

Code of Practice on the exercise of social services functions in relation to part 4 (direct payments and choice of accommodation) and part 5 (financial assessment and charging) of the Social Services and Well-being (Wales) Act 2014

Introduction

1.1 This Code of Practice is issued under section 145 of the Social Services and Well-being (Wales) Act 2014 (the “Act”).

1.2. The Social Services and Well-being (Wales) Act 2014 is available at: <http://www.legislation.gov.uk/anaw/2014/4/enacted>

1.3. Local authorities, when exercising their social services functions, **must** act in accordance with the requirements contained in this code. Section 147 (departure from requirements in codes) **does not** apply to any requirements contained in this code.

1.4. In this code a **requirement** is expressed as “must” or “must not”. **Guidance**, where local authorities have discretion, is expressed as “may” or “should/should not”.

1.5. This code should be read in conjunction with all relevant codes of practice issued under the Act. In particular with regard to those relating to care and support provision under Part 3 (Assessing the needs of individuals) and Part 4 (Meeting needs).

1.6. The Welsh Government has sought to support implementation of the Act through a process that engages our stakeholders. Central to this approach has been the establishment of technical groups made up of representatives with the relevant expertise, technical knowledge and practical experience to work with officials on the policy necessary to implement the Act, which in turn will deliver the policy aspirations underpinning the Act. This code is based on the outcome of that exercise.

Purpose

2.1 This code sets out the requirements for local authorities in relation to:

- *setting a contribution or reimbursement in connection with direct payments under sections 50-53 of the Act;*
- *the choice of accommodation for those in a care home, including additional payments in certain circumstances, under section 57 of the Act;*
- *charging and financial assessment under section 59 of the Act of those who are to receive care and support, or in the case of carers support;*
- *the deferment of payments for those in a care home under section 68 of the Act;*
- *charging under 69 of the Act for the provision or arrangement of preventative services or assistance;*

- *the transfer of assets to avoid charges under section 72 of the Act; and;*
- *reviews relating to charging under section 73 of the Act.*

This code covers:

- *Designing a charging policy;*
- *Common issues for charging;*
- *Charging for care and support in a care home;*
- *Choice of accommodation when arranging care in a care home;*
- *Making additional payments for preferred accommodation;*
- *Charging for care and support in the community;*
- *Charging for support to carers;*
- *Requesting local authority support to meet eligible needs.*

This chapter of the code must be read in conjunction with annexes A to E, which provide further detailed information.

General

3.1 The Social Services and Well-being (Wales) Act 2014 (the “Act”) provides for a single legal framework for charging for care and support provided under the Act. It provides a local authority with the discretion to charge where it feels it is appropriate to do so and where it feels the person required to pay any charge levied has sufficient financial means to do so

3.2 Where a local authority provides or arranges care and support to meet a person’s needs it may charge the person for this, except where it is required by regulations not to charge a particular person or not to charge for a particular type of care and support. The charging and financial assessment framework introduced by the Act, the regulations and this code is intended to make charging more consistent, fairer and more clearly understood by everyone. The overarching principle is that people who are asked to pay a charge should only be required to pay what they can afford. People who require care and support will be entitled to financial support from their local authority in certain circumstances based on their financial means and some will be entitled to care and support at no charge. The framework is therefore based on the following principles that local authorities **must** take into account when deciding whether to charge a person and in setting the level of any charge they make. Local authorities should:

- ensure that people are not charged more than it is reasonably practicable for them to pay and **must** never be charged more than the cost to the authority of providing or arranging the care and support they are receiving;

- be consistent, to reduce variation in the way people are financially assessed and charged;
- be clear and transparent, so people know what they will be charged;
- promote wellbeing outcomes, social inclusion and support the vision of independence, voice and control;
- support carers to look after their own health and wellbeing so as to care effectively and safely;
- be person-focused, reflecting the variety of care and caring situations and the variety of options available to meet person's needs and well-being outcomes;
- apply charging equally so those with similar needs for care and support are treated the same and minimise anomalies between charging for different care and support;
- encourage and enable those who wish to stay in or take up employment, education or training or plan for the future costs of meeting their needs to do so; and
- be sustainable for local authorities in the long-term.

3.3 Alongside this local authorities **must** ensure there is information and advice available, in a suitable format, in relation to their charging policies (in particular for those with a sensory impairment, learning disability or for whom English is not their first language), to ensure that individuals, or their representatives, are able to understand why they are being charged and how any charge is calculated. Local authorities should also make the person or their representative aware of the availability of independent financial information and advice.

Designing a charging policy

4.1 Working within the requirements of the Act, the regulations and this code, a local authority has discretion on how it decides to make charges for care and support. In line with the requirements of the Act, the regulations and this code, authorities need to decide which care and support, if any, they will make a charge for, the nature and level of any charges to be made and how these charges will be applied to particular care and support recipients. Within this framework authorities will also need to determine how their processes for undertaking the various stages of their charging procedure would operate and ensure that these are compliant with the requirements of the Act, the regulations and this code. Although the Financial Assessment regulations set out those things which a local authority is obliged to take into account or disregard in assessing a person's means, local authorities have discretion to apply disregards which are more generous. It should be stressed that the Act, regulations and this code of practice do not make any presumption that local authorities will charge for care and support but local authorities have a discretion to charge. Where

they do decide to charge they must do so in accordance with the Financial Assessment regulations and the Charging regulations.

4.2 Welsh Government policies for social care and support aim to promote the independence and social inclusion of individuals. Authorities may wish to take a similar approach in designing any charging policy, taking into account the principles of the Social Model of Disability and the UN Convention on the Rights of Persons with Disabilities. Where authorities decide to charge, charging policies should be seen within this context and should equally seek to promote the independence and social inclusion of care and support recipients. Charging policies therefore **must** be fair and reasonable, taking due account of the costs to authorities of providing or arranging care and support, the impact of this on the provision of care and support overall, the financial means of recipients and the financial and other impacts on those having to pay charges. Policies therefore **must** strike an appropriate balance between ensuring that any contributions sought from individuals who are to receive care and support towards the cost of this are reasonable, while securing sufficient funds to help assist in the future provision of such care and support. Where authorities design new policies, or significantly amend existing policies, they **must** consult those affected locally and take their views into account before deciding upon what policy, or what amendments to their policy, they should operate.

Common issues for charging

5.1 Local authorities have a duty to arrange care and support for those with eligible needs, and a power to meet non-eligible needs should they wish to do so. In all cases a local authority has the discretion to choose whether or not to charge for this under sections 50- 53 (in relation to direct payments), section 59 (in relation to care and support provided or arranged) or sections 69 (in relation to preventative services or assistance) of the Act. Where a local authority decides to charge it **must** follow the Care and Support (Charging) (Wales) Regulations 2015 and the Care and Support (Financial Assessment) (Wales) Regulations 2015 and this code. The detail of how charging occurs is different depending on whether someone is receiving care in a care home, or in their own home or in the community. However, they share common elements, which are set out in the following sections.

- Inability to meet costs of care

5.2 Where a local authority chooses to charge for non-residential care and support, regulations determine the maximum amount a local authority can charge a person. Only in care homes, where the financial assessment identifies that a person's resources exceed the capital limit, is a local authority precluded from paying towards the costs of care of that individual.

- Needs assessments / individual financial assessments

5.3 This code and its supporting annexes assume that the appropriate assessment of needs has been carried out and the local authority has chosen to charge in a particular case. It therefore provides detail on how to conduct the financial assessment of that person, where this is required, and what to take account of in setting that charge. In undertaking charging a local authority **must not** assess couples or civil partners according to their joint resources. Each person **must** be treated individually in terms of their financial means to meet a charge.

- People who lack capacity

5.4 Where a person lacks capacity they may still be assessed as being able to contribute towards the cost of their care and support. However, a local authority **must** put in place policies regarding how they communicate, how they carry out financial assessments and how they collect any charges from that person that take into consideration the capacity of the person as well as any illness or condition they might have. Local authorities **must** use social work skills both to communicate with people and also to design a system that works with, and for, very vulnerable people. In such circumstances local authorities **must** consult with and engage with family members where this is required. Where possible, local authorities should work with someone who has the legal authority to make financial decisions on behalf of a person who lacks capacity. If there is no such person, then an approach to the Court of Protection may be required.

- Children

5.5 The Act prevents local authorities from charging a child for the care and support they receive. While the Act allows authorities to charge a parent or guardian for this, the regulations and code preclude this.

- Prisoners

5.6 The charging framework also applies to people in prison. Whilst prisoners have restricted access to paid employment and benefits (and earnings in prison are to be disregarded for the purposes of the financial assessments), any capital assets, savings and pensions will need specific consideration as set out in this code and relevant annexes.

- Welfare Benefits Advice

5.7 Authorities should provide appropriate welfare benefits advice to those who receive care and support to aid them in their understanding of the benefits to which they may be entitled. This should normally be provided by means of a personal discussion with the person in their own home by appropriately skilled staff and with the person's representative if required. This assistance should include advice about entitlement to benefits, help with completion of benefit claims and follow-up action, if the person wishes. In many cases it may be both convenient for individuals and cost-effective to provide combined financial assessments and benefits advice discussions. However, people may prefer to obtain assistance from an independent source and should be offered this choice, where possible.

Capital limits

6.1 The financial limit, known as the "capital limit", exists for the purposes of the financial assessment and sets out at what point a person is entitled to access local authority support to meet their eligible needs. Full details of it are set out in annex A, and the local authority **must** follow that annex in undertaking a financial assessment and applying the capital limit.

6.2 The capital limit is set in the Care and Support (Charging) (Wales) Regulations 2015. Those with capital assets at or below this limit can seek means-tested support from their local authority. This means that the local authority will undertake a financial assessment of the person's assets and may apply a charge in accordance with the procedure set out in the Charging regulations. In the financial assessment capital at or below the capital limit **must** be disregarded in the assessment of what a person can afford to pay. Where a person's resources are at or below the capital limit they will not need to contribute to the cost of their care and support from their capital.

6.3 A person with capital above the capital limit can ask the local authority to arrange their care and support for them if they choose. The authority **must** meet the eligible needs if requested. However, people in this position are not entitled to receive any financial assistance from their local authority towards their care costs and in any case, will be required to pay the full cost of their care and support until such time as the value of their capital falls to the level of the capital limit.

Care and support for which a charge cannot be made

7.1 A local authority **must not** charge for certain types of care and support which must be arranged free of charge. These are:

- care and support provided to a person returning home after discharge from hospital for the first 6 weeks following discharge (although authorities should have regard as to whether to extend this period based on the needs of a person in individual cases);
- care and support provided to those with Creutzfeldt-Jacob Disease;
- after-care services/support provided under section 117 of the Mental Health Act 1983;
- assessment of needs, care planning, care plans and provision of statements of a charges **must** not be charged for, since these processes do not constitute the provision of care and support. This includes the provision of information and advice;
- transport to a day service where the transport is provided as part of meeting a person's needs.
- the arrangement of an independent advocate under part 4 of the Act to facilitate the involvement of an individual where they are not able to overcome the barrier(s) to fully participating in the process of determining and meeting their care and support needs unless there is an appropriate person available to support and represent their views and no such person is available.

Carrying out a financial assessment

8.1. The legal framework for charging for care and support is set out under part 5 of the Act, while that for care and support through direct payments is set out under sections 50-53 of the Act. When choosing to charge, or set a contribution or reimbursement for direct payments, a local authority **must not** charge more than the

cost for meeting the assessed needs of the person. It also **cannot** recover any administration fee relating to arranging that care and support where it does so .

8.2. Where a local authority has decided to charge, except where a flat rate charge is to be applied (see later in this chapter), it **must** carry out a financial assessment and determine what the person can afford to reasonably pay in accordance with the Charging regulations. When the determination is made, it **must** provide a written statement of the charge to the person. This could be provided alongside a person's care and support plan or separately. The Care and Support (Charging) (Wales) Regulations 2015 and the Care and Support (Financial Assessment) (Wales) Regulations 2015 set out the requirements of a financial assessment, determining a charge and providing a statement of this charge. The statement **must** explain how the assessment has been carried out, what the charge will be and how often it will be made, and if there is any fluctuation in charges, the reason. The local authority **must** ensure that this is provided in format to meet the communication needs of the person.

8.3 In carrying out the financial assessment the local authority **must** follow the regulations and relevant provisions of this code.

8.4. At the time of the financial assessment , the local authority **must** establish whether the person has the capacity to take part in the assessment. If the person lacks capacity, the local authority **must** find out if the person has any of the following as the appropriate person will need to be involved:

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

8.5 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 the local authority can apply if there is no family involved in the care of the person. The deputy is then able to access information about bank accounts and financial affairs. A person with dementia, for example, **should not** be 'forced' to undertake a financial assessment, to sign documents they can no longer understand and **should not** be prejudiced because they are not able to provide complete information or any information. The local authority **must** work with an EPA, a LPA or a Deputy instead.

8.6. In the financial assessment, the person's capital is taken into account unless it is subject to one of the disregards set out in the regulations and described in the annexes to this code. The main examples of capital are property and savings.

8.7 In assessing what a person can afford to pay, a local authority **must** take into account their income. However, to help encourage people to remain in or take up employment, with the benefits this has for a person's well-being, earnings from current employment **must** be disregarded when working out how much they can pay. There are different approaches to how income is treated depending on whether a person is in a care home or receiving care and support in the community. Full details are set out in the annex to this code on the treatment of income in a financial assessment.

No requirement for a financial assessment

8.8. In some circumstances a local authority is **not** required to undertake a financial assessment. The circumstances where this applies are included in the Care and Support (Financial Assessment) (Wales) Regulations 2015. They include situations where:

(a) where the local authority charges a small or flat rate charge for particular care and support (including for preventative services and assistance) and carrying out a financial assessment would be disproportionate to the charge levied;

(b) where the person declines to provide information and/or documentation reasonably required to undertake the assessment, or only provides partial information. In that case the authority can determine whether to charge, and the level of that charge, on the basis of available information / documentation if it considers that it has sufficient information to do so;

(c) the person is receiving care and support for which no charge can be made.

8.9 There are several circumstances when a local authority may be satisfied that a person is able to afford any charges due even where no information or only partial information is provided. These include where the person has:

(a) property clearly worth more than the capital limit, either where they are the sole owner or where they are one of joint owners but it is clear that the value of their share exceeds the capital limit;

(b) savings clearly worth more than the capital limit.

Flat rate charges

9.1 When deciding whether or not to charge a relatively flat rate for care and support, or to charge a flat rate charge under section 69 of the Act for preventative services or assistance, a local authority **must** consider both the level of the flat rate charge it proposes to make, and its potential financial effect on the person required to pay this. Flat rate charges would typically be for care and support which are tasks which a person would normally have to do as a part of everyday life, such as preparing meals or laundry. In some cases it might be the only care and support a person receives.

9.2 However, it is **not** acceptable for local authorities to set flat rate charges for all care and support to avoid the maximum weekly charge set by regulation 7(1).

9.3 Particular care needs to be taken to avoid an adverse impact on a person's income where they are receiving a number of low level, low cost care and support where a flat rate charge is applied to each. In such circumstances local authorities **must** take account of these flat rate charges as set out in the Care and Support (Charging) (Wales) Regulations 2015 as part of the minimum income amount referred to in those. This to avoid a situation where the accumulative effect of such flat rate charges and charges under section 59 of the Act for formal care and support makes these unaffordable for the individual. While the regulations remove the obligation to carry out a means assessment, where concerns arise, authorities should offer the person the opportunity to have a means assessment undertaken should they have any reason to believe that the accumulative effect of flat rate charges is or may be unaffordable.

9.4 In deciding whether to levy flat rate charges under section 69 of the Act for preventative services or assistance local authorities **must** consider the balance between collecting income to help provide such care and support on a sustainable basis, and the effect making such charges may have on the take up of them. Local authorities should avoid a situation where the flat rate charge they set discourages take up of the preventative services and therefore inhibits the local authority's ability to achieve the purposes of section 15 of the Act

Maximum Weekly Charge

9.5 In determining a charge under section 59 of the Act, or a contribution or reimbursement under sections 50-53 of the Act in connection with direct payments, local authorities **must not** charge a person in receipt of non-residential care and support more than the weekly maximum charge for all of the non-residential care and support they receive. This requirement was introduced in 2011 by Ministers to bring about more consistency across Wales in such charges. The Care and Support (Charging) (Wales) Regulations 2015 have this requirement and set the level of the maximum charge. Local authorities **are not** at liberty to charge a non-residential care and support recipient more than this maximum charge in a week irrespective of the size and cost of the non-residential care package they have. This applies equally where a person receives dual services; ie care and support provided or arranged by their local authority and care and support provided through direct payments. The total of any charge made for the both of these must not exceed the weekly maximum charge.

9.6 It is open to authorities to operate a lower maximum weekly charge than set in the regulations if they wish. The maximum weekly charge set in the regulations will be kept under review and may, from time to time, be revised.

Deprivation of assets and debts

10.1 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.

10.2 There are some cases where a person may have tried to deliberately avoid paying for care and support through depriving themselves of assets – either capital or income. Where a local authority believes it has evidence to support this it can, if it

wishes, recover costs under section 72 of the Act. In such cases the local authority may either charge the person as if they were still in possession of the asset, or if the asset has been transferred to someone else, seek to recover the lost income from charges from that person.

10.3 However, the local authority **cannot** recover more than the person gained from the transfer and **must** apply the relevant regulations in calculating the charge which would have been levied. In addition, local authorities **must not** automatically assume that deprivation of an asset has occurred in a particular case and **must** treat each case where they have concerns on its merits.

Recovery of debts

11.1 Where a person has accrued a debt, the local authority may use its powers under the section 70 of the Act to recover that debt. In deciding how to proceed the local authority **must** consider the circumstances of the case before deciding a course of action. For example, a local authority should consider whether this was a deliberate avoidance of payment or due to circumstances beyond the person's control.

11.2 Ultimately, the local authority may institute proceedings to recover the debt through the courts. However, they **must** only use this power after other reasonable alternatives for recovering the debt have been exhausted with the person owning the debt.

Charging for care and support in a care home

12.1 This part of the code must be read in conjunction with annexes A and B on the treatment of capital and income respectively in relation to care homes.

12.2 Where a local authority has decided to charge for the provision or arrangement of accommodation in a care home and to undertake a financial assessment, it **must** support the person to identify options of how best to pay any charge. This may include offering the person a deferred payment agreement. Such cases are described in the annex on deferred payments agreements.

12.3 Where a local authority is meeting needs by arranging accommodation in a care home, it is responsible for contracting with the provider of the care home. It is also responsible for paying the full amount, including where an additional payment is being paid for accommodation which has been chosen by the person and which is more expensive than the amount the local authority would expect to pay for accommodation of that type (see the annex on choice of accommodation). However, where all parties are agreed it may choose to allow the person to pay the additional payment to the provider directly. In doing so it should remember that multiple contracts risk confusion and that the local authority may be unable to assure itself that it is meeting its responsibilities under the additional cost provisions in the Act. Local authorities **must** ensure they follow the annex on choice of accommodation on the use of additional payments.

12.4 Where a person is a short-term resident (ie a stay not exceeding 8 weeks) in a care home, a local authority may choose to charge as if it was provision of non-residential care and support. This may occur where a person receives respite care in

a care home. For the first eight weeks a local authority may choose to charge based on its approach to charging for those receiving non-residential care and support.

12.5 People in a care home will contribute most of their income, excluding their earnings, towards the cost of their care and support. However, a local authority **must** leave the person with a specified amount of their own income so that the person has money to spend on personal items such as clothes and other items that are not part of their care and support. This is known as the minimum income amount (previously referred to as the personal expenses allowance). This is in addition to any income the person receives from earnings. Local authorities have discretion to apply a higher income allowance in individual cases, for example where the person needs to contribute towards the cost of maintaining their former home. The Care and Support (Charging) (Wales) Regulations 2015 sets the level of the minimum income amount.

Choice of accommodation

13.1 Where someone's needs are to be met by provision of accommodation in a care home, the Choice of Accommodation Regulations require the local authority to provide for the person's preferred choice of accommodation, subject to certain conditions. Determining the appropriate type of accommodation should be made with the person as part of the care and support planning process, therefore this choice only applies between providers of the same type.

13.2 Any additional payment **must** always be optional and never as a result of a commissioning shortfall in the funding provided for the placement leading to a lack of choice. Local authorities **must** follow the Care and Support (Choice of Accommodation) (Wales) Regulations 2015 in connection with this and the annex on such circumstances.

Charging for care and support in the community including a person's own home

14.1 This section should be read in conjunction with the regulations and annexes on the treatment of capital and income in respect of charging for non-residential care and support.

14.2 These charging arrangements cover meeting care and support needs outside of a care home, either in a person's own home or in the community. The intention of the regulations and this code is to support local authorities, where they have decided to charge for the care and support a person is to receive, to assess what that person can afford to contribute towards the costs of their care and support.

14.3 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 framework seeks to ensure they have enough money to meet these costs. As a result after charging, local authorities **must** leave a person who is being charged with a minimum income amount (MIA). The Care and Support (Charging) (Wales) Regulations 2015 set out how the MIA is calculated in each person's case. The MIA includes an allowance for disability-related expenditure.

14.4 Additionally, the financial assessment of capital **must** exclude the value of property occupied as the main or only home. However, local authorities have flexibility within this framework to take account of local circumstances and promote independence and integration. For example, they may choose to disregard additional

sources of income, set a lower weekly maximum charge for non-residential care and support than the one stipulated in the Charging regulations. However, any charging policies applied which are more generous to those with care and support needs must be applied consistently and fairly.

Charging for support to carers

15.1 Where a carer has eligible support needs of their own, the local authority has a duty, to arrange support to meet their needs. Where a local authority is meeting the needs of a carer by arranging or providing a service directly to a carer, it has a discretion to charge the carer.

15.2 However, a local authority **must not** charge a carer for care and support provided directly to the person they care for under any circumstances. In addition, local authorities **are not** required to charge a carer for support. When deciding whether to charge, and in determining what an appropriate charge is, a local authority may wish to consider how it wishes to express the way it values carers within its local community as partners in care, and recognise the significant contribution carers make. Carers help to maintain the health and wellbeing of the person they care for, support this person's independence and enable them to stay in their own homes for longer. In many cases, carers voluntarily meet needs that the local authority would otherwise be required to meet.

15.3 Local authorities **must** consider carefully the likely impact of any charges on carers, particularly in terms of their willingness and ability to continue their caring responsibilities. It may be that there are circumstances where a nominal charge may be appropriate, for example to provide support which is subsidised but for which the carer may still pay a small charge, such as a gym class. Ultimately, a local authority **must** ensure that any charges do not negatively impact on a carer's ability to look after their own health and wellbeing and to care effectively and safely for the cared for person.

15.4 Where a local authority takes the decision to charge a carer, it **must** do so in accordance with the non-residential charging rules. In doing so, it is required to carry out a financial assessment to ensure that any charges are affordable. However, in the case of a carer where low level support is required, a local authority may agree to charge flat rate charges so that undergoing a financial assessment is not required.

15.5 In considering whether to charge carers, local authorities **must** consider both the level of the charge it proposes to make and the impact this will have on the carer's ability to undertake their caring role.

Requesting local authority support to meet eligible needs

16.1 Local authorities are not required to meet the eligible needs of those with financial assets above the capital limit. However, those in this position may ask the local authority to meet their needs if they choose. This could be for a variety of reasons such as the person needing support to access the support or services required, or wishing to take advantage of the local authority's knowledge of the local market for care and support.

16.2 Where the person asks the local authority to meet their eligible needs, then the local authority **must** meet their needs. Local authorities **must** therefore take steps to make people aware that they have the right to request the local authority to meet their needs even when they have resources above the capital limit and would not be entitled to financial support with any charges. Local authorities **must** also offer support to people in meeting their own needs, including providing information and advice on different options, and may offer to arrange contracts with providers.

16.3 A local authority will be under a duty to meet a person's eligible needs when requested to do so and their needs are to be met by care and support. However, where the person has resources above the capital limit the local authority may charge the person for the full cost of their care and support. In such circumstances, the person remains responsible for paying for the cost of their care and support, but the local authority takes on the responsibility for arranging to meet those needs. This means that the local authority may for example provide or arrange care and support, or make a direct payment, or some combination of these.

16.4 The local authority **must** ensure that the arrangements which it puts in place for a person who will be meeting the full cost are affordable and sustainable for that person over a longer period. The local authority **must** also take steps to avoid disputes and additional liabilities by securing a person's agreement in writing to pay the costs that they are responsible for in meeting their needs, including payments to providers. Local authorities should make similar arrangements with any third parties that agree to contribute towards these costs.

Annex A - Treatment of Capital

This annex covers:

- *The treatment of capital when conducting a financial assessment*

General

1.1 This annex applies where a local authority has chosen to charge a person for the care and support it is providing or arranging and, when setting a contribution or reimbursement in connection with direct payments, and therefore **must** undertake a financial assessment. When doing so, it **must** assess the income and capital of the person. This annex covers the treatment of capital and should be read in conjunction with the annex on the treatment of income. The detail of how local authorities **must** treat various forms of capital in financial assessments is set out in the Care and Support (Financial Assessment) (Wales) Regulations 2015 (the “regulations”).

1.2. The financial assessment will need to look across all of a person’s assets – both capital and income – decide which is capital and which is income, and assess those assets according to the regulations and this code. A local authority therefore **must** also refer to the annex on the treatment of income. The treatment of income will vary depending on the type of care and support being provided or arranged for a person. The treatment of capital, as set out in this annex, is broadly the same for all types care and support. Where there is a distinction between the provision of care and support by way of provision of accommodation in a care home and all other types of care and support, this is clearly set out.

1.3. In assessing what a person can afford to contribute towards the cost of their care and support a local authority **must** apply the capital limit. The capital limit is set in the Care and Support (Charging) (Wales) Regulations 2015.

1.4. A person with assets above the capital limit will be deemed to be able to afford the full cost of their care and support. Any capital at or below the capital limit should be disregarded. Further details are set out in paragraphs 8.1 – 8.3.

Defining capital

2.1. Capital can mean many different things and the intention is not to give a definitive definition here as a local authority will need to consult the regulations and consider the individual asset on its merits. In general it refers to financial resources available for use and tends to be from sources that are considered more durable than money in the sense that they can generate a return.

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

(a) Buildings

(b) Land

(c) National Savings Certificates and Ulster Savings Certificates

(d) Premium Bonds

(e) Stocks and shares

(f) Capital held by the Court of Protection or a Deputy appointed by that Court

(g) Any savings held in:

(i) Building society accounts.

(ii) Bank current accounts, deposit accounts or special investment accounts. This includes savings held in the National Savings Bank, Girobank and Trustee Savings Bank.

(iii) SAYE schemes.

(iv) Unit Trusts.

(v) Co-operatives share accounts.

(vi) Cash.

(h) Trust funds

2.3. People **must not** be charged twice on the same resources. Therefore, resources should only be treated as income or capital but not both. If a person has saved money from their income then those savings should normally be treated as capital. However they **should not** be assessed as both income and capital in the same period. Therefore in the period when they are received as income, the resource should be disregarded as capital.

- cases where it is not clear whether a payment is capital or income

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

(a) not in respect of a specified period; and

(b) not intended to form part of a series of payments.

3.2. Local authorities **must** also have regard to the section on capital treated as income at paragraph 20.1.

- who owns the capital?

4.1. 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.

4.2. Where ownership is disputed, a local authority **must** seek written evidence to prove where the ownership lies. If a person states they are holding capital for

someone else, the local authority **must** obtain evidence of the arrangement, the origin of the capital and intentions for its future use and return to its rightful owner.

4.3. 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.

4.4. In some cases a person may be the legal owner of a property but not the beneficial owner of a property. In other words, they have no rights to the proceeds of any sale. In such circumstances the property **must not** be taken into account.

- calculating the value of capital

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

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

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

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

5.3. If the person and the assessing officer both agree that after deducting any relevant amounts set out in paragraph 5.1 that the total value of the person's capital is more than the capital limit then it is not necessary to obtain a precise valuation. If there are any disputes, a precise valuation should be obtained. However, the local authority should bear in mind how close someone is to the capital limit when deciding whether or not to obtain a precise valuation.

5.4. Where a precise valuation is required, a professional valuer **must** 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.

5.5. Where the value of a property is disputed, the aim should be to resolve this as quickly as possible. Local authorities should try to obtain an independent valuation of the person's beneficial share of the property within the 12-week disregard period where a person is in a care home. This will enable local authorities to work out what charges a person should pay and enable the person, or their representative, to consider whether to seek a deferred payment agreement.

5.6. The value of National Savings Certificates (and Ulster Savings Certificates) (Premium Bonds) is assessed in the same way as other capital assets. A valuation for savings certificates can be obtained by contacting the NS&I helpline. An alternative method to get the value of National Savings Certificates is to use the NS&I online calculator. To enable an accurate value for the savings certificates the person must provide details of the:

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

6.1. Where capital is held abroad and all of it can be transferred to the UK, its value in the other country **must** be obtained and taken into account less any appropriate deductions under paragraph 5.1. 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.

6.2. Where the capital cannot be wholly transferred to the UK due to the rules of that country, for example currency restrictions, the local authority **must** require evidence confirming this fact. Examples of acceptable evidence could include documentation from a bank, Government official or solicitor in either this country or the country where the capital is held.

6.3. Where some restriction is in place, a local authority **must** seek evidence showing what the asset is, what its value is and to understand the nature and terms of the restriction so that should this change, the amount can be taken into account. It should also take into account the value that a willing buyer would pay in the UK for those assets, but be aware that it may be less than the market or surrender value in the foreign country.

- capital not immediately realisable

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

Capital limit

8.1. The capital limit sets at what point a person is able to access local authority support and how much support they receive. The local authority **must** apply the capital limit.

8.2. If a person clearly has capital in excess of the capital limit, there is no need to make a wider assessment. If a person is near the capital limit, the local authority **must** be mindful of the need to plan ahead for when assets have been spent down and a person may therefore fall below the capital limit. This will help reduce burdens

on both the local authority and the person from needing to repeat the financial assessment within a short timeframe.

8.3. The capital which a person has at or below the capital limit **must** be disregarded.

Notional capital

9.1. In some circumstances a person may be treated as possessing a capital asset even where they do not actually possess it. This is called notional capital.

9.2. Notional capital may be capital which:

- (a) would be available to the person if they applied for it;
- (b) is paid to a third party in respect of the person;
- (c) the person has deprived themselves of in order to reduce the amount of a charge, contribution or reimbursement they have to pay for their care.

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

9.4. Where a person has been assessed as having notional capital, the value of this **must** be reduced over time. The rule is that the value of notional capital **must** be reduced weekly by the difference between the weekly rate the person is paying for their care and the weekly rate they would have paid if notional capital did not apply.

Capital disregarded

10.1. The following capital assets **must** be disregarded:

- (a) Property in specified circumstances (see paragraph 11.1);
- (b) The surrender value of any:
 - (i) Life insurance policy;
 - (ii) Annuity.
- (c) Payments of training bonuses of up to £200;
- (d) Payments in kind from a charity;
- (e) Any personal possessions such as paintings or antiques, unless they were purchased with the intention of reducing capital in order to avoid care and support charges;
- (f) Any capital which is to be treated as income or student loans;
- (g) Any payment that may be derived from:
 - (i) The Macfarlane Trust;
 - (ii) The Macfarlane (Special Payments) Trust;
 - (iii) The Macfarlane (Special Payment) (No 2) Trust;

- (iv) The Caxton Foundation;
- (v) The Fund (payments to non-haemophiliacs infected with HIV);
- (vi) The Eileen Trust;
- (vii) The MFET Trust;
- (viii) The Independent Living Fund (2006);
- (ix) The Skipton Fund;
- (x) The London Bombings Relief Charitable Fund.

(h) The value of funds held in trust or administered by a court which derive from a payment for personal injury to the person. For example, the vaccine damage and criminal injuries compensation funds;

(i) The value of a right to receive:

- (i) Income under an annuity;
- (ii) Outstanding instalments under an agreement to repay a capital sum;
- (iii) Payment under a trust where the funds derive from a personal injury;
- (iv) Income under a life interest or a life-rent;
- (v) Income (including earnings) payable in a country outside the UK which cannot be transferred to the UK;
- (vi) An occupational pension;
- (vii) Any rent. (Please note however that this does not necessarily mean the income is disregarded. See the annex on the treatment of income).

(j) Capital derived from an award of damages for personal injury which is administered by a court or which can only be disposed of by a court order or direction;

(k) The value of the right to receive any income under an annuity purchased pursuant to any agreement or court order to make payments in consequence of personal injury or from funds derived from a payment in consequence of a personal injury and any surrender value of such an annuity;

(l) Periodic payments in consequence of personal injury pursuant to a court order or agreement to the extent that they are not a payment of income and are treated as income (and disregarded in the calculation of income);

(m) Any Social Fund payment;

(n) Refund of tax on interest on a loan which was obtained to acquire an interest in a home or for repairs or improvements to the home;

- (o) Any capital resources which the person has no rights to as yet, but which will come into his possession at a later date, for example on reaching a certain age;
- (p) Payments from the Department for Work and Pensions to compensate for the loss of entitlement to Housing Benefit or Housing Benefit Supplement;
- (q) The amount of any bank charges or commission paid to convert capital from foreign currency to sterling;
- (r) Payments to jurors or witnesses for court attendance (but not compensation for loss of earnings or benefit);
- (s) Community charge rebate/council tax rebate;
- (t) Money deposited with a Housing Association as a condition of occupying a dwelling;
- (u) Any Child Support Maintenance Payment;
- (v) The value of any ex-gratia payments made on or after 1st February 2001 by the Secretary of State in consequence of a person's, or person's spouse or civil partner's imprisonment or internment by the Japanese during the Second World War;
- (w) Any payment made by a local authority under the Adoption and Children Act 2002 (under section 2(b)(b) or 3 of this act);
- (x) The value of any ex-gratia payments from the Skipton Fund made by the Secretary of State for Health to people infected with Hepatitis C as a result of NHS treatment with blood or blood products;
- (y) Payments made under a trust established out of funds provided by the Secretary of State for Health in respect of persons suffering from variant Creutzfeldt-Jakob disease to the victim or their partner (at the time of death of the victim);
- (z) Any payments under Section 2, 3 or 7 of the Age-Related Payments Act 2004 or Age Related Payments Regulations 2005 (SI No 1983);
- (aa) Any payments made under section 63(6)(b) of the Health Services and Public Health Act 1968 to a person to meet childcare costs where he or she is undertaking instruction connected with the health service by virtue of arrangements made under that section;
- (ab) Any payment made in accordance with regulations under Section 14F of the Children Act 1989 to a resident who is a prospective special guardian or special guardian, whether income or capital.

Property disregards

11.1. In the following circumstances the value of the person's main or only home **must** be disregarded:

(a) Where the person is receiving care and support that is not provided or arranged by way of accommodation in a care home;

(b) If the person's stay in a care home is temporary and they:

(i) intend to return to that property and that property is still available to them; or

(ii) are taking reasonable steps to dispose of the property in order to acquire another more suitable property to return to.

(c) Where the person no longer occupies the property but it is occupied in part or whole as their main or only home by any of the people listed below, the mandatory disregard only applies where the property has been continuously occupied since before the person went into a care home (for discretionary disregards see below):

(i) the person's partner, former partner or civil partner, except where they are estranged;

(ii) a lone parent who is the person's estranged or divorced partner;

(iii) a relative as defined in paragraph 11.2 of the person or member of the person's family who is:

(1) Aged 60 or over, or

(2) Is a child of the resident aged under 18, or

(3) Is incapacitated.

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

(a) Parent (including an adoptive parent)

(b) Parent-in-law

(c) Son (including an adoptive son)

(d) Son-in-law

(e) Daughter (including an adoptive daughter)

(f) Daughter-in-law

(g) Step-parent

(h) Step-son

(i) Step-daughter

(j) Brother

(k) Sister

(l) Grandparent

(m) Grandchild

(n) Uncle

(o) Aunt

(p) Nephew

(q) Niece

(r) The spouse, civil partner or unmarried partner of a to k inclusive.

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

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

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

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

11.5. For the purpose of the property disregard, the meaning of "occupy" is not closely defined. In most cases it will be obvious whether or not the property is occupied by a qualifying relative as their main or only home. However, there will be some cases where this may not be clear and the local authority should undertake a factual inquiry weighing up all relevant factors in order to reach a decision. An emotional attachment to the property alone is not sufficient for the disregard to apply.

11.6. Circumstances where it may be unclear might include where a qualifying relative has to live elsewhere for the purposes of their employment, for example a member of the armed services or the diplomatic service. Whilst they live elsewhere in order to undertake their employment, the property remains their main or only home. Another example may be someone serving a prison sentence. It would not be reasonable to regard the prison as the person's main or only home and they may well intend to return to the property in question at the end of their sentence. In such circumstances the local authority may wish to consider the qualifying relative's length of sentence and the likelihood of them returning to the property. Essentially the qualifying relative is occupying the property but is not physically present.

11.7. In considering such cases the local authority **must** take account of the individual circumstances of each case

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

Discretionary disregard

12.1. A local authority may also use its discretion to apply a property disregard in other circumstances. However, the local authority will need to balance this discretion with ensuring a person's assets are not maintained at public expense. An example where it may be appropriate to apply the disregard is where it is the sole residence of someone who has given up their own home in order to care for the person who is now in a care home or is perhaps the elderly companion of the person.

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

12.3. The local authority should consider if the principle reason for the move is that it is necessary to ensure the relative has somewhere to live as their main or only home. A disregard would not be appropriate, for example where a person moves into a property solely to protect the family inheritance. Local authorities need to ensure that people are not needlessly maintained at public expense. A local authority **must** take account of the individual circumstances of each case

12-week property disregard

13.1 A key aim of the charging framework is to prevent people being forced to sell their home at a time of crisis. The regulations under the Social Services and Well-being (Wales) Act 2014 therefore create space for people to make decisions as to how to meet their contribution to the cost of their eligible care needs. A local authority **must** therefore disregard the value of a person's main or only home when the value of their non-housing assets is below the capital limit for 12 weeks in the following circumstances:

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

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

26-week disregard

14.1. The following capital assets **must** be disregarded for at least 26 weeks in a financial assessment. However, a local authority may 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 a self-employed worker and has stopped work due to some disease or disablement but intends to take up work again when they are fit to do so. Where the person is in a care home, this should apply from the date they first took up residence.

(b) Money acquired specifically for repairs to or replacement of the person's home or personal possessions provided it is used for that purpose. 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

15.1. The following payments of capital **must** be disregarded for a maximum of 52 weeks from the date they are received:

(a) The balance of any arrears of or any compensation due to non-payment of:

(i) Mobility supplement

(ii) Attendance Allowance

(iii) Constant Attendance Allowance

(iv) Disability Living Allowance / Personal Independence Payment

(v) Exceptionally Severe Disablement Allowance

(vi) Severe Disablement Occupational Allowance

(vii) Armed forces service pension based on need for attendance

(viii) Pension under the Personal Injuries (Civilians) Scheme 1983, based on the need for attendance

(ix) Income Support/Pension Credit

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

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

- (b) Payments or refunds for:
 - (i) NHS glasses, dental treatment or patient's travelling expenses;
 - (ii) Cash equivalent of free milk and vitamins;
 - (iii) Expenses in connection with prison visits.
- (c) Personal Injury Payments.

15.2. Local authorities **must** disregard payments made under a trust established out of funds by the Secretary of State for Health in respect of vCJD to:

- (a) A member of the victim's family for 2 years from the date of death of the victim (or from the date of payment from the trust if later); or
- (b) A dependent child or young person until they turn 18.

Other disregards

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

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

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

Treatment of investment bonds

17.1. The treatment of investment bonds is currently complex. This is in part because of the differing products that are on offer. As such, local authorities may wish to seek advice from their legal departments.

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

Capital treated as income

18.1. The following capital payments **must** be treated as income. Local authorities therefore **must** have regard to the annex on the treatment of income before conducting their assessments:

- (a) Any payment under an annuity.
- (b) Capital paid by instalment where the total of:
 - (i) the instalments outstanding at the time the person first becomes liable to pay for their care, or in the case of a person in temporary care whom the local authority had previously decided not to charge, the first day on which the local authority decided to charge; and
 - (ii) the amount of other capital held by the resident is over £16,000. If it is £16,000 or less, each instalment should be treated as capital.

Earnings

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

Income treated as capital

20.1. The following types of income should 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

21.1. In some instances a person may need to apply for access to capital assets but has not yet done so. In such circumstances this capital should be treated as already belonging to the person except in the following instances:

(a) Capital held in a discretionary trust;

(b) Capital held in a trust derived from a payment in consequence of a personal injury;

(c) Capital derived from an award of damages for personal injury which is administered by a court;

(d) Any loan which could be raised against a capital asset which is disregarded, for example the home.

21.2 A local authority should distinguish between:

(a) Capital already owned by the person but which in order to access they must make an application for. For example:

(i) Money held by the person's solicitor;

(ii) Premium Bonds;

(iii) National Savings Certificates;

(iv) Money held by the Registrar of a County Court which will be released on application; and

(b) Capital not owned by the person that will become theirs on application, for example an unclaimed Premium Bond win. This should be treated as notional capital.

21.3 Where a local authority treats capital available on application as notional capital they should do so only from the date at which it could be acquired by the person.

21.4 April 2015 also sees much greater flexibility introduced regarding how people can access their defined contribution pensions, including enabling them to access their full pension pot. As a result, when applying notional income to a defined contribution pension this should be calculated as the maximum income that would be available if the person had taken out an annuity (see the annex on the treatment of income).

Annex B -Treatment of Income

This annex covers:

• *The treatment of income when conducting a financial assessment. This is divided into:*

- *Care homes;*
- *All other care and support.*

General

1.1. This section of the code applies where a local authority has chosen to charge a person for the care and support it is providing or arranging, and when setting a contribution or reimbursement in connection with direct payments, and therefore must undertake a financial assessment. When doing so, it **must** assess the income and capital of the person.

1.2. There are differences in how income is treated in a care home and with all other forms of care and support. This section of the code sets out the common issues and any particular issues unique to each. Local authorities **must** follow this in all circumstances.

1.3. This section of the code covers the treatment of income and should be read in conjunction with the annex on the treatment of capital. The detail of how local authorities **must** treat various forms of income in financial assessments is set out in the Care and Support (Financial Assessment) (Wales) Regulations 2015.

Common issues

2.1. The following section sets out the issues common to all charging for care and support.

2.2. Only the income of the person receiving care and support can be taken into account in the financial assessment of what they can afford to pay. Where this person receives income as one of a couple, the starting presumption is that each person has an equal share of the income. A local authority should also consider the implications for person's partner.

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

2.4. Income **must** always be taken into account unless it is disregarded under the regulations. Income that is disregarded will either be:

- (a) Partially disregarded; or
- (b) Fully disregarded.

2.5. In all cases employed and self-employed earnings **must** be fully disregarded.

2.6. 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.

2.7 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.

2.8. 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.

2.9 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.

2.10 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

3.1. Local authorities **must** take most of the benefits people receive into account. Those they **must** disregard are listed below. However, they **must** ensure that in addition to the minimum guaranteed income or personal expenses allowance – details of which are set out below – people retain enough of their benefits to pay for things to meet those needs not being met by the local authority.

3.2. Any income from the following sources **must** be fully disregarded:

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

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

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

- (i) Maternity Allowance
- (j) Pension Credit
- (k) Personal Independence Payment (Daily Living component)
- (l) State Pension
- (m) Universal Credit
- (n) Working Tax Credit.

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

Annuity and pension income

4.1 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 **must** be taken fully into account except where it is:

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

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

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

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

4.5. Where the disregard is applied, only the following aspects may be disregarded:

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

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

- (a) The loan must have been made as part of a scheme that required that at least 90% of that loan be used to purchase the annuity;

- (b) The annuity ends with the life of the person who obtained the loan, or where there are two or more annuitants (including the person who obtained the loan), with the life of the last surviving annuitant;
- (c) The person who obtained the loan or one of the other annuitants is liable to pay the interest on the loan;
- (d) The person who obtained the loan (or each of the 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.

4.7 Where the person is using part of the income to repay the loan, the amount paid as interest **must** 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, disregard the net interest. Otherwise, disregard the gross interest.

4.8 Reforms to defined contribution pensions come into effect from April 2015. The aim of the reforms is to provide people with much greater flexibility in how they fund later life. This may lead to changes in how people use the money in their pension fund. The rules for how 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 should be treated according to the rules for that product;
- (b) If a person is only drawing a minimal income, then a local authority can apply notional income rather than drawn income, according to the maximum income that could be drawn under an annuity product. If applying maximum notional income, the actual income should be disregarded to avoid double counting;
- (c) If a person is drawing down an income that is higher than the maximum available under an annuity product, the actual income that is being drawn down should be taken into account.

Mortgage protection insurance policies

5.1 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 **must** 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.

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

Other income that must be fully disregarded

6.1 Any income from the following sources must be fully disregarded:

- (a) Armed Forces Independence Payments and Mobility Supplement
- (b) Child Support Maintenance Payments and Child Benefit
- (c) Child Tax Credit
- (d) Council Tax Reduction Schemes where this involves a payment to the person
- (e) Disability Living Allowance (Mobility Component) and Mobility Supplement
- (f) Christmas bonus
- (g) Dependency increases paid with certain benefits
- (h) Discretionary Trust
- (i) Gallantry Awards
- (j) Guardian's Allowance
- (k) Guaranteed Income Payments made to Veterans under the Armed Forces Compensation Scheme
- (l) Income frozen abroad
- (m) Income in kind
- (n) Pensioners Christmas payments
- (o) Personal Independence Payment (Mobility Component) and Mobility Supplement
- (p) Personal injury trust, including those administered by a Court
- (q) Resettlement benefit
- (r) Savings credit disregard
- (s) Social Fund payments (including winter fuel payments)
- (t) War widows and widowers special payments
- (u) Any payments received as a holder of the Victoria Cross, George Cross or equivalent

- (v) Any grants or loans paid for the purposes of education; and
- (w) Payments made in relation to training for employment.
- (x) Any payment from the:
 - (i) Macfarlane Trust
 - (ii) Macfarlane (Special Payments) Trust
 - (iii) Macfarlane (Special Payment) (No 2) Trust
 - (iv) Caxton Foundation
 - (v) The Fund (payments to non-haemophiliacs infected with HIV)
 - (vi) Eileen Trust
 - (vii) MFET Limited
 - (viii) Independent Living Fund (2006)
 - (ix) Skipton Fund
 - (x) London Bombings Relief Charitable Fund.

Charitable and voluntary payments

7.1 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.

7.2 Charitable and voluntary payments that are made regularly **must** be fully disregarded.

Partially disregard income

8.1 The following income is partially disregarded:

- (a) The first £10 per week of War Widows and War Widowers pension, survivors Guaranteed Income Payments from the Armed Forces Compensation Scheme, Civilian War Injury pension, War Disablement pension and payments to victims of National Socialist persecution (paid under German or Austrian law).
- (b) A savings disregard based on qualifying income. Where a person is in receipt of qualifying income of less than a set amount per week there will be no savings disregard but where a person is in receipt of qualifying income between particular levels a set saving disregard will apply. The levels of the qualifying income and of the saving disregard are set out in the Care and Support (Financial Assessment) (Wales) Regulations 2015.

Notional income

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

9.2. Notional income should also be applied where a person who has reached retirement age and has a personal pension plan but has not purchased an annuity or arranged to draw down the equivalent maximum annuity income that would be available from the plan. Notional income should be applied in line with paragraph 4.8. Estimates of the notional income can be received from the pension provider or from estimates provided by the UK Government Actuary's Department.

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

9.4 Notional income should be calculated from the date it could be expected to be acquired if an application had been made. In doing so, a local authority **must** 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.

9.5 However, there are some exemptions and the following sources of income **must 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.

Disability-related expenditure

10.1 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.

10.2 In relation to charging for non-residential care and support local authorities **must** include in their minimum income amount for the person being charged at least 10% of their basic entitlement as disability related expenditure. Details of this are in the Care and Support (Charging) (Wales) Regulations 2015. Local authorities have the discretion to provide for more than this level should they choose. They also have the discretion to provide for a disability related expenditure disregard with charging for residential care and support.

10.3 In assessing disability-related expenditure, local authorities should include the following. However, it should also be noted that this list is not intended to be exhaustive and any reasonable additional costs directly related to a person's disability should be included:

- (a) Payment for any community alarm system;
- (b) Costs of any privately arranged care services required, including respite care;
- (c) Costs of any specialist items needed to meet the person's disability needs, for example:
 - i. Day or night care which is not being arranged by the local authority;
 - ii. specialist washing powders or laundry;
 - iii. additional costs of special dietary needs due to illness or disability (the person may be asked for permission to approach their GP in cases of doubt);
 - iv. 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;
 - v. additional costs of bedding, for example, because of incontinence;
 - vi. any heating costs, or metered costs of water, above the average levels for the area and housing type,
 - vii. occasioned by age, medical condition or disability;
 - viii. reasonable costs of basic garden maintenance, cleaning, or domestic help, if necessitated by the individual's disability and not met by social services;
 - ix. purchase, maintenance, and repair of disability-related equipment, including equipment or transport needed to enter or remain in work; this may include IT costs, where necessitated by the disability; reasonable hire costs of equipment may be included, if due to waiting for supply of equipment from the local council;
 - x. personal assistance costs, including any household or other necessary costs arising for the person;
 - xi. internet access for example for blind and partially sighted people

xii. other transport costs necessitated by illness or disability, including costs of transport to day centres, over and above the mobility component of DLA or PIP, if in payment and available for these costs. In some cases, it may be reasonable for a council not to take account of claimed transport costs – if, for example, a suitable, cheaper form of transport, e.g. council-provided transport to day centres is available, but has not been used;

xiii. in other cases, it may be reasonable for a council not to allow for items where a reasonable alternative is available at lesser cost. For example, a council might adopt a policy not to allow for the private purchase cost of continence pads, where these are available from the NHS.

10.4 What is disability-related expenditure should not be limited to what is necessary for care and support. For example, above average heating costs should be considered.

Care homes

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

- Personal expenses allowance

12.1 The local authority **must** leave the person with a minimum amount of income. This is known as the Personal Expenses Allowance (PEA) and the amount is set out in the regulations. Anything above this may be taken into account in determining charges.

12.2 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. Where a person has no income, the local authority is not responsible for providing one. However, the local authority should support the person to access any relevant state benefits or independent advocacy service.

12.3 The purpose of the PEA is to ensure that a person has money to spend as they wish. It must not be used to cover any aspect of their care and support that has been provided or arranged 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.

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

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

b) Where a person is paying half their occupational or personal pension or retirement annuity to a spouse or civil partner who is not living in the same care home, the local authority **must** disregard this money. This does not

automatically apply to unmarried couples although the local authority may wish to exercise its discretion in individual cases.

(c) Where a person is temporarily in a care home and is a member of a couple – whether married or unmarried – the local authority **must** disregard any Income Support or Pension Credit awarded to pay for home commitments and should consider the needs of the person at home in setting the personal expenses allowance. It should also consider disregarding other costs related to maintain the couple's home (see below).

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

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

Non-residential Care and Support

- Minimum income guarantee

13.1 Local authorities **must** ensure that a person's income is not reduced below a specified level after charges have been deducted for non-residential care and support. This **must** be at least the equivalent of the value of Income Support or the Guaranteed Credit element of Pension Credit plus a minimum buffer of 35% of this. The amounts are set out in the Care and Support (Charging) (Wales) Regulations 2015. As indicated above this must also include a further 10% to allow for disability related expenditure. However, these are only a minimums and local authorities have discretion to set a higher levels if they wish.

13.2 The purpose of the minimum income guarantee is to promote independence and social inclusion and ensure that people 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. For example, a council tenant will have water rates as part of a rent service charge whilst a private or housing association tenant will not.

Annex C - Choice of Accommodation and Additional Payments

This annex covers:

- *Choice of accommodation when arranging care and support in a care home*
- *Making additional payments for preferred accommodation*

General

1.1 A person's ability to make an informed choice is a key element of the care and support system. This must extend to where the care and support assessment process has determined that a person needs to live in a specific type of accommodation to meet their care and support needs.

1.2. The care and support assessment process will have determined what type of accommodation will best suit the person's needs. Where this is a care home, the person will have a right to choose the particular provider or location, subject to certain conditions. Where this occurs local authorities **must** apply this annex and in doing so, local authorities **must** have regard to the following principles:

- good communication of clear information and advice to ensure well informed decisions;
- a consistent approach to ensure genuine choice;
- clear and transparent arrangements for choice and any additional payments;
- clear understanding of potential consequences should additional payments fail, with clear exit strategies; and
- the choice is suitable to the person's identified needs.

1.3. Local authorities **must** also remember that the Care and Support (Choice of Accommodation) (Wales) Regulations 2015 (the "regulations") and this code of practice apply equally to those entering residential care for the first time, those who have already been placed by a local authority, and those who have been self funding their own residential care but who because of diminishing financial resources will need local authority support.

Choice of Accommodation

2.1. Where a local authority is responsible for meeting a person's care and support needs, and their needs have been assessed as requiring a particular type of accommodation in a care home in order to ensure that they are met, local authorities **must** allow the person to have the right to choose between different providers and locations of that type of accommodation provided that:

- the accommodation is suitable in relation to the person's assessed needs;
- to do so would not cost the local authority more than the amount it would usually expect to pay for accommodation of that type;
- the accommodation is available; and

- the provider of the accommodation is willing to enter into a contract with the local authority to provide the care at the local authority's terms and conditions.

2.2. A local authority must not limit this choice to those settings or individual providers with which the local authority already contracts with, or operates, or those that are within that local authority's geographical boundary. It must be a genuine choice across the appropriate provision.

2.3. If a person chooses to be placed in a setting that is outside the local authority's area, the local authority **must** still arrange for their preferred care. In doing so, the local authority should have regard to the cost of residential care in that area. In placing out of area local authorities **must** follow the regulations and code of practice in relation to ordinary residence issued in connection with section 194 of the Social Services and Well-being (Wales) Act 2014 (the "Act").

Suitability of Accommodation

3.1. In exercising a choice, a local authority **must** ensure that the accommodation a person chooses is suitable to meet their assessed needs and identified outcomes established as part of the care and support assessment process.

3.2. People are able to express a preference about the setting in which their needs are met through the care and support planning process. This process considers both the person's needs and preferences. Once this is agreed, the choice is between different care homes, not different types of residential settings. A person cannot exercise the right to a choice of accommodation to choose another type of residential setting where the care and support assessment process, which involves the person, has assessed their needs as needing to be met in a care home.

Cost

4.1. The care and support assessment process will identify how best to meet a person's needs. The local authority will then need to arrange to meet the person's needs either because it is required to do so or has been asked to do so by the person concerned. However, the local authority should take into consideration cases or circumstances where the cost to the local authority of doing this may need to be adjusted to ensure that needs are met. For example, a person may have specific dietary requirements that can only be met in specific settings. In all cases the local authority **must** have regard to the actual cost of good quality care in meeting a person's needs to ensure that the amount is one that reflects local market conditions. This should also reflect other factors such as the person's circumstances and the availability of provision. In addition, the local authority should not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect a fair cost of care.

4.2. A person **must not** be asked to pay an additional payment towards the cost of their accommodation except in the circumstances described in the "Additional Payments" section below. People should not be asked to contribute to the cost of meeting their assessed needs because the level of the usual amount a local authority has determined to provide for accommodation of the type they require is inadequate to meet their needs. . As such a local authority **must** have options available that are affordable within its standard amount for residential care from which a person can choose where to be placed. If no preference has been

expressed and no suitable accommodation is available at the amount identified, the local authority **must** arrange care in a more expensive setting and adjust its funding of this accordingly to ensure that needs are met. In such circumstances, the local authority **must not** ask for an additional payment from the the person being placed or from a third party. Only when a person has chosen genuinely more expensive accommodation than an authority would usually pay for a care home placement of the type they require can an additional payment be sought (see “additional payments”).

Availability

5.1. Local authorities have specific duties to shape and facilitate the market of care and support services locally, including ensuring sufficient supply. As a result, a person **must not** have to wait for their assessed needs to be met. However, in some cases, a short wait may be unavoidable, particularly when a person has chosen a particular setting that is not immediately available. This may include putting in place temporary arrangements – taking in to account the person’s preferences and securing their agreement – and placing the person on the waiting list for their preferred choice of provider. It should be remembered however that such arrangements can be unsettling for the person and **must** be avoided wherever possible.

5.2. In such cases, the local authority **must** ensure that in the interim appropriate care and support is provided and should set out how long the interim arrangement may last. In establishing any temporary arrangements, the local authority **must** provide the person with clear information in writing on the detail of the arrangements as part of their care and support plan. As a minimum this should include the likely duration of the arrangement, information on the operation of the waiting list for their preferred setting alongside any other information that may be relevant. If any interim arrangements exceed 12 weeks, the person **must** be reassessed to ensure that both the interim arrangement and the preferred option are still able to meet the person’s needs and that remains their choice.

5.3. Where a person contributes to the cost of their care following a financial assessment they **must not** be asked to pay more than their assessment shows they can afford.

5.4. In some cases a person may decide that they wish to remain in the interim setting, even if their preferred setting subsequently becomes available. If the care home where they are temporarily resident is able to accommodate the arrangement on a permanent basis this should be arranged and they should be removed from the waiting list of their original preferred setting. Before doing so, the local authority **must** make clear any financial implications for the person being placed.

Choice that cannot be met and refusal of arrangements

6.1. Whilst a local authority **must** do everything it can to meet a person’s choice for a particular care home. Inevitably there will be some instances where a choice cannot be met, for example if the provider does not have capacity to accommodate the person. In such cases, a local authority **must** set out in writing why it has not been able to meet that choice and **must** offer suitable alternatives. It **must** also set out the detail of the local authority’s complaints procedure and if and when the decision may be reviewed.

6.2. A local authority **must** do everything it can to take into account a person's circumstances and preferences when arranging their care home placement. However, in all but a very small number of cases, such as where a person is being placed under guardianship under Section 7 of the Mental Health Act 1983, a person has a right to refuse to enter a setting whether that is on an interim or permanent basis. Where a person unreasonably refuses the arrangements, a local authority is entitled to consider that it has fulfilled its statutory duty to meet needs and may then inform the person in writing that as a result they need to make their own arrangements. This should be a step of last resort and local authorities **must** consider the risks posed by such an approach, for both the authority itself and the person concerned. Should the person contact the local authority again at a later date, the local authority **must** reassess their needs as necessary and re-open the care and support planning process.

Contractual terms and conditions

7.1. In supporting a person's choice of care home, the local authority may need to enter into a contract with a provider that they do not currently have an arrangement with. In doing so, they should ensure that the contractual conditions are broadly the same as those they would negotiate with any other provider whilst taking account of the individual circumstances. Strict or unreasonable conditions **must not** be used as a means to avoid or deter the arrangement.

Additional Costs "Additional Payments"

8.1. In some cases, a person may actively choose a setting that is more expensive than the local authority would usually expect to incur for the provision of the accommodation for that person. Where they have chosen a care home 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 "additional payment" and is the difference between the amount a local authority would usually pay for care home accommodation of that type and the actual cost of the chosen care home. In such cases, the local authority **must** arrange for the person to be placed in their chosen accommodation, provided a third party, or in certain circumstances the person in need of residential care and support, is willing and able to meet the additional payment.

8.2 The following sections only apply where the person has chosen a more expensive care home. Where someone is placed in a more expensive setting, solely because the local authority has been unable to make arrangements at its usual cost for residential care, the local authority **must** meet the difference in cost itself. The additional cost provisions **must not** apply in such circumstances.

8.3. Having chosen a setting that is more expensive, based on good information and advice, the local authority **must** ensure that the person understands the full implications of this choice, remembering that this is often at a point of crisis. This **must** include for example that a third party, or in certain circumstances the person needing care and support, will need to meet the additional cost of that setting for the full duration of their stay and that should the additional cost not be met they may be moved to an alternative setting.

8.4 The local authority **must** ensure that the person paying the additional payment is willing and able to meet this for the likely duration of the arrangement, recognising

that this may be for some time into the future. Therefore it **must** ensure that the person paying the additional payment enters into a written agreement with the local authority, agreeing to meet that cost. The agreement **must**, as a minimum, include the information required in the regulations. This will include information such as the amount to be paid, the frequency of payments, the effect of an increase in the payments and the consequences of non-payment.

8.5 Before entering into the agreement, the local authority **must** provide the person paying the additional payment with access to sufficient information and advice to ensure that they understand the terms and conditions, including actively considering the provision of independent financial information and advice. Further detail on each of these points is set out below.

8.6 Ultimately, if the arrangements for an additional payment were to fail for any reason, the local authority would need to meet the cost or make alternative arrangements, subject to a needs assessment. Further details are set out below in the consequences of ceasing to make payments. Local authorities **must** therefore maintain an overview of all such agreements entered into and should deter arrangements for additional payments to be paid directly to a provider.

- the amount to be paid

9.1. The amount of the additional payment should be the difference between the actual costs of the preferred provider and the amount that the local authority would usually paid to meet the person's eligible needs by arranging or providing accommodation of the same type. When considering the cost of care in its area, the local authority is likely to identify a range of costs which apply to different circumstances and settings. For the purposes of agreeing an additional payment the local authority **must** consider what it would have set at the time care and support is needed. It **should not** automatically default to the cheapest rate or to any other arbitrary figure.

- frequency of payments

10.1. In agreeing any additional payment arrangement, the local authority **must** clearly set out how often such payments need to be made, e.g. on a weekly or monthly basis, responsibility for the additional payment and to whom payments are made.

10.2. When entering into a contract to provide care in a care home that is more expensive than the amount the local authority would usually pay for such accommodation, the local authority is responsible for the total cost of that placement. This means that if there is a breakdown in the arrangement of an additional payment, for instance if the person making the payment ceases to make the agreed payments, then the local authority is liable for the care home fees until it has either recovered the additional costs incurred or made alternative arrangements to meet the cared for person's needs.

10.3. In terms of securing the funds needed to meet the total cost of the care (including the additional payment element) a local authority has three options, except where it is being funded by a deferred payment agreement, in which case it is added to the amount owed. In choosing which option to take the local authority will need to

consider the individual circumstances of the case, and should be able to assure itself of the security of the arrangements. There **must** be no undue pressure on the person making the additional payment to increase the level of payment. Whichever option it chooses, the local authority remains responsible for the total amount. The options are:

- treat the additional payment as part of the person's income and therefore recover the costs from the person concerned through the financial assessment (where the additional payment is being made by a third party rather than the cared for person, this is on the assumption that the third party makes the payment to the person with care needs); or
- agree with the person, the third party paying the additional payment (if this is not the cared for person) and the provider that payment for the additional element can be made directly to the provider with the local authority paying the remainder. However, as stated earlier, this is not recommended; or
- the person making the additional payments pays these to the local authority. The local authority then pays the full amount to the provider.

10.4. In the case of people with eligible needs who pay in full for their own care and support who ask the local authority to arrange their care home placement, see paragraph 17.1.

- provisions for reviewing the agreement

11.1. As with any financial arrangement, an agreement to make an additional payment must be reviewed. A local authority **must** set out in writing details of how the arrangements will be reviewed, what may trigger a review and circumstances when any party can request a review.

11.2. Local authorities **must** also consider how often it may be appropriate to review the arrangements. In doing so it should bear in mind how often it reviews other financial arrangements, such as deferred payment agreements. These should take place at least annually and in line with wider reviews of the financial assessment.

- consequences of ceasing to make payments

12.1. The local authority **must** make clear in writing the consequences should there be a breakdown in the arrangement to meet the cost of the additional payment. This could include that the person may be moved to an alternative accommodation where this would be suitable to meet their needs and affordable to the local authority. As with any change of circumstance, a local authority **must** undertake a new needs assessment before considering this course of action, including consideration of the impact a move would have on the person's well-being and whether there is also a requirement for an assessment of their health needs.

- price increases

13.1. Arrangements will need to be reviewed from time to time, for example in response to any changes in circumstances of the cared for person, the person making the additional payment (if this is different from the cared for person), local authority commissioning arrangements or a change in provider costs. However,

these changes may not occur together and a local authority **must** set out in writing how these changes will be dealt with.

13.2. The local authority **must** clearly set out in writing to the person or persons concerned its approach to how any increased costs may be shared. This **must** also include details of how agreement will be reached on the sharing of any price increases. This **must** also state that there is no guarantee that these increased costs will automatically be shared evenly should the provider's costs rise more quickly than the amount the local authority would have increased its funding for the care home placement and there is an alternative option that would be affordable within its budget.

13.3. A local authority may wish to negotiate any future price rises with the provider at the time of entering into a contract. This can help provide clarity to individuals and providers and help ensure that the additional payment remains affordable.

13.4. The local authority **must** also make clear that where the person has a change in circumstances that requires a new financial assessment and this results in a change in the level of contribution the person makes, this may not reduce the need for an additional payment.

- consequences of changes in circumstances of the person making the additional payment

14.1. The person making the additional payment could see an unexpected change in their financial circumstances that will impact upon their ability to continue to pay this. Where a person is unable to continue making additional payments, the local authority may seek to recover any outstanding debt and has the power to make alternative arrangements to meet a person's needs, subject to a needs assessment. The local authority **must** set out in writing how it will respond to such a change and what the responsibilities of the person making the additional payment are in terms of informing the local authority of the change in circumstances.

- "first party" additional payments

15.1. The person whose needs are to be met by the residential accommodation may themselves choose to make an additional payment only in the following circumstances:

- where they are subject to a 12-week property disregard (see the treatment of capital annex to this code);
- where they have a deferred payment agreement in place with the local authority. Where this is the case, the terms of the agreement should reflect this arrangement (see the annex to this code on deferred payment agreements); or
- where they are receiving accommodation provided under section 117 of the Mental Health Act 1983 as mental health aftercare.

People who are unable to make their own choice

16.1. There will be cases where a person lacks capacity to express a choice for themselves. Local authorities **must** therefore act on the choices expressed by the person's advocate, carer or legal guardian in the same way they would on the person's own wishes, unless in the local authority's opinion it would be against the best interests of the person.

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

17.1. The Act enables a person who can afford to pay, in full, for their own care and support in a care home to ask the local authority to arrange this on their behalf. Where this occurs the local authority **must** respond to the person's request by meeting their needs in a care home suitable to meet their needs. In these circumstances, the same rules on choice **must** apply.

17.2. In supporting self-funders to arrange care, the local authority may choose to enter into a contract with the preferred provider, or may broker the contract on behalf of the person. Where the local authority is arranging and managing the contract with the provider, it **must** ensure that there are clear arrangements in place as to how the costs will be met, including any additional payment.

17.3. Ultimately, the local authority **must** assure itself that robust contractual arrangements are in place in such circumstances that clearly set out where responsibilities for costs lie and ensure that the person understands those arrangements. Self-funders will have to pay the total cost of their care and support including, in cases where they choose a care home that is more expensive than the local authority would usually pay, the additional payment element of the costs of that care home.

Information and advice

18.1. Under section 17 of the Act a local authority **must** establish and maintain a service for providing people in its area with information and advice in relation to care and support. This **must** include information and advice about the different care providers available in the local area to enable choice as well as information and advice to help people to understand care charges, different ways to pay and money management. Local authorities should also have a role in facilitating access to financial information and advice provided independently of the local authority, including regulated information and advice where appropriate; to support people in making informed financial decisions. This may be particularly appropriate when a person is considering making an additional payment to help understand what they would be paying the additional payment for and come to a judgment about whether it would represent good value for money.

18.2. Where an additional payment arrangement is being entered into, all parties should fully understand their responsibilities, liabilities and the consequences of the arrangements. A local authority **must** provide the third party with sufficient information and advice to support them to understand the terms of the proposed written agreement before entering into it.

Annex D - Deferred Payment Agreements

This annex covers:

- *What deferred payment agreements are;*
- *Who can have a deferred payment;*
- *Provision of information and advice before making a deferred payment agreement;*
- *How much can be deferred and security for the agreement;*
- *Interest rate for the deferral and administrative charges;*
- *Making the agreement, responsibilities while the agreement is in place and termination of the agreement.*

Definitions

1.1 Definitions used in this annex are:

- ‘Care costs’ – all costs charged for a person’s care home placement, including any additional payments due;
- ‘Additional payments’ – are payments due to a local authority under the Care and Support (Choice of Accommodation) (Wales) Regulations 2015 in connection with agreeing to a resident’s request to be provided with more expensive accommodation than a local authority would usually provide;
- “The Act” – means the Social Services and Well-being (Wales) Act 2014.

Introduction

2.1 By entering into a deferred payment agreement a care home resident, whose property is taken into account in their financial assessment, can ‘defer’ or delay paying the costs of their residential care until a later date so as to not be required to sell their property immediately upon entering a home. Deferring payment of these costs can help residents to delay the need to sell their home so as to provide time to do this at a time that suits them, or to provide time to put their financial affairs in order, at what is often a challenging time (or even a crisis point) as they make the transition into residential care.

2.2 A deferred payment agreement can provide additional flexibility for when and how someone pays for their residential care and support. It should be stressed from the outset that the payment for care and support is deferred and not ‘written off’ – the costs of provision of care and support will still have to be repaid by the individual (or a third party on their behalf) at a later date.

2.3 Local authorities **must** enter into a deferred payment agreement with those entering or in a care home who meet certain criteria governing eligibility. Local authorities **must** ensure that adequate security is in place for the amount being deferred, so that they can be confident that this will be repaid in the future.

2.4 A deferral can last for the whole period of a person's stay in a care home, or for as long as the resident wishes. Many people choose to use a deferred payment agreement as a 'bridging loan' where they are required to sell their home to pay for their residential care and support, to give them time and flexibility to make this sale when they choose to do so. This is entirely up to the individual to decide. Further details on deferred payment agreements are set out in the sections below.

Who can have a deferred payment

3.1 Deferred payment agreements are designed to avoid those required to sell their home to pay for their residential care for having to do this immediately and being able to do this at a time that suits them. Local authorities **must** provide them to people entering or in residential care who meet the eligibility criteria set out in the Care and Support (Deferred Payment) (Wales) Regulations 2015 (the "regulations"). In essence this is:

- (a) anyone whose needs are to be met by the provision of care and support in a care home, whether this is being provided by a local authority using its duty to meet needs under section 35 of the Act or its powers to meet needs under section 36(1) of the Act;
- (b) that the person is required to pay a charge for this under section 59 of the Act; and
- (c) the local authority has carried out a financial assessment under section 63 of the Act.

3.2 This requirement to enter into a deferred payment agreement with those in this position **does not** apply unless the conditions listed the regulations are met. These include:

- (a) that the local authority is satisfied that the person has a legal or beneficial interest in a property which the person occupies as their only or main residence, or which they used to occupy as their only or main residence;
- (b) the value of this interest has not been disregarded for the purposes of calculating the amount of the person's capital and that the person's capital not including the value of their property does not exceed the capital limit;
- (c) that the person's income does not exceed the level below which (if no account was taken of their capital) it would not be reasonably practical for the person to pay the local authority's standard charge for their care home placement;
- (d) the person is in agreement with all of the terms and conditions of a deferred payment offered;
- (e) the local authority has obtained consent from any other person who it considers has an interest over the property which it considers may prevent it from realising the sale of the property or recovering any deferred amount;

(f) where the person's interest in a property is subject to other charges over it, that the local authority is satisfied that the person is likely to be able to continue to make any payments in connection with those charges.

Ability to refuse a deferred payment agreement

4.1 A local authority **must** enter into a deferred payment with someone meeting the eligibility criteria governing for deferred payment agreements outlined above. However there are certain circumstances in which a local authority may refuse to enter into a deferred payment agreement, even if a person meets the eligibility criteria and the local authority would otherwise be required to offer the person an agreement. These are listed in the regulations and are intended to provide local authorities with a reasonable safeguard against default or non-repayment of debt. They include, for example, where:

- (a) a local authority is unable to secure a charge on the person's property;
- (b) when the value of the property is excluded, the person still has capital above the capital limit;
- (c) someone has other charges over the property and the authority is not confident that the person is able to continue to make payments in connection with them in the event that the deferred payments agreement is entered into;
- (d) someone is seeking an additional payment in connection with a choice of accommodation; and/or
- (e) where a person does not agree to the terms and conditions of the agreement. This might be, for example, failing to meet a condition that the person insures and maintains the property in good order.

4.2 Where a local authority is not required to enter into a deferred payment agreement it should consider whether to exercise discretion to offer a deferred payment anyway (for example, if a person's property is uninsurable but has a high land value, the local authority may choose to accept charges against this land as security instead).

Circumstances in which local authorities may stop deferring care home costs

5.1 There are also circumstances where a local authority may refuse to defer any more charges for a person who has an active deferred payment agreement. Local authorities **cannot** demand repayment in these circumstances and repayment is still subject to the usual terms of termination, as set out later.

5.2 The local authority **must** provide a minimum of 30 working days advance notice that further deferrals will cease and **must** provide the person with an indication of how their care costs will need to be met in future. Depending on their financial circumstances, the person may either receive local authority support in meeting the costs of their care, or may be required to meet their costs from their income and assets. Local authorities exercising these powers to cease a deferred payment **must** consider their decision to do so in the light of the person's financial circumstances and their overarching duties under the well-being principle.

5.3 Circumstances in which a local authority may refuse to defer any more charges include:

- (a) when a person's total capital falls below the level of the capital limit and the person becomes eligible for local authority support in paying for their care;
- (b) where a person no longer has need for care in a care home;
- (c) if a person breaches certain predefined terms or conditions of their agreement (which must be clearly set out in the contract with them) and the local authority's attempts to resolve the breach are unsuccessful (and the contract specifies that the authority will stop making further payments in such a case); or
- (d) if, under the regulations the value of the property becomes disregarded for any reason and the person consequently qualifies for local authority support in paying for their care, including but not limited to:
 - where a spouse or dependent relative (as defined in the charging regulations) has moved into the property after the agreement has been made;
 - where a relative who was living in the property at the time of the agreement subsequently becomes a dependent relative.

5.4 Local authorities **must** also cease deferring further amounts when a person has reached the 'equity limit' that they are allowed to defer as set out in the regulations. In this instance, where a local authority has chosen to charge interest on the deferment, it may continue to charge this on the amount deferred until the agreement is terminated (either by sale of the property, the person's death or by the local authority being repaid separately - see 'Termination of the Agreement' section below). This also applies when the value of the property has dropped so that the equity limit has been reached earlier than expected.

Information and advice

6.1 Under the Act local authorities have responsibilities to provide information and advice to people about care and support. These extend to information and advice in relation to deferred payment schemes. In order to be able to make well-informed choices, it is essential that people access appropriate information and advice before taking out a deferred payment agreement. It is also important that people are kept informed about their agreement throughout its course and that they (and the executor of their estate where appropriate) receive the necessary information upon termination of the agreement.

6.2 Deferred payment agreements are often made during a time that is demanding for a person and their loved ones – a period when they are making a transition into a care home. People may need additional support during this period, and the local authority has a role in providing this support and facilitating their transition, particularly if their transition to care is made rapidly and/or at an unexpected point. The local authority **must** provide information in a way which is clear and easy to understand, and it should be designed to ease the process of transition for people, their carers and their families.

6.3 As a deferred payment agreement can take some time to set up and agree, it is important that both the local authority and the individual consider any potential issues around mental capacity. Where a person may lack capacity to request a deferred payment, a Deputy or Attorney (a person with a relevant Enduring Power of Attorney or Lasting Power of Attorney) may request a deferred payment on their behalf. If a family member requests a deferred payment and they do not have the legal power to act on behalf of the person, then the person and the family member should receive information and advice on how to obtain this, through Lasting Power of Attorney and Deputyships. Where the local authority is the Deputy for a person, then the local authority Deputy may apply for deferred payments where this is in the best interests of the person. Local authorities **must** not enter into deferred payment agreements with a person lacking the requisite mental capacity unless the proper arrangements are in place.

6.4 If a local authority identifies someone who may benefit from or be eligible for a deferred payments agreement, or a person approaches them for information, the local authority **must** tell them about them and how they work. This explanation should, at a minimum:

- set out clearly that the care costs are being deferred or delayed and must still be paid back at a later date, for example through the sale of the home (potentially after the individual's death);
- explain the types of security that a local authority is prepared to accept (as set out by each local authority in a publicly – available policy; see the section entitled 'Obtaining Security' below);
- explain that if a home is used as security, the home may need to be sold at a later date to repay the amount due;
- explain that the total amount they can defer will be governed by an equity limit (discussed in the section entitled 'How much can be deferred' below) which may change if the value of their security changes;
- explain the circumstances where the local authority may cease to defer further amounts (such as when the person qualifies for local authority support in paying for their care), and the circumstances where the agreement has to stop deferring further amounts (such as when the person reaches their equity limit);
- explain whether interest will be charged and the level of this on any amount deferred;
- explain that they may be liable to pay administrative charges and the level of this;
- explain what happens on termination of the agreement, how the loan becomes due and their options for repayment;
- explain what happens if they do not repay the amount due;
- set out the criteria governing eligibility for an agreement;

- detail the requirements that must be adhered to during the course of the agreement;
- explain the implications that a deferred payment agreement may have on their income, their benefit entitlements, and charging;
- provide an overview of some potential advantages and disadvantages of taking out an agreement and explain that there are other options for paying for their care that they may wish to consider;
- note the existence of the 12-week disregard, which will afford those who qualify for it some additional time to consider their options in paying for care; and
- suggest that people may want to consider taking independent financial advice (including flagging the existence of regulated financial advice).

6.5 Local authorities **must** provide information in a suitable format to match the communication needs of the person. This may be in the form of a standardised information sheet.

6.6 Local authorities **must** advise people (where appropriate) that they will need to consider how they plan to use, maintain and insure their property if they take out a deferred payments agreement; that is whether they wish to rent, to prepare for sale, or to leave it vacant for a period. The local authority should advise if it intends to place conditions on how the property is maintained whilst any agreement is in place.

How much can be deferred?

7.1 In principle, a person should be able to defer the entirety of their care costs; subject to any contribution the local authority is allowed to require from the person's income. The local authority will need to consider whether a person can provide adequate security for the deferred payment agreement (see next section entitled 'Obtaining Security').

7.2 If the person is considering an additional payment (a "top-up"), the local authority should also consider whether the amount or size of the deferral requested is sustainable given the equity available from their chosen form of security. A discussion of sustainability may be helpful in all cases to ensure the person is aware of how much care their chosen form of security would afford them. Local authorities should also satisfy themselves that any top-up they agree to is sufficiently sustainable.

Equity Limit

8.1 When considering the equity available, local authorities **must** be guided by an 'equity limit' for the total amount that can be deferred and ensure that the amount deferred does not rise above this limit. The equity limit will leave some equity remaining in the security used for the agreement. This will both act as a buffer to cover any subsequent interest which continues to accrue, and will provide a small 'cushion' in case of small variations in value of the property. When calculating progress towards the equity limit, the local authority **must** also include any interest or administration fees to be deferred.

8.2 As a person intends to secure their deferred payment agreement with a property, local authorities **must** obtain a valuation of the property. Reasonable property valuation costs are included in the list of administration charges that local authorities can pass on to people, should they wish to do so. People may request an independent assessment of the property's value (in addition to the local authority's valuation). If an independent assessment finds a substantially differing value to the local authority's valuation, the local authority and person should discuss and agree an appropriate valuation prior to proceeding with the agreement.

8.3 The equity limit to be used is set out in the regulations. This limit provides some protection to local authorities against changes in the value of the security (such as possible house price fluctuations) and the risk that they may not be able to recoup the full amount owed, but also should mean that people qualify for local authority support if they deplete the equity available in their property (and are consequently not at risk of having to sell their home to pay for care)

8.4 Local authorities **must**, when someone is approaching or reaches the point at which they have deferred 70% of the value of their property, review the cost of their care with the person, discuss when the person might be eligible for any means tested support, discuss the implications for any additional payment they might currently have, and consider jointly whether a deferred payment agreement continues to be the best way for someone to meet these costs.

8.5 Local authorities **must** not allow additional amounts to be deferred beyond the equity limit, and must refuse to defer care costs beyond this. However, interest can still accrue beyond this point, and administrative charges can still be deferred.

Contributing to care costs from other sources

9.1 The share of care costs that someone defers will depend on the amount they will be paying from other sources.

9.2 Local authorities may require a contribution towards care costs from a person's income, but the person has a right to retain a proportion of their income (the 'minimum income amount'). The minimum income amount (or personal expenses allowance as it was formerly known) is set out in the charging regulations and is a proportion of a person's income which the local authority **must** allow the person to retain (if the person wants to retain it). The local authority can require the person to contribute the rest of their income, but **must** allow the person to retain as much of their minimum income amount as they want to.

9.3. A person may choose to keep less of their income than the minimum income amount. 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 minimum income amount if the person wants to retain the full amount.

9.4. If a person decides to rent out their property during the course of their agreement, a local authority should permit that person to retain a percentage of any rental income they possess.

9.5 A person may also contribute to their care costs from payments by a third party (including any contributions available from a financial product) or from their savings. Contributing to care costs from another source would be beneficial for a person as it would reduce the amount they are deferring (and hence reduce their overall debt to the local authority). A local authority **must** not compel a person to contribute to their deferral from these sources.

Obtaining security

10.1 In cases where an agreement is to be secured with a jointly-owned property, local authorities **must** seek both owners' consent (and agreement) to a charge being placed on the property. Both owners will need to be signatories to the charge agreement, and the co-owner will need to agree not to object to the sale of the property for the purpose of repaying the debt due to the local authority (following the same procedure as in the case where an individual is the sole owner of a property).

10.2 The local authority **must** obtain similar consent to a charge being created against the property from any other person who has a beneficial interest in the property.

Interest rate and administration charge

11.1 The deferred payment agreement scheme is intended to be run on a cost-neutral basis, with local authorities able to recoup the costs associated with deferring payments by charging interest should they wish to do so. Local authorities can also recoup the administrative costs associated with agreements, including legal and ongoing running costs, via administration charges which can be passed on to the individual. Administration charges and interest can be added on to the total amount deferred as they are accrued, although a person may request to pay these separately if they choose. The agreement **must** make clear that all fees deferred, alongside any interest and administrative charges incurred, must be repaid by the person in full. The local authority **must** also notify the individual in writing whenever they are liable for an administration charge.

11.2. Local authorities will have the ability to charge interest on any amount deferred, including any administration charge deferred. This is to cover the cost of lending and the risks to local authorities associated with lending, for example the risk of default. Where local authorities charge interest this **must** not exceed the maximum amount specified in the regulations.

11.3 The national maximum interest rate will change every six months on 1st January and 1st June to track the market gilts rate specified in the most recently published report by the Office of Budget Responsibility. This is currently published in the Economic and Fiscal Outlook, which is usually published twice-yearly alongside the Budget and Autumn Statement. Local authorities **must** ensure that any changes to the national maximum rate are applied to any agreements they have entered into or enter into (unless they are already charging less than the national maximum). Individual agreements must also contain adequate terms and conditions to ensure that the interest rate within any given agreement does not exceed the nationally-set maximum.

11.4 Local authorities **must** inform people before they make the agreement if interest will be charged, what interest rates are currently set at, and when interest rates are likely to change. This is to enable people to make well-informed decisions about whether a deferred payment agreement is the best way for them to meet the costs of their care.

11.5 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.

11.6 Interest can accrue on the amount deferred even once someone has reached the 'equity limit' (see 'how much can be deferred' above). It can also accrue after someone has died up until the point at which the deferred amount is repaid to the local authority. If the local authority cannot recover the debt and seeks to pursue this through the County Court system, the local authority may charge the higher County Court rate of interest.

11.7 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. Relevant costs may include (but are not limited to) the costs incurred by a local authority whilst:

- registering a legal charge with the Land Registry against the title of the property, including Land Registry search charges and any identity checks required;
- undertaking relevant postage, printing and telecommunications;
- costs of time spent by those providing the agreement;
- cost of valuation and re-valuation of the property;
- costs for removal of charges against property;
- overheads, including where appropriate (shares of) payroll, audit, management costs, legal services.

11.8 Local authorities **should** maintain a publicly-available list of administration charges that a person may be liable to pay. 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 onetime fees during the course of the agreement (reflecting actual charges incurred in the course of the agreement).

Making the agreement

12.1 Where someone chooses to enter into a deferred payment agreement, local authorities **should** aim to have the agreement finalised and in place by the end of the 12-week disregard period (where applicable), or within 12 weeks of the person approaching the local authority regarding an agreement in other circumstances.

12.2 Decisions on a person's care and support package, the amount they intend to defer, the security they intend to use and the terms of the agreement **should** only be

taken following discussion between the local authority and the individual. Once agreement in principle has been reached between the local authority and the person, it is the local authority's responsibility to transpose the details agreed into a deferred payment agreement, taking the legal form of a contract between the local authority and the person.

12.3 The local authority **must** provide a hardcopy of the deferred payment agreement to the person, and they should be provided with reasonable time to read and consider the agreement, including time for the individual to query any clauses and discuss the agreement further with the local authority.

12.4 The agreement must clearly set out all terms, conditions and information necessary to enable the person to ascertain his or her rights and obligations under the agreement. These should include:

- (a) terms to explain how the interest will be calculated and that it will be compounded if it is to be added to the deferred amount;
- (b) information as to administrative costs the individual might be liable for;
- (c) terms to explain how the person may exercise his or her right to terminate the agreement, which should explain the process for and consequences of terminating the agreement and specify what notice should be given (see the section entitled 'terminating the agreement' below);
- (d) terms to explain the circumstances in which the local authority might refuse to defer further fees (either when it is required to stop deferring, for example if the person has already deferred up to their 'equity limit', or when it has powers to stop deferring, such as when a person qualifies for local authority support in paying for their care; as set out in the 'how much can be deferred' and 'permission to refuse' sections above);
- (e) that the local authority will secure their debt either by placing a legal (Land Registry) charge against the property, or by some other means specified;
- (f) a term requiring the local authority to provide the person with a written statement every six months and within 28 days of request by the person, setting out how much the person owes to the authority and the cost to them of repaying the debt;
- (g) a term which explains that the maximum amount which may be deferred is the equity limit and that this is likely to vary over time;
- (h) a term which requires the local authority to give the adult 30 days written notice of the date on which they are likely to reach the equity limit;
- (i) a term which requires the adult to obtain the consent of the local authority for any person to occupy the property; and
- (j) an explanation that the local authority will stop deferring its charges and making advances under a loan agreement if the person no longer receives care and support in a care home.

12.5 Local authorities should ensure at a minimum that people sign or clearly and verifiably affirm they have received adequate information on options for paying for their care, that they understand how the agreement works and understand the agreement they are entering into; and that they have had the opportunity to ask questions about the contract. A term reflecting this should be included in the agreement itself.

12.6 Local authorities **must** at a minimum provide people with six-monthly written updates of the amount of fees deferred, of interest and administrative charges accrued to date, and of the total amount due and the equity remaining in the home (the 'equity limit' discussed in the section entitled at 'how much can be deferred' above). Local authorities should also provide the person with a statement on request within 28 days. Local authorities may provide updates on a more frequent basis at their discretion. The update should set out the amount deferred during the previous period, alongside the total amount deferred to date, and should also include a projection of how quickly someone would deplete all equity remaining in their chosen form of security up to their equity limit.

12.7 Local authorities should reassess the value of the chosen form of security once the amount deferred exceeds 50% of the security (and periodically thereafter), and adjust the equity limit and review the amount deferred if the value has changed.

Termination of agreement

13.1 A deferred payment agreement can be terminated in three ways:

- (a) at any time by the individual, or someone acting on their behalf, by repaying the full amount due (this can happen during a person's lifetime or when the agreement is terminated through the agreement holder's death);
- (b) when the property (or form of security) is sold and the authority is repaid;
or
- (c) when the person dies and the amount is repaid to the local authority from their estate.

13.2 On termination, the full amount due (including care costs, any interest accrued and any administrative or legal fees charged) must be paid to the local authority.

13.3 If a person decides sell their home, they should notify the local authority during the sale process. They will be required to pay the amount due to the local authority from the proceeds of the sale, and the local authority will be required to relinquish the charge on their property.

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

13.5 If the deferred payment is terminated due to the person's death, the amount due to the local authority must be either paid out of the estate or paid by a third party. A person's family or a third party may wish to settle the debt to the local

authority by other means of repayment (as may be the case if the family wanted to avoid having to sell the property or means of security), and the local authority **must** accept an alternative means of payment in this case, provided this payment covers the full amount due to the local authority.

13.6 The executor of the will or Administrator of the Estate can decide how the amount due is to be paid; either from the person's estate (usually via the sale of the house or potentially via a life assurance policy) or from a third party source.

13.7 A local authority should wait at least two weeks following the person's death before approaching the executor with a full breakdown of the total amount deferred (but a family member or the executor can approach the local authority to resolve the outstanding amount due prior to this point). Responsibility for arranging for repayment of the amount due (in the case of payment from the estate) falls to the executor of the will.

13.8 Interest will continue to accrue on the amount owed to the local authority after the individual's death and until the amount due to the local authority is repaid in full. If terminated through a person's death, the amount owed to a local authority under a deferred payment agreement falls due 90 days after the person has died. After this 90 day period, if a local authority concludes active steps to repay the debt are not being taken, for example if the sale is not progressing and a local authority has actively sought to resolve the situation (or the local authority concludes the executor is wilfully obstructing sale of the property), the local authority may enter into legal proceedings to reclaim the amount due to it.

13.9 In whichever circumstance an agreement is terminated, the full amount due to the local authority must be repaid to cover all costs accrued under the agreement, and the person (and/or the third party where appropriate) must be provided with a full breakdown of how the amount due has been calculated. Once the amount has been paid, the local authority should provide the individual with confirmation that the agreement has been concluded, and confirm (where appropriate) that the charge against the property has been removed.

Annex E - Review of Charging Decisions and Determinations

This annex covers:

- *Review of a determination that a person is required to pay a charge for the care and support they receive*
- *Review of the level of the charge set for this.*

General

1.1 The Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011 introduced the right for a person receiving non-residential care and support, or direct payments to obtain this, to request a review of a decision to impose a charge, contribution or reimbursement for this. The principle was that where a person felt an inappropriate decision has been made in relation to this, either in its level or in relation to the basis upon which the decision to impose this was made, they should be able to request the local authority to review this in a consistent, clear manner. In line with the principles of dealing with a complaint, these regulations specified that this initial review process should involve the authority itself reflecting upon the decision made and taking a view as to whether its original decision was correct in the light of any further information available.

1.2 The Care and Support (Review of Charging Decisions and Determinations) (Wales) Regulations 2015 (the “regulations”), made under the Social Services and Well-being (Wales) Act 2014 (the “Act”), replace these regulations and introduce a similar review process of determinations of a charge, contribution or reimbursement, and the level of these, in connection with the provision of both non-residential and residential care and support. This process does not seek to replicate or replace the wider formal complaints procedure which local authorities are required to operate. Instead, it is to establish a consistent review process for such decisions so that where a person wishes a charging decision or charge level to be reviewed, they will be able to ask an authority to do this in a relatively straight forward way and in doing so, potentially obviate the need for a person to make a formal complaint to the authority.

1.3 It is hoped the vast majority of these requests for a review would be satisfactorily resolved through the review process. Where, however, a person is still unhappy with an authority’s charging decision they will, as now, be able to make a formal complaint about this to an authority to be considered through its formal complaints procedure where they consider the authority has not made a properly considered decision in determining their review, e.g. not following its charging policy or not properly considering relevant information.

1.4 Local authorities **must** operate a review process as set out in the regulations and this code to enable care and support recipients to seek a review of a determination of a charge, contribution or reimbursement, or the level of these.

1.5 Where under the regulations and this code local authorities are required to provide a statement or information to a person seeking a review, or their representative, this **must** be provided in writing and any format appropriate to meet the communication needs of the person and their representative.

Operation of the Review Process

- making a request for a review

2.1 Regulation 3 of the regulations sets out the persons who can request a review. These are:

- those upon whom a charge has been levied for the care and support they will, or already, receive;
- those upon whom a contribution or reimbursement has been levied for the care and support they will, or already, receive through direct payments;
- a liable transferee (a person within the meaning of section 72 of the Act who has received a transfer of an asset from a person who needs have been or are being met by a local authority with the sole intention of avoiding charges for meeting that need).

2.2 Regulation 4 sets out the circumstances in which a review can be requested. These range from a local authority not having complied with any of the duties placed on it by relevant parts of the Act, the regulations and this code, to it not following its agreed charging policy, to it not taking into proper account relevant information connected with the determination of the charge, contribution or reimbursement made or the level of this. The circumstances also include certain factual disputes such as whether care and support, in respect of which a charge has been imposed, has in fact been provided or, in the case of a liable transferee, that the asset was not transferred with the intention of avoiding charges for care and support.

2.3 Local authorities **must** have a review process in place which considers requests for a review from these individuals in the circumstances listed in the regulations. It **must** consider requests for reviews made at any time after a local authority has made a determination to impose a charge, contribution or reimbursement, set the level of this, and communicated that to the person to be charged.

2.4 A request must state on which circumstance in regulation 4 it is being made and provide reasons for the review being made. Local authorities **must** consider requests for a review made both in writing and orally.

2.5 A request for a review can be made by a representative on behalf of the person seeking the review, either for the whole of the review or for such part as the person wishes. This can be, for example, a friend or relative appointed by the person, or a formal advocate whom they wish to act for them. In either case the person must provide the local authority with their authorisation for this, either orally or in writing. Where the person does this orally, the local authority **must** confirm this by providing a statement to them and their representative of this appointment and of the representative's involvement in the review, i.e. whole or part. A local authority **must** allow a person appointing a representative for a review to withdraw their consent for this at any time during the period of the review should they wish to do so. Notice of this **must** be able to be made either orally or in writing.

- appointing a person to deal with a request for a review

3.1 Local authorities **must** appoint a suitably trained staff member to manage a review request made. Such staff **must** be familiar with the requirements of the Act, regulations and this code in relation to such reviews. It is good practice to include contact details for such staff in the section of a statement of a charge, contribution or reimbursement, issued to a person in accordance with the Care and Support (Charging) (Wales) Regulations 2015 so as to provide that person with information to challenge this if they wish, together with information on how to access this review process.

- withdrawing a request for a review

4.1 A person, or their representative, can withdraw a request at any time while the review is being considered, either orally or in writing to the local authority's appointed person. Where this occurs the local authority **must** provide a statement to the person and their representative to confirm that the request has been withdrawn and no further action upon the original request will be taken as a result.

- acceptance of a request for a review

5.1 Where a previous request for a review has been dealt with and a subsequent request is made by the same person in connection with the same care and support, an authority is under no duty to consider this if it reasonably believes that there has been no material change in the circumstances listed in regulation 4 of the regulations that gave rise to the original request being made. In these circumstances an authority **must** send a statement to the person and their representative that the subsequent request will not be considered and provide the reasons for this.

5.2 Where a request for a review is from a person listed in regulation 3 of the regulations (listed above), or their representative, and relates to one or more of the circumstances listed in regulation 4 (referred to above), a local authority **must** consider this request in accordance with the requirements of the Act, the regulations and this code.

- acknowledgement of a request for review

6.1 A local authority **must** within 5 working days of receiving a valid request for a review (which complies with requirements of regulations 3, 4 and 5), send the person making the request, or their representative, a statement of acknowledgement confirming receipt of the request and which provides key information with regard to the review. That information is set out in regulation 10 of the regulations and covers such information as, confirmation of the basis of request, what further information or documentation the authority requires to process the review, that this can be provided by means of a visit to their home or other place if they wish, how the authority will process the review and, where they have not done so already, that person can appoint a representative if they wish.

6.2 If the person making the request for a review is a liable transferee, the acknowledgement **must** also indicate if the authority intends to request information or documentation from a person other than the person requesting the review and what information or documentation will be requested, if any. Where the local

authority is requesting information or documentation from another person, the local authority **must** send that person a statement requesting this which contains the information listed at regulation 10 (3) of the regulations.

6.3 Where a local authority considers it can make a decision on a valid review requested (which complies with requirements of regulations 3, 4 and 5) on the basis of the information and documentation contained within it, and can therefore make that decision within 5 working days, the requirements of 10.1 and 10.3 do not apply.

- payment of the charge, reimbursement or contribution during the review

7.1 The acknowledgement that a local authority **must** issue as set out above **must** inform the person requesting the review, or their representative, that the charge, contribution or reimbursement which is the subject of the review (or the part of this which is the subject of the review) does not need to be paid during the period of the review, if the person wishes.

7.2 Where a person does not wish to pay a charge, contribution or reimbursement (or a part of this) during the period of the review, they or their representative must confirm this to the authority orally or in writing within 5 working days of receiving the acknowledgement of their request. Where this occurs a local authority **must not** collect the charge, reimbursement or contribution or relevant part of this during the period of the review. However, a person's liability for these payments remains. Consequently, a local authority's acknowledgement **must** also inform the person or their representative whether or not it is the authority's policy to recover such unpaid amounts once the review has been completed.

7.3 In the case of those who pay a contribution for direct payments so that they would normally receive a direct payment net of this deduction, for the review period an authority **must** pay the direct payments gross without this deduction should the recipient elect not to pay the contribution during the period of the review. This is so that these individuals are treated equally to those who receive their care and support direct from a local authority, who may have also elected not to pay their charges for the period of any review they have requested.

- time limit for providing further information or documentation

8.1 If a local authority reasonably requires further information and/or documentation to process a review request, the person requesting the review or their representative must provide this within 15 working days of the date that the request for this was made in the acknowledgment outlined above. It would be good practice for local authorities before the end of this period to remind a person or their representative of the timescale for submitting the information and/or documentation requested, where this was yet to be provided.

8.2 Within this timescale the person or their representative can ask, either orally or in writing, for an extension of time in which to provide the required information and/or documentation. For example, a service user may have difficulty in obtaining certain documents required or in contacting certain individuals or organisations that hold such documents or information required. This equally applies where a local authority

requests information or documentation from a third person in relation to a review involving a liable transferee. The request for the extension should, therefore, explain the reason for this request.

8.3 Local authorities **must** grant any reasonable request for such an extension and confirm to the person, or their representative, that this has been done and the revised time to submit the information and/or documentation. This confirmation **must** be in writing.

8.4 Should a local authority not receive the requested information and/or documentation to process the review, or any request to extend the time for submitting this, within the 15 working days allowed for submitting this, it may treat the request for the review as if it had been withdrawn. If this occurs the local authority **must** send a statement to the person who sought the review, or their representative, containing the information required in regulation 12 (6) of the regulations to confirm this has been done and that the charge, reimbursement or contribution it related to is now payable and the amount(s) due. This statement **must** be in writing.

8.5 In the event that a local authority does not receive information and/or documentation from a third person in connection with a review involving a liable transferee within the 15 working days, or a request for an extension of time during this period, the local authority **must** send a statement to that third person, the person requesting the review and their representative. This **must** include the information required in regulation 13 (3) of the regulations, confirmation that the third party has failed to provide the information/documentation requested, that the authority will make a decision on the review on the basis of the information/documentation it has available and that the failure to provide the information/documentation requested may have an adverse impact upon the decision made. If the information/documentation is provided after the time limit for providing it has expired but before a decision upon the review is made, that information/documentation may be taken into account when making the decision.

- deciding a review

9.1 As soon as possible, and in any event within 10 working days of receiving sufficient information and/or documents to determine a review, the local authority **must** make a decision upon it and identify the action necessary to implement that decision. It **must** send a statement to the person who requested the review, and their representative, containing the information required in regulation 14 of the regulations to confirm the decision, the reason for that decision and whether the person's charge, contribution or reimbursement has been amended as a result. If the decision results in an amendment of the charge, reimbursement or contribution, the authority **must** also send the person and their representative a statement of the amended charge, contribution or reimbursement, issued to a person in accordance with the Care and Support (Charging) (Wales) Regulations 2015.

9.2 Should a local authority only receive partial requested information and/or documentation to process the review (either within the 15 working days outlined above or within an extended period of time), a local authority **must** within 10 working

days of the end of the later of these periods make a decision upon the review on the basis of the available information and documentation. It **must** also determine what action is necessary to implement that decision and send a statement to the person who requested the review, and their representative, containing the information required in regulation 14 of the regulations to confirm the decision, the reason for that decision and whether the person's charge, contribution or reimbursement has been amended as a result. If the decision results in an amendment of the charge, reimbursement or contribution, the local authority **must** also send the person and their representative a statement of the amended charge, contribution or reimbursement, issued to a person in accordance with the regulations.

9.3 Where an authority is unable to make a review decision within the 10 working days the local authority **must** as soon as possible, but in any event within this period, provide the person who requested the review, or their representative, with a statement containing the information required under regulation 14 (3) of the regulations to confirm this fact, the reason for it and the date by which a decision will be made. The local authority **must** also inform the person that if they wish, they can elect not to pay the charge, reimbursement or contribution which is the subject of the review while the review is being completed. The person, or their representative, may then do this if they wish by notifying the authority orally or in writing. A local authority **must** make it clear in this statement that charges, contributions or reimbursements that would have accrued during this extended period are not recoverable by the authority irrespective of the outcome of the review and local authorities **must not** seek to collect such amounts.

- basis for a review decision

10.1 Local authorities **must** designate appropriate officers of the authority to make decisions on reviews. This could be an appropriate officer of a similar standing to the one who took the original decision which is the subject of the review, but who was not involved in the making of the original decision; or a section head(s); or a head of service(s); or a Director of Social Services. Whatever decision making process is used, local authorities **must** ensure that this is fair, open and impartial, supporting the principles of natural justice.

10.2 Regulation 14 (4) of the regulations sets out the factors which those taking a decision on a review **must** take into account. This lists the relevant legislation to consider, as well as the financial circumstances of the person who is the subject of the review and the circumstances that impact upon their ability to pay a charge, contribution or reimbursement set.

10.3 In undertaking a decision on a review, as well as considering whether the person concerned has the financial means to pay a charge, contribution or reimbursement set and the impact upon their independence of so doing, local authorities **must** take into account any wider "financial hardship" a person may have as a result of their impairment, condition or personal circumstances. This could be, for example, unpredicted household expense where the person needs to urgently spend to replace a loss, a sudden change in their income (such as being made redundant) or an unpredicted domestic crisis (such as someone being moved to a place of safety where they need to urgently buy clothing and household items).

- payment of charges after review period

11.1 A local authority may, where the person who is the subject of the review has elected not to pay a charge, reimbursement, or contribution during the review period, seek to recover any unpaid amounts following the completion of the review but it is **not** obliged to do so. The amount that can be recovered would be the amount of the charge, reimbursement or contribution the authority has decided is now correct as a result of the outcome of the review.

11.2 A local authority **must not** recover any amount that accrued from the time it extended the period on the review to the time the review was completed. Where an authority seeks to recover unpaid amounts it **must** have regard to the person's financial circumstances and be satisfied that the recovery of this would not cause them undue financial hardship. If it considers this to be the case, then the local authority **must** offer the person the option of repaying the amount in periodic instalments.

11.3 Regulation 15 of the regulations sets out the detail of the payment of the charge, reimbursement or contribution during and after the review period, which local authorities **must** follow in this situation.