

Adult Social Services



Non-Residential Charging Policy April 2018 (v1)

Norfolk County Council

Non-Residential Care Charging Policy

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Norfolk County Council – Non-Residential Care Charging Policy

1. Legal Status

1.1 The Care Act 2014 provides a single legal framework for charging and enables a Local Authority to charge a person when it is arranging to meet a person's care and support. This is set out in Sections 14 and 17 of the Care Act 2014. This charging policy for non-residential care came into effect on 1st April 2015 and is based on the Care Act 2014 and the regulations under it, including the Care and Support (Charging and Assessment of Resources) Regulations 2014. This policy covers home care and other non-residential care. Where this policy refers to Supported Living, it also relates to Housing with Care.

1.2 This policy is made having due regard to the Statutory Guidance issued by the Secretary of State. Norfolk will apply the guidance contained in the Care and Support Statutory Guidance 2014, save where the contrary is indicated in this policy. The policy is made having regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010, together with the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

1.3 Where this policy leaves a discretion to the Council, Norfolk County Council (NCC) will exercise that discretion in the following way:

- The discretion will be applied so as to ensure as far as possible the individual will contribute to the cost of their care and support in accordance with the Care and Support Statutory Guidance.
- Where a discretion has been exercised, the financial assessment will include a note of the written reasons why the discretion has been exercised in the way it has.
- The assessment will also include the initials of the person who has exercised the discretion along with those of a manager who will have approved this.

1.4 The overarching principle is that people should only pay what they can afford to pay and this will be based on a mean-test financial assessment unless the person has more than the upper capital limit (which is currently set at £23,250). Some people will be entitled to free care and this is set out at 1.9 below.

1.5 If the person has more than the upper capital limit, Norfolk County Council (NCC) will arrange the care and support (if asked to do so) but there may be a charge for this arrangement. Also the person will be expected to pay the full cost of their care until their capital falls below the upper capital limit.

1.6 NCC will not charge more than the cost that we incur in meeting the assessed needs of the person.

1.7 NCC's charging policy will ensure that people are not charged more than it is reasonably practicable for them to pay. The policy is comprehensive, to reduce variation in the way people are assessed and charged and is clear and transparent, so people know what they will be charged. It also promotes wellbeing, social inclusion, and supports the vision of personalisation, independence, choice and control.

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

1.9 NCC charges for all types of care and support with the exception of the following:

- Intermediate care including reablement (for up to six weeks).
- Community Equipment (aids and minor adaptations). Aids are provided free of charge. 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 Health Care and the NHS contribution to Registered Nursing Care.
- 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".

1.10 Where NCC is meeting needs by arranging care, we are responsible for contracting with the care provider. We are also responsible for paying the full amount, including where a 'top-up' fee is being paid. We will invoice the person for their contribution towards the cost of the care as worked out in the financial assessment. We will also invoice the appropriate person for any top-up.

1.11 The only exception to 1.10 above is where a person chooses to buy some additional care and support which does not form part of the care package to meet the person's eligible needs. In such cases the person will need to make these arrangements themselves and NCC will not be responsible for meeting these costs, nor will the costs be allowed as a Disability Related Expense. Please see section 10 below for disability related expenses.

2. The financial assessment

2.1 NCC will carry out a financial assessment to determine what the person can afford to pay. The financial assessment looks across all of a person's assets – both capital and income in accordance with the regulations and guidance.

2.2 In a financial assessment income and capital will either be disregarded (ignored), partly disregarded or included in the calculation.

2.3 There is an upper capital limit of £23,250 and a lower capital limit of £14,250.

2.4 Where the person has more than £23,250 and they ask NCC to arrange the care and support, we may apply an administration fee to cover our costs. This will be a fixed rate arrangement fee and will be no higher than the cost we have incurred in making the arrangements.

2.5 Where a person's resources are below the lower capital limit, £14,250, they will not need to contribute to the cost of their care and support from their capital i.e. the contribution will be based on their income only.

2.6 Every person who receives a financial assessment will be given a written record of the assessment which will explain how the assessment has been carried out, what the charge will be and how often it will be made, and when it will be reviewed. The review will generally take place on an annual basis but this may vary according to individual circumstances.

2.7 If the person lacks the mental capacity to take part in the financial assessment, NCC will consult with any of the following people who have:

- Enduring Power of Attorney (EPA);
- Lasting Power of Attorney (LPA) for Property and Affairs;
- Lasting Power of Attorney (LPA) for Health and Welfare;
- Property and Affairs Deputyship under the Court of Protection; or
- Any other person dealing with that person's affairs (e.g. someone who has been given appointeeship by the Department for Work and Pensions (DWP) for the purpose of receiving benefits payments).

2.8 People who lack capacity to give consent to a financial assessment and who do not have any of the above people with authority to be involved in their affairs, may require the appointment of a Property and Affairs Deputy. Family members can apply for this to the Court of Protection or we can apply if there is no family involved in the care of the person. While this takes some weeks, it then enables the person appointed to access information about bank accounts and financial affairs. A person with dementia for example will not be 'forced' to undertake a financial assessment or to sign documents they can no longer understand. In such cases NCC will work with an EPA, a LPA or a Deputy instead. In those circumstances, the EPA, LPA or Deputy will take on the financial responsibilities of the person receiving care and will be liable to pay their care fees on their behalf once they have access to their funds.

2.9 In the financial assessment, the person's capital is taken into account unless it is subject to one of the disregards set out in Section 7 below. The main examples of capital are property and savings. Where the person receiving care and support has capital at or below the upper capital limit (currently £23,250), but more than the lower capital limit (currently £14,250), they will be charged £1 per week for every £250 in capital between the two amounts. This is called "tariff income". For example, if a person has £4,000 above the lower capital limit, they are charged a tariff income of £16 per week towards the cost of their care.

2.10 In assessing what a person can afford to pay, NCC will take into account the person's income with the exception of earnings from current employment. Please refer to Section 9 below for further information relating to income.

2.11 Where the person has refused a financial assessment or NCC has been unable to carry out a full financial assessment because of the person's refusal to cooperate, we will assume the person has financial resources in excess of the upper limit and will charge them the full cost of their care.

3. Light touch financial assessments

3.1 In some circumstances, NCC may choose to treat a person as if a financial assessment had been carried out. In order to do so, NCC must be satisfied on the basis of evidence provided by the person that they can afford, and will continue to be able to afford, any charges due. This is known as a 'light-touch' financial assessment.

3.2 The main circumstances in which NCC may consider carrying out a light-touch financial assessment are:

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

3.3 Ways NCC may be satisfied that a person is able to afford any charges due might include evidence that a person has either:

- property clearly worth more than the upper capital limit, where they are the sole owner or it is clear what their share is
- savings clearly worth more than the upper capital limit
- sufficient income left following the charge due

3.4 Where NCC is going to meet the person's needs, and it proposes to undertake a light-touch financial assessment, it should take steps to assure itself that the person concerned is willing, and will continue to be willing, to pay all charges due. It must also remember that it is responsible for ensuring that people are not charged more than it is reasonable for them to pay. Where a person does not agree to the charges

that they have been assessed as being able to afford to pay under this route, a full financial assessment may be needed.

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

4. Charging

4.1 These charging arrangements relate to meeting care and support needs outside of a care home. For example, care and support received in a person's own home and Supported Living.

4.2 Because a person who receives care and support outside a care home will need to pay their daily living costs such as rent, food and utilities, the charging rules ensure that the person will have enough money to meet these costs. After charging, a person will be left with the minimum income guarantee (MIG), as set out in the Care and Support (Charging and Assessment of Resources) Regulations 2014. Where a Deferred Payment Agreement applies, NCC will consider if this allows sufficient income to maintain the property concerned with the Deferred Payment Agreement.

4.3 NCC will consider allowing Disability Related Expenses (DRE) where the expense are directly related to the person's disability or medical condition, are greater than what the average person would spend on a similar item and where the person provides evidence to support these costs. Please see section 10 below for more detailed information.

4.4 The financial assessment of the person's capital will exclude the value of the property which they occupy as their main or only home, e.g. the place where the person is living. The only exception to this is where the person is moving into Supported Living, in such cases the property they occupied as their main or only home will be included in the financial assessment. Any other capital will be treated as outlined under the capital section at Section 7 below.

5. Carers

5.1. NCC do not charge carers for support.

6. Requesting local authority support to meet eligible needs

6.1. People with eligible needs and financial assets above the upper capital limit may ask NCC to meet their needs. This could be for a variety of reasons such as the person finding the system too difficult to navigate, or wishing to take advantage of our knowledge of the local market of care and support services. Where the person asks NCC to meet their eligible needs for care other than in a care home setting, we will meet those eligible needs and we may charge a fixed rate administrative fee for arranging this care. This will be known as an Arrangement Fee. This will be in addition to the weekly full cost of care that the person will have to pay. The Arrangement fee will cover the costs of arranging the care including any negotiations and/or management of the contract with a provider and any administration costs incurred.

6.2 NCC will make people aware that they have the right to request our support to meet their needs, in certain circumstances, even when they have resources above the financial limits and would not be entitled to financial support with any charges. This only applies to care in a non-care home setting and there will be a cost for us arranging this.

NCC will also offer support to people in meeting their own needs and this will include providing information and advice on different options.

7. Capital

7.1 A person with assets above the upper capital limit will be deemed to be able to afford the full cost of their care. Those with capital between the lower and upper capital limit will be deemed as able to make a contribution, known as “tariff income”, from their capital. Any capital below the lower capital limit will be disregarded.

What is Capital?

7.2 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.

7.3 The following list gives examples of capital. This list is intended as a guide and is not exhaustive.

- (a) Buildings
- (b) Land
- (c) National Savings Certificates and Ulster Savings Certificates
- (d) Premium Bonds
- (e) Stocks and shares
- (f) Capital held by the Court of Protection or a Deputy appointed by that Court
- (g) Any savings held in Building Society Accounts and Bank Current Accounts, Deposit Accounts or special investment accounts. This includes savings held

in the National Savings Bank; Girobank and Trustee Savings Bank; SAYE schemes; Unit Trusts; Co-operatives share accounts.

- (h) Cash
- (i) Trust funds (in certain circumstances).

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

Do we treat as income or capital?

7.5 In assessing a person's assets it may not be immediately clear where a resource is capital or income, particularly where a person is due to receive planned payments. In general, a planned payment of capital is one which is not in respect of a specified period and not intended to form part of a series of payments.

Who owns the capital?

7.6 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.

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

Examples of a capital dispute:

1. Arlene has £14,000 in a building society account in her own name. She says that £3,000 is set aside for her granddaughter's education. Unfortunately, there is no deed of trust or other legal arrangement which would prevent Arlene using the whole amount herself. She is therefore treated as the beneficial owner of the whole amount.
2. 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.

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

Example of joint ownership:

Mary is receiving a package of home care. She and her son David have £21,000 in a joint building society account. Mary has contributed £8,500 and David, £12,500. Each is treated as owning £10,500.

The joint account is then closed and Mary and David open separate accounts. Mary now has £8,500 in her account and so is assessed as owning £8,500.

In some cases a person may be the legal owner of a property but not the beneficial owner of a property. In other words, they have no rights to the proceeds of any sale. In such circumstances the property must not be taken into account, but they would need to provide evidence that the legal owner has no beneficial interest in the property.

How to calculate the value of capital

7.8 NCC will need to work out what value a capital asset has in order to take account of it in the financial assessment. Other than National Savings Certificates, the valuation must be the current market or surrender value of the capital asset, e.g. property, whichever is higher, minus:

- i. 10% of the value if there will be any actual expenses involved in selling the asset. This must be expenses connected with the actual sale and not simply the realisation of the asset. For example the costs to withdraw funds from a bank account are not expenses of sale, but legal fees to sell a property would be; and
- ii. Any outstanding debts secured on the asset, for example a mortgage.

Please note we will only include the value of the property in the financial assessment for non-residential care where the cared for person is moving into Supported Living or where the cared person owns another property as well as the home in which they live.

7.9 A capital asset may have a current market value, for example stocks or shares, or a surrender value, for example premium bonds. The current market value will be the price a willing buyer would pay to a willing seller. The way the market value is obtained will depend on the type of asset held.

If the person and the Financial Assessment Officer both agree that after deducting any relevant amounts set out in 7.8 above, the total value of the person's capital is

more than the upper capital limit of £23,250 or less than the lower capital limit of £14,250, it is not necessary to obtain a precise valuation. If there are any disputes, a precise valuation should be obtained. However, NCC will give consideration to how close the person is to the upper capital limit when deciding whether or not to obtain a precise valuation.

Where a precise valuation is required, a professional valuer should be asked to provide a current market valuation. Once the asset is sold, the capital value to be taken into account is the actual amount realised from the sale, minus any actual expenses of the sale.

7.10 Where the value of a property is disputed, the aim should be to resolve this as quickly as possible. NCC will try to obtain an independent valuation of the person's beneficial share to enable us to work out what charges a person should pay and will help the person, or their representative, to consider whether to seek a deferred payment agreement if applicable.

7.11 The value of National Savings Certificates (and Ulster Savings Certificates) is assessed in the same way as other capital assets. A valuation for savings certificates can be obtained by contacting the NS&I helpline on 0808 500 7007. An alternative method to get the value of National Savings Certificates is to use the NS&I online calculator (please see <http://www.nsandi.com/savings-index-linked-savings-certificates#interest-calculator>).

To enable an accurate value for the savings certificates the person must provide details of the certificate issue number(s); the purchase price and the date of purchase.

Assets held abroad

7.12 Where capital is held abroad and all of it can be transferred to the UK, its value in the other country will need to be obtained (this could be in the form of a letter from a property agent confirming the value) as it will be taken into account less any appropriate deductions as outlined in 7.8 above.

Where capital is held jointly, it should be treated the same as if it were held jointly within the UK. The detail will depend on the conditions for transfer to the UK.

7.13 Where the capital cannot be wholly transferred to the UK due to the rules of that country, for example currency restrictions, the person will need to provide evidence confirming this fact. Examples of acceptable evidence could include documentation from a bank, Government official or solicitor in either this country or the country where it is held.

7.14 Where some restriction is in place, the person will need to provide evidence showing what the asset is and the value of the asset. NCC will need to understand

the nature and terms of the restriction so that should this change, the actual amount can then be revised accordingly.

Capital not immediately realisable

7.15 Capital which is not immediately realisable due to notice periods, for example National Savings Bank investment accounts, will be taken into account in the normal way at its face value. This will be the value at the time of the financial assessment, but may need to be confirmed and adjusted when the capital is realised. If the person chooses not to release the capital, the value at the time of the assessment will be used and reassessed each year in the normal way.

Where the person receiving care and support inherits a sum of money, this will be included in the financial assessment from the date of entitlement.

Tariff Income

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

Example of tariff income:

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

Notional Capital

7.17 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:

- Would be available to the person if they applied for it;
- Is paid to a third party in respect of the person;
- The person has deprived themselves of in order to reduce the charge they have to pay for their care.

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

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

assessed to pay for their care and the weekly rate they would have paid if notional capital did not apply.

Example of diminishing notional capital:

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

If she did not have the notional capital it would not affect her ability to pay. This is as she has a weekly income of £284.60 and a MIG of £189.00 per week. Mary would therefore be assessed as being able to pay £95.60 per week (for 2018/2019).

The notional capital should therefore be reduced by £204.40 per week – the difference between the sum Hayley is assessed to pay (£300 and the amount she would have paid without the notional capital, £95.60).

Capital disregarded

7.19 The following capital assets will be disregarded:

- i. Property in specified circumstances (see 7.20 below).
- ii. The surrender value of any Life insurance policy and or Annuity.
- iii. Payments of training bonuses of up to £200.
- iv. Payments in kind from a charity.
- v. 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.
- vi. Any capital which is to be treated as income or student loans.
- vii. Any payment that may be derived from:
 - (a) The Macfarlane Trust;
 - (b) The Macfarlane (Special Payments) Trust;
 - (c) The Macfarlane (Special Payment) (No 2) Trust;
 - (d) The Caxton Foundation;
 - (e) The Fund (payments to non-haemophiliacs infected with HIV);
 - (f) The Eileen Trust;
 - (g) The MFET Trust;
 - (h) The Independent living Fund (2006);
 - (i) The Skipton Fund;
 - (j) The London Bombings Relief Charitable Fund.
- viii. 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.
- ix. The value of a right to receive:

- i. Income under an annuity, however, any tax free lump sum not used to purchase an annuity is still treated as capital;
 - ii. Outstanding instalments under an agreement to repay a capital sum (money that is due to be repaid to the service user);
 - iii. Payment under a trust where the funds derive from a personal injury;
 - iv. Income under a life interest or a life-rent;
 - v. Income (including earnings) payable in a country outside the UK which cannot be transferred to the UK;
 - vi. An occupational pension;
 - vii. Any rent. Please note however that this does not necessarily mean the income is disregarded. Please see below for guidance on the treatment of income.
- x. 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.
 - xi. 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.
 - xii. 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).
 - xiii. Any Social Fund/Local Assistant Scheme payment.
 - xiv. 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.
 - xv. 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.
 - xvi. Payments from the Department of Work and Pensions to compensate for the loss of entitlement to Housing Benefit or Housing Benefit Supplement.
 - xvii. The amount of any bank charges or commission paid to convert capital from foreign currency to sterling.
 - xviii. Payments to jurors or witnesses for court attendance (but not compensation for loss of earnings or benefit).
 - xix. Community charge rebate/council tax rebate.
 - xx. Money deposited with a Housing Association as a condition of occupying a dwelling.
 - xxi. Any Child Support Maintenance Payment.
 - xxii. The value of any ex-gratia payments made on or after 1st February 2001 by the Secretary of State in consequence of a person's, or person's spouse or civil partner's imprisonment or internment by the Japanese during the Second World War.
 - xxiii. Any payment made by a local authority under the Adoption and Children Act 2002 (under section 2(6) (b) or 3 of this act).

- xxiv. 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.
- xxv. 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).
- xxvi. Any payments under Section 2, 3 or 7 of the Age-Related Payments Act 2004 or Age Related Payments Regulations 2005 (SI No 1983).
- xxvii. Any payments made under section 63(6)(b) of the Health Services and Public Health Act 1968 to a person to meet childcare costs where he or she is undertaking instruction connected with the health service by virtue of arrangements made under that section.
- xxviii. 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.

Example of disregarded capital:

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

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

Property and property disregards

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

7.21 Where the person moves into Supported Living the value of the former home will be included in the financial assessment.

Discretionary disregard

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

26-week disregard

7.23 In line with the guidance, the following capital assets will be disregarded for at least 26 weeks in a financial assessment. However, there may be occasions where

NCC choose to apply the disregard for longer where it considers this appropriate. For example, where a person is taking legal steps to occupy premises as their home, but the legal processes take more than 26 weeks to complete.

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

52-week disregard

7.24 In line with the guidance, the following payments of capital will be disregarded for a maximum of 52 weeks from the date they are received.

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

- xii. Housing Benefit
- xiii. Universal Credit
- xiv. Special payments to pre-1973 war widows.

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

(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.

Example of a disregard for 52 weeks:

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

Colin tells the local authority that he will apply for Pension Credit. It is explained to him that the level of what he can afford to contribute will be reassessed once he starts to receive the additional benefit. If the payments are backdated, his contributions to the cost of his care will also be backdated and he may therefore need to make an additional payment to meet any arrears. Colin therefore chooses to pay £90 per week. After six weeks, arrears of Pension Credit at £35 per week (£210) are received.

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

2-year disregard

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

Other disregards

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

- (a) A description of the nature of the business asset;

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

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

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

Treatment of investment bonds

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

7.30 NCC recognises that Investment Bonds can be complex instruments, and it retains the discretion to consider the treatment of these on a case by case basis.

Capital treated as income

7.31 The following capital payments will be treated as income:

- (a) Any payment under an annuity, however, any tax free lump sum not used to purchase an annuity is still treated as capital (unless it is already included as generating notional income in the assessment);
- (b) Capital paid by instalment where the total of:
 - i. The instalments outstanding at the time the person first becomes liable to pay for their care, or in the case of a person in temporary care whom we had previously decided not to charge, the first day on which we decide to charge; and
 - ii. The amount of other capital held by the resident is over £16,000. If it is £16,000 or less, each instalment should be treated as capital.

Income treated as capital

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

Capital available on application

7.33 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.

7.34 NCC will distinguish between:

- (a) Capital already owned by the person but which in order to access they must make an application for. For example:
 - i. Money held by the person's solicitor;
 - ii. Premium Bonds;
 - iii. National Savings Certificates;
 - iv. Money held by the Registrar of a County Court which will be released on application; and
- (b) Capital not owned by the person that will become theirs on application, for example an unclaimed Premium Bond win. This will be treated as notional capital.
- (b) Capital not owned by the person that will become theirs on application, for example an unclaimed Premium Bond win. This will be treated as notional capital.

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

8. Minimum Income Guarantee

8.1 NCC will ensure that a person's income is not reduced below a specified level after charges have been deducted. This amount is currently £189.00 for 2018/2019.

8.2. The purpose of the minimum income guarantee is to promote independence and social inclusion and ensure that the cared for person has sufficient funds to meet basic needs such as purchasing food, utility costs or insurance. This amount is after any housing costs such as rent and council tax net of any benefits provided to support these costs and after any allowed disability related expenditure.

9. Income

9.1 Only the income of the cared-for person will be taken into account in the financial assessment. Where the person receives means-tested income as one of a couple, the starting presumption is that the cared-for person has an equal share of the income. However, NCC will consider the implications for the cared-for person's partner.

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

9.3 Income will always be taken into account unless it is disregarded under the regulations. Income that is disregarded will either be partially disregarded or fully disregarded.

Example of a cared-for person who receiving income as one of a couple:

Jarred is receiving support at home. He lives with his wife, Susan, who has an underlying entitlement to Carers Allowance. Both Jarred and Susan receive low rate Attendance Allowance of £57.30 each.

Their couple Pension Credit appropriate amount is £413.40 per week, which includes the couple's personal allowance of £248.80 per week, 2x Severe Disability Premium (£128.60) per week and 1x Carers Premium (£36) per week.

Jarred has a State Retirement Pension of £125.95 per week plus an occupational pension of £30 per week. Susan gets £75.50 per week State Retirement Pension. This is their "qualifying income."

Jarred and Susan receive £181.95 per week Guarantee Pension Credit (GPC) and £4.31 per week Savings Credit (NB Savings Credit is disregarded in the non-residential financial assessment.) Jarred's share of the GPC is determined by dividing the Guarantee Pension Credit appropriate amount in half, e.g. £181.95/2 equals £ 90.98.

Jarred's maximum contribution is calculated as follows:

State Retirement Pension	£125.95
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Occupational Pension	£ 30.00
Guarantee Pension Credit	£ 90.98
Attendance Allowance	<u>£ 57.30</u>
Total	£304.23

Less
 Minimum Income Guarantee £189.00

Maximum Weekly Contribution £ 115.23

If Susan is receiving care and support at home, her contribution would be:

State Retirement Pension	£ 75.50
Guaranteed Pension Credit)	£ 90.98
Attendance Allowance	<u>£ 57.30</u>
Total	£223.78

Less
 Minimum Income Guarantee £189.00

Maximum Weekly Contribution £ 34.78

Example of a cared-for person who is not receiving income as a couple:

Cheryl, who is 64, is receiving support at home. She lives with her husband, Dan, who is 59. Cheryl receives a State Retirement Pension of £185.45 per week, middle rate Personal Independence Payment (PIP) daily living component of £57.30 per week and higher PIP mobility component (£58.00)* plus an occupational pension of £214.55 per week.

Dan gets standard rate of Personal Independence Payment (PIP) Daily Living of £55.65 per week, the enhanced rate PIP mobility of £59.75 per week and a small occupational pension of £20 per week.

Cheryl and Dan’s two children each receive Carer’s Allowance for looking after their parents.

Cheryl’s “qualifying income” (QI) of £457.30 per week and Dan’s QI of £20 per week plus the fact that someone gets Carers Allowance for looking after both of them means their income is too high for Pension Credit.

The applicable couple personal allowance is £248.80 per week.

Cheryl’s maximum contribution is calculated as follows:

State Retirement Pension	£185.45
Occupational Pension	£214.55
Disability Living Allowance Care	<u>£ 57.30</u>
Total	£457.30

Less
 Minimum Income Guarantee £189.00

Maximum Weekly Contribution £268.30

**DLA mobility is disregarded in a financial assessment.*

However, NCC needs to consider the implications of Cheryl's care charges on her joint income with Dan and make sure the couple receive at least the Pension Credit couple's personal allowance of £248.80 per week. NCC has already disregarded £189.00 of Cheryl's income and also all of Dan's "qualifying income", giving a total disregard of £209 per week. This is less than the basic couple's Personal Allowance of £248.80.

Therefore, NCC will make a "Spouse Disregard" of £39.80 per week to bring the total disregarded "qualifying income" up to the couple's Personal Allowance.

Cheryl's revised Maximum Weekly Contribution is:	£269.30
<i>Less</i> Spouse Disregard	£ 39.80
TOTAL	£229.50

Earnings

9.4 In all cases, employed and self-employed earnings are fully disregarded in the financial assessment.

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

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

- (k) The amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001.

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

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

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

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

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

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

Benefits

9.9 NCC will take most of the benefits people receive into account. Those we will include and disregard are listed below.

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

- (a) Attendance Allowance**, including Constant Attendance Allowance and Exceptionally Severe Disablement Allowance
- (b) Bereavement Allowance
- (c) Carers Allowance
- (d) Disability Living Allowance (Care component)
- (e) Employment and Support Allowance or the benefits this replaces such as Severe Disablement Allowance and Incapacity Benefit
- (f) Income Support
- (g) Industrial Injuries Disablement Benefit or equivalent benefits
- (h) Jobseeker's Allowance
- (i) Maternity Allowance
- (j) Pension Credit
- (k) Personal Independence Payment (Daily Living component)

- (l) State Pension
- (m) Universal Credit.

** Please also refer to partially disregarded income at 9.21.

9.11 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.

Annuity and pension income

9.12. An annuity is a type of pension product that provides a regular income for a number of years in return for an investment. Such products are usually purchased at retirement in order to provide a regular income. While the capital is disregarded, any income from an annuity will be taken fully into account except where it is:

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

9.13 For those who have purchased an annuity with a loan secured on their main or only home (as per (a) above), this is known as a 'home income plan'. Under these schemes, a person has purchased the annuity against the value of their home – similarly to a Deferred Payment Agreement and this may be disregarded in the financial assessment.

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

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

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

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

- (a) The loan must have been made as part of a scheme that required that at least 90% of that loan be used to purchase the annuity;
- (b) The annuity ends with the life of the person who obtained the loan, or where there are two or more annuitants (including the person who obtained the loan), with the life of the last surviving annuitant;
- (c) The person who obtained the loan or one of the other annuitants is liable to pay the interest on the loan;
- (d) The person who obtained the loan (or each of the annuitant where there are more than one) must have reached the age of 65 at the time the loan was made;

- (e) The loan was secured on a property in Great Britain and the person who obtained the loan (or one of the other annuitants) owns an estate or interest in that property; and
- (f) The person who obtained the loan or one of the other annuitant occupies the property as their main or only home at the time the interest is paid.

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

9.15 Reforms to defined contribution pensions came into effect from April 2015. The aim of the reforms is to provide people with much greater flexibility in how they fund later life. This may lead to changes in how people use the money in their pension fund. The rules for how to assess pension income for the purposes of charging are:

- (a) If a person has removed the funds and placed them in another product or savings account, they will be treated according to the rules for that product;
- (b) If a person is only drawing a minimal income or no income, NCC will operate in accordance with the treatment of income support claimants: if a person is drawing income from their pension fund which is less than 100% of the annuity the fund would yield, then NCC will only apply notional income equivalent to 100% of the annuity that would be yielded. Any actual income drawn will be disregarded to avoid double counting. This means that where a person draws income that is less than 100% of the annuity that would be yielded, the notional income is the difference between the amount drawn and 100% of the annuity that would be yielded. Where the income drawn is more than 100% of the annuity that would be yielded the actual amount is taken into account.
- (c) If a person is drawing down an income that is higher than the maximum previously payable under an annuity product, the actual income that is being drawn down will be taken into account.

Mortgage protection Insurance policies

9.16 Any income from an insurance policy is usually taken into account. In the case of mortgage protection policies where the income is specifically intended to support the person to acquire or retain an interest in their main or only home or to support them to make repairs or improvements to their main or only home it will be disregarded. However, the income must be being used to meet the repayments on the loan.

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

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

9.17 It should be remembered that Income Support, Employment and Support Allowance and Pension Credit may be adjusted to take account of the income from the policy.

Example of mortgage protection policy in payment:

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

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

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

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

Other income that is fully disregarded

9.18. Any income from the following sources will be fully disregarded:

- (a) Direct Payments
- (b) Armed Forces Independence Payments and Mobility Supplement
- (c) War Disablement Pension (except Constant Attendance Allowance)
- (d) Child Support Maintenance Payments and Child Benefit, except where the accommodation in which the adult and child both live is arranged under the Care Act
- (e) Child Maintenance Flat rate
 - a. A flat rate of £5 a week will be disregarded if the service user doesn't qualify to pay the nil rate, and the service user's gross weekly income is less than £100 a week, regardless of how many children the parent with day-to-day care looks after, or how many other children you have.
 - b. A flat rate of £5 will also be disregarded if the service user or current partner get certain benefits (regardless of how many children the parent with day-to-day care looks after, or how many other children you have), including:
 - i. Pension Credit
 - ii. Income Support
 - iii. Income-based Jobseeker's Allowance (JSA)
 - iv. Income-related Employment and Support Allowance (ESA)

- v. Universal credit calculated on the basis that you have no income.
- vi. State Retirement Pension
- vii. Carer's Allowance
- viii. Incapacity Benefit
- ix. contribution-based Jobseeker's Allowance (JSA)
- x. contributory Employment and Support Allowance (ESA).
- xi.
- (f) Child Tax Credit
- (g) Council Tax Reduction Schemes where this involves a payment to the person
- (h) Disability Living Allowance (Mobility Component) and Mobility Supplement
- (i) Working Tax Credit
- (j) Savings Credit
- (k) Christmas bonus
- (l) Dependency increases paid with certain benefits
- (m) Discretionary Trust
- (n) Gallantry Awards
- (o) Guardian's Allowance
- (p) Guaranteed Income Payments made to Veterans under the Armed Forces Compensation Scheme
- (q) Income frozen abroad
- (r) Income in kind
- (s) Pensioners Christmas payments
- (t) Personal Independence Payment (Mobility Component) and Mobility Supplement
- (u) Personal injury trust, including those administered by a Court
- (v) Resettlement benefit
- (w) Savings credit disregard
- (x) Social Fund payments (including winter fuel payments)
- (y) War widows and widowers special payments
- (z) Any payments received as a holder of the Victoria Cross, George Cross or equivalent
- (aa) Any grants or loans paid for the purposes of education; and payments made in relation to training for employment.
- (bb) 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.

Charitable and voluntary payments

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

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

Partially disregarded income

9.21 The following income is partially disregarded:

- The first £10 per week of the following:
 - War Widows and War Widowers pension
 - Survivors Guaranteed Income Payments from the Armed Forces Compensation Scheme (SGIP)
 - Civilian War Injury pension.
 - Payments to victims of National Socialist persecution (paid under German or Austrian law).
- Where a person is receiving high rate of Attendance Allowance, Disability Living Allowance or Personal Independence Payments and NCC is not providing night time care, we will disregard the high rate in the financial assessment.

Example of 'no night time care' disregard:

Michael receives enhanced rate Personal Independence Payment Daily Living Component of £85.60 per week (April 2018 rate), but his Summary Support Plan does not include any care at night. Therefore, NCC will only count the standard rate Personal Independence Payment Daily Living Component of £57.30 (April 2018 rate) in the financial assessment and disregard £28.30 per week of Michael's Payment Daily Living Component.

Notional income

9.22. In some circumstances a person may be treated as having income that they do not actually have. This is known as notional income. This might include for example income that would be available on application but has not been applied for, income that is due but has not been received or income that the person has deliberately deprived themselves of for the purpose of reducing the amount they are liable to pay for their care. For guidance on deprivation of assets, please see Section 13. In all cases NCC must satisfy itself that the income would or should have been available to the person.

9.23 Notional income should also be applied where a person has reached retirement age (i.e. when the person reaches the Pension Credit qualifying age) and has a personal pension plan, but has not purchased an annuity or arranged to draw down the equivalent maximum annuity income that would be available from the plan. Estimates of the notional income can be received from the pension provider or from estimates provided by the Government Actuary's Department.

9.24. Where notional income is included in a financial assessment, it will be treated the same way as actual income. Therefore, any income that would usually be disregarded will continue to be so.

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

Example of notional income:

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

Example of notional income in relation to new pension flexibilities:

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

The equivalent maximum annuity income would be £120 per week. For the purposes of the financial assessment, NCC will assume an income £120 per week.

9.26. There are some exemptions and the following sources of income will not be treated as notional income:

- (a) Income payable under a discretionary trust;
- (b) Income payable under a trust derived from a payment made as a result of a personal injury where the income would be available but has not yet been applied for;
- (c) Income from capital resulting from an award of damages for personal injury that is administered by a court;
- (d) Occupational pension, which is not being paid because:
 - i. The trustees or managers of the scheme have suspended or ceased payments due to an insufficiency of resources; or
 - ii. The trustees or managers of the scheme have insufficient resources available to them to meet the scheme's liabilities in full.
- (e) Working Tax Credit.

10. Disability Related Expenditure

10.1 Disability related expenditure (DRE) may be allowed as a disregard (i.e. a reduction of the assessed charge) for any person receiving a non-residential care service. In order for NCC to consider a DRE, the expense must be:

- Directly related to the person's disability/illness
- Greater than the national average spend for the same thing (NCC uses the Office of National Statistics "Detailed household expenditure by gross income decile group" as a guide to the average household expenditure.)
- Supported by receipts, doctor's letter, etc that shows how much money is spent on the item

10.2 Such DREs could include the following:

(a) Payment for any community alarm system

(b) Costs of any specialist items needed to meet the person's disability needs, for example:

- i. Specialist washing powders or laundry;
- ii. Additional costs of special dietary needs due to illness or disability (the person may be asked for permission to approach their GP for evidence);
- iii. Special clothing or footwear, for example, where this needs to be specially made; or additional wear and tear to clothing and footwear caused by disability;
- iv. Additional costs of bedding, for example, because of incontinence where they are not provided by or available from the NHS, where not included in the person's care and support plan;
- v. Any heating costs, or metered costs of water, (not already discounted) above the average levels for the area and housing type, occasioned by age, medical condition or disability;
- vi. Reasonable costs of basic garden maintenance, cleaning, or domestic help, if necessitated by the individual's disability and where this is not included in the person's support plan;
- vii. Personal assistant's costs, including any household or other necessary costs hygiene costs arising for the personal assistant in line with their care duties, where not included in the person's care and support plan;
- viii. Internet access for example for blind and partially sighted people or where internet access has been identify in the care and support plan as a critical need for social contact.

11. Deferred Payments

11.1 NCC operates a Deferred Payment Scheme. Deferred Payments are designed to prevent people from being forced to sell their home in their lifetime to meet the cost of their care. The Deferred Payment Scheme is also open to those people

moving into Supported Living. For further details relating to the Deferred Payments Scheme, please refer to our Deferred Payments Policy.

12. Choice of Accommodation – Third Party Payments and First Party “top-ups”

Third Party Payments

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

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

In such cases, NCC must arrange for them to be placed there, provided a third party, or in certain circumstances the person in need of care and support, is willing and able to meet the additional cost.

12.3 When entering into a contract to provide care in a setting that is more expensive than the amount identified in the personal budget, NCC is responsible for the total cost of that placement. This means that if there is a break down in the arrangement of a ‘top-up’, for instance if the person making the ‘top-up’ ceases to make the agreed payments, then we are liable for the fees until we have either recovered the additional costs we incur or made alternative arrangements to meet the cared for person’s needs.

12.4 It is therefore really important that the person paying the top-up fully understands the implications of this choice and that they are aware that they will need to meet the additional cost of care for the full duration of the stay and that should this cost not be met, the cared for person may be moved to an alternative setting. We should also advise the person paying the top-up that they may want to seek independent financial advice before entering into a Third Party agreement.

12.5 We must also ensure that the person paying the ‘top-up’ is willing and able to meet the additional cost for the likely duration of the arrangement, recognising that this may be for some time into the future. Therefore the person paying the ‘top-up’ must enter into a written agreement with us, agreeing to meet that cost. The agreement is called a “Deed of Third Party Contribution”.

We have adopted this arrangement because we consider it most suitable for the majority of cases and this is the Department of Health recommended best practice. However, we also recognise that in some cases, the individual circumstances of the

case will mean that one of two different approaches is more suitable and we will consider, in our discretion, the following alternatives:

- To treat the 'top-up' payment as part of the person's income and therefore recover the costs from the person concerned through the financial assessment.
- To agree with the third party paying the 'top-up' and the provider that payment for the 'top-up' element can be made directly to the provider with NCC paying the remainder.

12.6 The Deed of Third Party Contribution includes the following information:

- The weekly cost of the accommodation
- The amount specified for the accommodation in the person's personal budget;
- The additional amount to be paid;
- The frequency of the payments;
- To whom the payments are to be made;
- A statement on the consequences of ceasing to make payments;
- A statement on the effect of any increases in charges that a provider may make;
- A statement on the effect of any changes in the financial circumstances of the person paying the 'top-up';
- When the agreement will be reviewed.

First party 'top-ups'

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

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

In such cases we will follow the same principle as outlined in 12.1 to 12.6 above, i.e. we will pay the provider and invoice the person for the top-up.

Choice of accommodation and mental health after-care

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

12.9 Regardless of who is meeting the additional costs 12.1 to 12.6 would still apply.

13. Deprivation of assets

13.1. People with care and support needs are free to spend their income and assets as they see fit, including making gifts to friends and family. This is important for

promoting their wellbeing and enabling them to live fulfilling and independent lives. However, it is also important that people pay their fair contribution towards their care and support costs.

13.2 There are some cases where a person may have tried to deliberately avoid paying for care and support costs through depriving themselves of assets – either capital or income. There may also be valid reasons why someone no longer has an asset and therefore, we must ensure all cases are fully explored before we consider whether deprivation has occurred.

13.3 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.

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

Example:

Jake took a second mortgage on his property to replace his roof and to update his central heating. He has £10,000 left outstanding on the 2nd mortgage and pays £100 per month. There is 10 years remaining on the 2nd mortgage and NCC are allowing as a housing expense.

Jake's father dies and leaves him £20,000. Jake uses £10,000 of this to pay the 2nd mortgage even though he has 10 years left to pay it. NCC would disregard the £10,000 used to pay the debt, but include the other £10,000 as capital

13.5 Where NCC have evidence to support deprivation we will either charge the person as if they still possessed the asset or, if the asset has been transferred to someone else, will seek to recover the lost income or capital from the person to whom the asset has been transferred.

Has deprivation of capital occurred?

13.6 It is up to the person to prove to NCC that they no longer have the asset. If they are not able to, NCC will assess them as if they still had the asset. For capital assets, acceptable evidence of their disposal would be:

- (a) A trust deed;
- (b) Deed of gift;
- (c) Receipts for expenditure;
- (d) Proof that debts have been repaid.

13.7 A person can deprive themselves of capital in many ways, but common approaches may be:

- (a) A lump-sum payment to someone else, for example as a gift;
- (b) Substantial expenditure has been incurred suddenly and is out of character with previous spending;
- (c) The title deeds of a property have been transferred to someone else after April 2015;
- (d) Assets have been put in to a trust that cannot be revoked;
- (e) Assets have been converted into another form that would be subject to a disregard under the financial assessment, for example personal possessions;
- (f) Assets have been reduced by living extravagantly, for example gambling;
- (g) Assets have been used to purchase an investment bond with life insurance.

13.8 Deprivation will not be deliberate in all cases. The question of deprivation should only be considered where the person ceases to possess assets that would have otherwise been taken into account for the purposes of the financial assessment or has turned the asset into one that is now disregarded.

Example of where deprivation has not occurred:

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

Example of where deprivation would be considered:

Looking at the example of Emma above, had Emma had purchased the painting immediately prior to receiving home care, with £2,000 previously in a savings account, deprivation would be considered.

13.9 There may be many reasons for a person depriving themselves of an asset. Therefore, NCC will always consider the following in the first instance:

- (a) Whether avoiding the care and support charge was a significant motivation;
- (b) The timing of the disposal of the asset. At the point the capital was disposed of could the person have a reasonable expectation of the need for care and support; and
- (c) Whether the person had a reasonable expectation of needing to contribute to the cost of their eligible care needs?

13.10 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.

Example of assets to be considered:

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

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

Has deprivation of income occurred?

13.11 It is also possible for a person to deliberately deprive themselves of income. For example, they could give away or sell the right to an income from an occupational pension. As for capital, it is up to the person to prove to NCC that they no longer have the income.

13.12 Where we consider that a person may have deprived themselves of income, we may treat them as possessing notional income. However, in determining whether deliberate deprivation of income has occurred we will consider:

- (a) Was it the person's income?
- (b) What was the purpose of the disposal of the income?
- (c) The timing of the disposal of the income? At the point the income was disposed of could the person have a reasonable expectation of the need for care and support?

13.13 In cases where income may have been converted into capital (and this is deemed as deprivation), we will determine what tariff income may be applied to the capital and whether the subsequent charge is less or more than the person would have paid had the charge being paid based on the income.

Investigations into whether deprivation has occurred

13.14 As part of investigating whether deprivation has occurred, in extreme circumstances we will follow the organisational policy around the use of the Regulation of Investigatory Powers Act 2000 (RIPA).

13.15 In all other circumstances we will carry out an investigation by asking for and obtaining evidence to support the information given in the financial assessment.

What happens where deprivation of assets has occurred?

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

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

Recovering charges from a third party

13.18 Where the person has transferred the asset to a third party to avoid the charge, the third party is liable to pay NCC 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.

13.19 If the person has transferred funds to more than one third party, each of those people is liable to pay NCC 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, NCC will use the County Court process to recover debts once other avenues have been exhausted.

Example of liability of a third party:

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

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

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

14. Debt Collection

14.1. Where a person has accrued a debt to NCC, we will use our powers under the Care Act to recover that debt. For further information relating to debt collection, please refer to the NCC Debt Recovery Scheme for Care Charges.

15. Financial Information and advice

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

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

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

15.4 There will be occasions where NCC can provide the advice and similarly where the person has to be referred elsewhere.

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

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

16. Complaints

16.1 A person may wish to make a complaint about any aspect of the financial assessment or we have chosen to charge. NCC will therefore make it clear what our complaints procedure is and provide information and advice on how to lodge a complaint.

16.2 All complaints relating to our Charging Policy should be referred to the Compliments and Complaints Team. Full details on how to do this and how complaint are handled are shown under the Compliments and Complaints section on Norfolk County Council's website.

16.3 Complaints about the level of charge levied by a local authority are subject to the usual Care and Support complaints procedure as set out in The Local Authority Social Services and NHS Complaints (England) Regulations 2009.