁴ As above, Annex C, para 48

9. Alternative ways to fund care

9.1 Deferred Payment Agreement

A deferred payment agreement (DPA) is essentially a loan given by the local authority secured on the value of the person's property. In many cases, it allows the sale of a care home resident's home to be deferred until after their death. However, as the name suggests, payment of care home bills are only deferred – a local authority will place a charge on the value of the home to recoup the cost of their person's care home place, plus interest and any charges.

Types of deferred payment arrangements

The CASS states that deferred payment agreements can take two forms:

- the local authority pays the care home or supported living accommodation directly and defers the charges due to it from the individual (traditional type)
- the individual pays the care provider for their care and the local authority loans them the cost of care in instalments less any contributions the individual contributes from other sources (loan type).⁷⁵

How much can be deferred

While the CASS notes that "in principle, a person should be able to defer the entirety of their care costs", the actual amount to be deferred depends on three factors:

- a) The amount of equity a person has available in their chosen form of security (usually their property);
- b) The amount a person is contributing to their care costs from other sources, including income and (where they choose to) any contribution from savings, a financial product or a third-party; and
- c) The total care costs a person will face, including any top-ups the person might be seeking.⁷⁶

Local authorities must set an "equity limit" to determine how much equity can be deferred; a "buffer" should be left over from the asset "to cover any subsequent interest which continues to accrue, and will provide a small 'cushion' in case of small variations in value of the security".⁷⁷

For example, for a property the CASS states that the equity limit is the value of the property minus each of the following

- ten percent;
- £14,250 – for financial year 2017/18 this is in line with the lower capital limit, so ensuring that a person does not spend all of their capital on social care;

⁷⁵ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, para 9.10

⁷⁶ As above, paras 9.36 and 9.38

⁷⁷ As above, para 9.40

- “the amount of encumbrance secured on it” (e.g. a mortgage).⁷⁸

Interest rates and administration charges

An arrangement fee and also interest on the amount of the deferred payment can be accumulated while the person to whom it applies is alive.⁷⁹

It is a matter for the local authority to determine whether to charge interest or an administration fee, and, if it decides to do so, the applicable rates (subject to the CASS’s rules).

The CASS provides the following guidance on the interest rate and administrative charges payable under a deferred payment agreement:

Local authorities will have the ability to charge interest on any amount deferred, including any administration charge deferred.

[...]

Where local authorities charge interest this must not exceed the maximum amount specified in regulations. A local authority may (but is not required to) charge the nationally-set maximum interest rate. The same interest rate must be charged on all deferred payments within a local authority.

[...]

The interest charged and added to the deferred amount will be compounded, and local authorities should ensure when making the agreement that individuals understand that interest will accrue on a compound basis.

[...]

Local authorities must set their administration charge at a reasonable level, and this level must not be more than the actual costs incurred by the local authority in provision of the Universal Deferred Payment Scheme, as set out in regulations ... It is good practice to separate charges into a fixed set-up fee for deferred payment agreements, reflective of the costs incurred by the local authority in setting up and securing a typical deferred payment agreement, and other reasonable one-time fees during the course of the agreement (reflecting actual charges incurred in the course of the agreement).⁸⁰

The maximum interest rate is specified in regulations as being the “the weighted average interest rate on conventional gilts” over the period in consideration plus 0.15%.⁸¹

The CASS notes that “the national maximum interest rate will change every 6 months on the first of January and July respectively, to track the market gilts rate specified in the most recently published report by the

⁷⁸ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, para 9.42

⁷⁹ Previously, as AgeUK noted, “during the period of the agreement no interest can be charged”; adding that only “if your property remains unsold for longer than 56 days after your death, interest may start to accrue on the debt”. [AgeUK, *Treatment of property in the means test for permanent care home provision*, Factsheet 38, April 2014, section 7, pp15–17].

⁸⁰ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, paras 9.69–9.77 (selected quotes)

⁸¹ Care and Support (Deferred Payment) Regulations 2014 (SI 2014/2671), regulation 9

Office of Budget Responsibility (OBR) plus a 0.15% default component".⁸²

Eligibility criteria and discretion to be more generous

There are certain groups of people who must be offered a deferred payment agreement under the regulations (subject to a "permission to refuse", see below); for all other people, the local authority has a discretion to offer such an arrangement.

As the CASS states, someone "must" be offered a deferred payment agreement "if they meet all of the following criteria at the point of applying for a deferred payment agreement", and states that:

Broadly, they are that the:

- a) person is ordinarily resident in the local authority area or present in the area but of no settled residence; or ordinarily resident in another local authority area but the local authority has determined that they will or would meet the individual's care needs under section 19 of the Care Act if asked to do so⁸³
- b) person has needs which are to be met by the provision of care in a care home. This is determined when someone is assessed as having care and support needs⁸⁴ which the local authority considers should be met through a care home placement
- c) person has less than (or equal to) £23,250 in assets excluding the value of their main or only home (for example, in savings, other non-housing assets and housing assets other than their main or only home)
- d) person's home is not disregarded;⁸⁵ for example, it is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support (for example, someone whose home is taken into account in the local authority financial assessment and so might need to be sold).⁸⁶

The CASS adds that "local authorities are, at their discretion, permitted to be more generous than these criteria" and may offer deferred payment agreements to people "who do not meet criteria b, c or d".⁸⁷

In addition to those in care home settings, a deferred payment agreement may be offered by a local authority, "at their discretion", to "people whose care and support is provided in supported living

⁸² Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, para 9.71

⁸³ Note 2 of the CASS states: "Where a local authority is meeting an individual's care and support needs under section 19(2) of the Care Act".

⁸⁴ Note 3 of the CASS states: "When someone is arranging their own care and support and the authority has not performed an assessment, this condition is satisfied when someone would be assessed as having eligible needs were the authority to have carried out such an assessment".

⁸⁵ Note 4 of the CASS states: "Disregarded for the purposes of the financial assessment carried out under section 17 of the Act".

⁸⁶ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, para 9.7

⁸⁷ As above, para 9.8

accommodation. The local authority should not exercise this discretion unless the person intends to retain their former home and pay the associated care and accommodation rental costs from their deferred payment".⁸⁸

Permission to refuse to make a DPA, and to cease making further payments

A local authority may exercise its "permission to refuse" to offer a DPA, even if someone meets the eligibility criteria above. The CASS explains that the "permission (or discretion) to refuse is intended to provide local authorities with a reasonable safeguard against default or non-repayment of debt".⁸⁹

This permission may be exercised where a local authority is "unable to secure a first charge on the person's property, someone is seeking a top-up⁹⁰ and/or where a person does not agree to the terms and conditions of the agreement, for example a requirement to insure and maintain the property".⁹¹

In certain circumstances, a local authority may cease making further payments under a deferred payments agreement, for example when a person: becomes eligible for local authority support in paying for their care; leaves a care home; or if a person breaches certain predefined terms of their contract and the contract has specified that the authority will stop making further payments in such a case.⁹²

A local authority must also cease deferring further amounts when a person has reached the "equity limit" that they are allowed to defer.⁹³

9.2 Top-ups

The CASS notes that:

In some cases, a person may actively choose a setting that is more expensive than the amount identified for the provision of the accommodation in the personal budget. Where they have chosen a setting that costs more than this, an arrangement will need to be made as to how the difference will be met. This is known as an additional cost or 'top-up' payment and is the difference between the amount specified in the personal budget and the actual cost.⁹⁴

However, "where someone is placed in a more expensive setting solely because the local authority has been unable to make arrangements at

⁸⁸ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, para 9.9

⁸⁹ As above, para 9.11

⁹⁰ Note 5 of the CASS states: "In these situations, a local authority should still seek to offer a deferred payment agreement but should be guided by principles in the section 'How much to defer', to determine a maximum amount that is sustainable (or reflects their core care costs without any top-ups) and agree a deferral. The person can then choose whether they wish to agree".

⁹¹ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, para 9.16

⁹² As above, para 9.20

⁹³ As above, para 9.22

⁹⁴ As above, Annex A, para 20

the anticipated cost, the personal budget [see section 11] must reflect this amount".⁹⁵ It adds:

The local authority must ensure that the person has a genuine choice of accommodation. It must ensure that at least one accommodation option is available and affordable within the person's personal budget and it should ensure that there is more than one of those options. However, a person must 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 must always be optional and never as a result of commissioning failures leading to a lack of choice.⁹⁶

As AgeUK notes:

You should not be asked for third party top-up payments if you have moved into a more expensive home out of necessity rather than personal preference – it must always be your choice. Your local authority needs assessment should highlight this.⁹⁷

There are two types of top-up:

- first-party top-up, where the person provides their own money – at present, there are only limited circumstances in which first-party top-ups may be made;
- third-party top-up, where the top-up is funded by someone else e.g. a relative.

A first party top-up may only be made if one of the following applies to the person whose needs are being met in a care home:

- they are subject to a 12-week property disregard [...];
- they have a deferred payment agreement in place with the local authority [...]; or
- they are receiving accommodation provided under S117 [section 117 of the *Mental Health Act 1983*] for mental health aftercare.⁹⁸

The top-up should be the difference between the actual costs of the preferred provider and "and the amount that the local authority would have set in a personal budget or local mental health after-care limit to meet the person's eligible needs by arranging or providing accommodation of the same type".

The CASS notes that a local authority "is likely to identify a range of costs which apply to different circumstances and settings" and for the purposes of calculating the top-up "it should not automatically default to the cheapest rate or to any other arbitrary figure".⁹⁹

In order to agree to a top-up agreement, a local authority "must ensure that the person paying the 'top-up' is willing and able to meet the

⁹⁵ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex A, para 21

⁹⁶ As above, para 8.37

⁹⁷ AgeUK, [Finding, choosing and funding a care home](#), Factsheet 60, July 2019, p17, section 7.5

⁹⁸ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex A, para 39

⁹⁹ As above, Annex A, para 26

additional cost for the likely duration of the arrangement, recognising that this may be for some time into the future". The CASS states that a local authority "must ensure that the person paying the 'top-up' enters into a written agreement with the local authority, agreeing to meet that cost".¹⁰⁰

The CASS states that top-up arrangements should be reviewed "at least annually" and "in line with wider reviews of the financial assessment", adding that local authorities should consider how often it may be appropriate to review the arrangements.¹⁰¹

¹⁰⁰ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, Annex A, para 23

¹⁰¹ As above, Annex A, para 32

10. Care and support which must not be charged for

As the CASS highlights, there are certain care and support needs which a local authority cannot charge for which must be arranged free, namely:

- intermediate care, including reablement, which must be provided free of charge for up to 6 weeks. However, local authorities must have regard to the guidance on preventative support set out in Chapter 2. This sets out that neither should have a strict time limit but should reflect the needs of the person. Local authorities therefore may wish to apply their discretion to offer this free of charge for longer than 6 weeks where there are clear preventative benefits, such as when a person has recently become visually impaired
- community equipment (aids and minor adaptations). Aids must be provided free of charge whether provided to meet or prevent/delay needs. A minor adaptation is one costing £1,000 or less
- care and support provided to people with Creutzfeldt-Jacob Disease
- after-care services/support provided under section 117 of the Mental Health Act 1983
- 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
- more broadly, any services which a local authority is under a duty to provide through other legislation may not be charged for under the Care Act 2014
- assessment of needs and care planning may also not be charged for, since these processes do not constitute 'meeting needs'.¹⁰²

¹⁰² Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, para 8.14

11. Personal budgets

The Care Act 2014 provided the statutory basis for personal budgets for the first time, although they had previously been made available by local authorities.¹⁰³

The CASS explains that “the personal budget is the mechanism that, in conjunction with the care and support plan, or [for carers] support plan, enables the person, and their advocate if they have one, to exercise greater choice and take control over how their care and support needs are met”.¹⁰⁴

In terms of who is eligible for a personal budget, the CASS states that “everyone whose needs are met by the local authority, whether those needs are eligible, or if the authority has chosen to meet other needs, must receive a personal budget as part of the care and support plan, or support plan”.¹⁰⁵ This means that people who are entirely self-funding their care and support needs without assistance from the local authority will not have a personal budget.

The Department of Health and Social Care explains that personal budgets mean:

- knowing, before care and support planning begins, an estimate of how much money will be available to meet a person’s assessed needs and, with the final personal budget, having clear information about the total amount of the budget, including proportion the local authority will pay, and what amount (if any) the person will pay
- being able to choose from a range of options for how the money is managed, including direct payments, the local authority managing the budget and a provider or third party managing the budget on the individual’s behalf (an individual service fund), or a combination of these approaches
- having a choice over who is involved in developing the care and support plan for how the personal budget will be spent, including from family or friends
- having greater choice and control over the way the personal budget is used to purchase care and support, and from whom¹⁰⁶

The CASS notes that “at all times, the wishes of the person must be considered and respected”, and that “the personal budget should not

¹⁰³ The commitment to provide personal budgets was set out in the 2007 [Putting People First](#) ‘concordat’, signed by Central Government, Local Government, the professional leadership of adult social care and the NHS. The Labour Government expected the personal budget policy to be in place by 2011. The 2010 Coalition Government made a commitment to have all councils in England offering personal budgets by 2013 [see Department of Health press release, *Personal budgets for all and more breaks for carers*, November 2010], but this target was changed to moving 70% of users on to a personal budget by April 2013 [[“Lamb scraps 100% personal budgets target”](#), *Community Care*, 26 October 2012].

¹⁰⁴ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, para 11.3

¹⁰⁵ As above, para 11.7

¹⁰⁶ As above, para 11.3

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assume that people are forced to accept specific care options, such as moving into care homes, against their will because this is perceived to be the cheapest option".¹⁰⁷

Transparency is a key feature of the personal budget: the CASS states that "it is vital that the process used to establish the personal budget is transparent so that people are clear how their budget was calculated, and the method used is robust so that people have confidence that the personal budget allocation is correct and therefore sufficient to meet their care and support needs".¹⁰⁸

While the CASS does not specify how a personal budget should be calculated (noting that there are "many variations of systems used to arrive at personal budget amounts"), it does state that "regardless of the process used, the most important principles in setting the personal budget are transparency, timeliness and sufficiency".¹⁰⁹ It adds that:

Local authorities should ensure that the method used for calculating the personal budget produces equitable outcomes to ensure fairness in care and support packages regardless of the environment in which care and support takes place, for example, in a care home or someone's own home. Local authorities should not have arbitrary ceilings to personal budgets that result in people being forced to accept to move into care homes against their will.¹¹⁰

Anyone not satisfied with the level of their personal budget allocation can make a complaint to the local authority.¹¹¹

¹⁰⁷ Department of Health and Social Care, [Care and Support Statutory Guidance](#), 26 October 2018, para 11.7

¹⁰⁸ As above, para 11.4

¹⁰⁹ As above, paras 11.23 and 11.24

¹¹⁰ As above, para 11.22

¹¹¹ As above, paras 11.47–11.48

12. Helpful resources

This briefing paper provides general information on how individuals pay for social care, but more specific advice can be obtained from a variety of sources. For example, the following helplines might be of interest:

- [AgeUK](#) – helpline 0800 678 1174;
- [Independent Age](#) – helpline 0800 319 6789;
- [Mind](#) – legal line 0300 466 6463;
- [Scope](#) – helpline 0808 800 3333.

The Government updates the key elements of the means-test set out in the CASS every year through a Department of Health and Social Care “Local Authority Circular”. This includes the figures for the upper and lower limits of the capital means-test, and the rates of the PEA and MIG for the financial year ahead. The Circular is usually published at some point in the first few months of each calendar year.

Annex – List of MIG rates

For the current financial year (2019/20), the rates of the Minimum Income Guarantee are as follows:

- where the adult concerned is responsible for, and a member of the same household as, a child, the amount of £83.65 in respect of each child.
- where the adult concerned is a single person and—
 - a. is aged 18 or older but less than 25, the amount of £72.40;
 - b. is aged 25 or older but less than pension credit age, the amount of £91.40;
 - c. has attained pension credit age, the amount of £189.00.
- where the adult concerned is a lone parent aged 18 or over, the amount of £91.40.
- where the adult concerned is a member of a couple and—
 - a. one or both are aged 18 or over, the amount of £71.80;
 - b. one or both have attained pension credit age, the amount of £144.30.
- where the adult concerned is a single person who is in receipt of, or the local authority considers would, if in receipt of income support, be in receipt of—
 - a. disability premium, the amount of the applicable premium is £40.35;
 - b. enhanced disability premium, the amount of the applicable premium is £19.70.
- where the adult concerned is a member of a couple and one member of that couple is in receipt of, or the local authority considers would, if in receipt of income support, be in receipt of—
 - a. (a) disability premium, the amount of the applicable premium is £28.75;
 - b. (b) enhanced disability premium, the amount of the applicable premium is £14.15.
- where the adult concerned is in receipt of, or the local authority considers would, if in receipt of income support be in receipt of, carer premium, the amount of the applicable premium is £43.25.¹¹²

The CASS notes that “local authorities can allow people to keep more of their income if they wish” than the minimum levels set out in the MIG rates.¹¹³

¹¹² The MIG rates are set out in regulation 7 of the Care and Support (Charging and Assessment of Resources) Regulations 2014 (SI 2014/2672) as amended by the Care and Support (Miscellaneous Amendments) Regulations 2015 (SI 2015/644) – the current MIG rates came into effect on 6 April 2015.

¹¹³ Department of Health and Social Care, [Social care – charging for care and support](#), Local authority circular – LAC(DHSC)(2019)1, Annex to the Circular, p4, paras 2.9–2.10

Other Library briefings related to adult social care

- [NHS Continuing Healthcare in England](#)
- [Social care: Announcements delaying the introduction of funding reforms \(including the cap\) \(England\)](#)
- [Social care: Recent changes to the CQC's regulation of adult residential care \(care homes\)](#)
- [Health and Social Care Integration](#)
- [Adult Social Care Funding \(England\)](#)
- [Social care: Government reviews and policy proposals for paying for care since 1997 \(England\)](#)
- [Social care: the Conservative Party's 2017 General Election pledges on how individuals pay for care \(England\)](#)
- [Social care: forthcoming Green Paper \(England\)](#)
- [Social care: care home market – structure, issues, and cross-subsidisation \(England\)](#)
- [Four Seasons Health Care Group – financial difficulties and safeguards for clients](#)

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11.0	8/7/19	Updated with 2019/20 rates plus new sections added (“When capital diminishes to below the upper limit”, “‘Deliberate deprivation’ of capital”, and “Care and support which must not be charged for”), and note substantially restructured and revised.
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