

Lewisham Council

Adult Social Care Charging and Financial Assessment Framework

February 2018

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1 Introduction and principles

- 1.1 Social care and support services are not generally free of charge - people have always had to pay a contribution towards the cost of their care if they can afford to do so. The Care Act 2014 provides a single legal framework for charging for care and support. Section 14 and section 17 of the Act enables local authorities to decide how they will charge for care and support services that are arranged and funded by them. Income received from care charges helps the council to meet its statutory funding commitments and set a balanced budget. It also helps to protect, develop and extend care and support services to ensure that high quality services are available to meet the needs of adults in the local authority's area.
- 1.2 Lewisham Council's 'Adult Social Care Charging and Financial Assessment Framework' has been designed to comply with The Care Act 2014 and relevant regulations and statutory guidance. This framework will be reviewed regularly, and any changes agreed by the Council will be reflected in an updated document. The main aim is to produce a consistent and fair framework for charging and financial assessment for all service users who receive care and support services, following an assessment of their individual needs, and their individual financial circumstances.
- 1.3 For the purposes of this policy, an adult is a client aged 18 and above. Section 14 of the Care Act 2014 gives the Council the power to charge adults for care and support. This applies where adults are being provided with care and support to meet needs identified under section 18, section 19 or section 20 of the Care Act 2014.
- 1.4 Lewisham Council will refer to Care and Support Regulations (Statutory Instruments) and Care and Support Statutory Guidance and Appendices issued under the Care Act 2014, in all regards for specific guidance relating to charging and financial assessment, and as such, these statutory regulations form the basis of this policy.
- 1.5 Further, more detailed information on financial assessment calculations, including the current capital limits are available on the Council's internet site (www.lewisham.gov.uk), and on request and are also included within the appendices of this document.

2 Guiding principles

- 2.1 The Council believes it is important that people pay the contribution to their care costs that they are responsible for. The Council adheres to the following National principles:
 - a. ensure that people are not charged more than it is reasonably practicable for them to pay for care and support;
 - b. be comprehensive - to reduce variation in the way people are assessed and charged;
 - c. be clear and transparent - so people know what they will be charged;
 - d. promote wellbeing, social inclusion, and support the vision of personalisation, independence, choice and control;
 - e. support carers to look after their own health and wellbeing and to care effectively and safely;

- f. be client-focused - reflecting the variety of care and caring journeys and the variety of options available to meet their needs;
 - g. apply the charging rules consistently - so those with similar needs or services are treated the same and minimise anomalies between different care settings;
 - h. 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
 - i. be sustainable for the Council in the long-term.
- 2.2 The Council will seek to maximise income from those able to contribute to the cost services to maximise the budget available to fund the care of those who are less well off financially.
- 2.3 Where the Council arranges care and support to meet your needs, it will charge you, except where the Council is required to arrange care and support free of charge.
- 2.4 Alongside this, the Council will endeavour to ensure there is sufficient information and advice available in a suitable format for your needs, in line with the Equality Act 2010 (in particular for those with a sensory impairment, with learning disabilities or for whom English is not their first language), to ensure that you or your representative are able to understand any contributions you are asked to make.
- 2.5 Section 4 (1) of the Care Act 2014 requires the Council to establish and maintain a service for providing people in the area with information and advice in relation to care and/or support for adults and carers. In Lewisham this service is provided via the Council Website (www.lewisham.gov.uk) Carers Lewisham, Lewisham advice Finder and the Social Care Advice and Information Team (SCAIT). The Council will also make you or your representative aware of the availability of independent financial information and advice, when required.

3 Legal Basis for Charging

- 3.1 The Care Act 2014 provides a legal framework for charging for care and support. The detail of how to charge varies depending on whether someone is receiving care in a care home or in their own home or in another setting.
- 3.2 The Act, together with the supporting regulations and statutory guidance, sets out a framework model for charging people whose eligible needs are met within a care home setting and in settings other than care homes. These form the basis of the Council's charging policy, except where the Council exercises its discretionary powers. The Council will also refer in its financial assessment determinations to best practice guidance produced by the National Association of Financial Assessment Officers.
- 3.3 Section 14 of the Care Act 2014 gives the Council the power to charge adults where they are being provided with care and support to meet their needs. These needs are sometimes referred to as 'identified needs' or 'eligible needs'.
- 3.4 The Council must follow the regulations and guidance issued under the Care Act 2014. For example, in developing policies on charging and financial assessment, Councils must take note of the following documents:
- 'The Care and Support (Charging and Assessment of Resources) Regulations

2014', which set out:

- the power to charge for certain types of care and support;
 - the duty under section 17 of the Care Act to carry out a financial assessment if a council's policy is to charge for care and support;
 - rules on the treatment and calculation of income and capital within a financial assessment (including notional income and notional capital where a person has deliberately deprived themselves of an asset);
 - rules on minimum allowances to be given within a financial assessment;
 - the power to charge costs of putting arrangements into place in specific situations
- The Care and Support (Charging and Assessment of Resources)(Amendment) Regulations 2017' which amend paragraph 17 of the 2014 Care and Support (Charging and Assessment of Resources) Regulations.
 - 'The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014' which set out the rules on the provision of an individual's preferred accommodation.
 - 'The Care and Support (Deferred Payment) Regulations 2014' which set out the rules on when a council must, or is permitted to, enter into a Deferred Payment Agreement with an individual, for deferring part of their ongoing care and support costs. The Regulations also set out a council's power to charge interest and administration costs of running the Deferred Payment Scheme.
 - The Care and Support (Preventing Needs of Care and Support) Regulations 2014 which relates to the Council's general duty to provide services which will prevent, delay or reduce the care and/or support needs of adults within their area. The charging and assessment regulations do not apply to these services.
 - 'Care and Support statutory guidance issued by the Department of Health provides advice to councils on all aspects of the Care Act 2014, including 'Charging and Financial Assessment' (Chapter 8 and Chapter 9) and associated Annexes.

3.5 The Care Act 2014 also introduced a cap on care costs which limits how much people will pay toward their care and support needs over their lifetime. The cap is due to be introduced in 2020 and this framework will be updated and amended accordingly.

4 Charging

4.1 This framework and guidance applies to the following:

- a. Residential / Nursing / short term respite care
- b. Supported accommodation
- c. Shared Lives
- d. Home and domiciliary care services (including extra care)
- e. Day care, day care activities and day opportunities excluding transport, if provided
- f. Any care packages through Personal Budgets or Direct Payments
- g. Telecare/assistive technology provided following a care assessment
- h. One-off services: e.g., intensive house cleaning
- i. Telephone line rental and TV licences. However, this would be charged at cost unless exceptional hardship could be demonstrated

- 4.2 The following services are charged at a standard flat rate and are not subject to a financial assessment:
- a. Funerals provided under the duty set out under the Section 46 Public Health (Control of Disease) Act 1984 as this will be charged in accordance with the relevant protocol.
 - b. Day services or additional Adult Social Care services provided to those also accommodated by the Council in residential placements.
 - c. Reasonable costs incurred by the Council for providing protection of property.
 - d. The costs incurred by the Council or any of its officers in connection with an application to the Court of Protection for deputyship or any expenses incurred in the exercise of its functions, save as where these are recoverable from an alternative source.
 - e. Telecare/ assistive technology purchased by individuals who have not been assessed as requiring the service but who wish to purchase it via the Council at full cost.
- 4.3 As set out in Section 14 of The Care Act 2014, there are a number of circumstances in which people will not be asked to contribute towards their care or support cost. These include:
- a. Assessments of need and care planning
 - b. Any service or part of service which the National Health Service (NHS) is under a duty to provide, including Continuing Healthcare and the NHS contribution to Registered Nursing Care.
 - c. Intermediate Care - including enablement - which offers a short period of intensive therapies and support from health and social care professionals to help people promote or regain their independence. Up to six weeks of non-chargeable support is available here, with charges beginning from the seventh week if support is still required.
 - d. Community equipment and minor adaptations - small items of equipment or gadgets or small modifications designed to help you stay active and carry out everyday tasks without help from others.
 - e. Care and support provided to people with Creutzfeldt-Jacob Disease.
 - f. After-care services and support provided under section 117 of the Mental Health Act 1983.
 - g. Carer services provided directly to carers to meet carers identified needs.
 - h. 'Preventative' services provided directly by the Council to prevent or delay care needs becoming more serious (for example training to self-manage a health condition, or stress-management training for carers).
- 4.4 Examples (not an exhaustive list) of exempt support are stated below:
- a. Provision of information, advice, and guidance about the availability of service
 - b. Provision of assessment, including assessment of care needs

5 Financial Assessment

- 5.1 The Council has a duty under Section 17 of the Care Act to carry out a financial

assessment (if an assessment of need has been carried out) and exercises its discretion to charge for services. The Council will positively seek to complete a financial assessment for you as soon as possible unless:

- You are exempt as described under Section 4 of this document
- You choose not to be financially assessed. (NB if you choose not to be financially assessed you will be required to pay the full costs of support provided).

- 5.2 There are different routes where you may come into contact with Adult Social Services, and a financial assessment will be undertaken at the earliest possible opportunity. At the point of your enquiry regarding either the eligibility of access to services or during the initial discussion with social workers of the same, high level information regarding finances and representation will be requested so that you can be assessed and advised of the potential contribution you may need to make.
- 5.3 If you come to us via the enablement service initially: a financial assessment will be requested by the social worker/care manager as soon as an ongoing package of care is deemed appropriate
- 5.4 If you come into contact with us in any other way: as soon as the social worker/care manager identifies a need for a package of care they will request a financial assessment
- 5.5 Annual Review: at either the start of the new financial year or the annual review date, a new financial assessment will be sent to you. We will calculate this using actual changes to benefit rates and changes to your care package and with assumed increases to your other income and costs. The onus is upon you to either validate the information provided, or to provide correct financial information. The Council may interpret a failure to return a fully completed and signed financial assessment as a refusal to provide information which will result in you being required to pay the full costs of services provided. Should you experience any difficulties in making these payments you or your representative should contact social work staff to discuss what these may be and to request a financial re assessment if necessary.
- 5.6 The financial assessment team will gather financial data wherever possible from data held by the Department for Work and Pensions, Housing Benefits and/or Council tax departments. They will also take notice of any financial information you shared during the initial care need discussion with social work staff.
- 5.7 Where further evidence and/or information is required to complete an assessment, a financial assessment officer will liaise directly with you or your named representative as appropriate.
- 5.8 The financial assessment team will undertake a full benefits check and signpost you or your representative, in writing, to apply for benefits you might be entitled to claim.
- 5.9 During the care needs assessment process, the practitioner or support worker may also advise that you may have to pay a contribution towards the costs of your care and support, subject to a financial assessment.
- 5.10 If you opt for a direct payment instead of a commissioned service, any payments towards care and support costs may be made net of your contributions.
- 5.11 Any assessed contribution you have to make will not exceed the full cost of care and

support, or reduce your income to below the minimum income guarantee (MIG) which currently is equivalent to Income Support plus a buffer of 25%.

- 5.12 If you choose to have social care support commissioned by Lewisham Council, this will result in an invoice being issued. You will receive one itemised invoice for all support received. For example if you receive homecare and daycare you will receive one invoice for both services.
- 5.13 Following the financial assessment, you will be informed if you are considered as able to self-fund your care costs, or of the weekly amount you must contribute based on your financial circumstances. You will not be charged more than the amount determined by the financial assessment, or the actual cost of your services if you can self-fund your care and support costs. Contributions are normally payable from the date care commences.
- 5.14 If you only receive income support (i.e. you do not also get Attendance Allowance or Disability Living Allowance or Personal Independence Payment) you will be financially assessed but will usually pay nothing, but you must inform the Council immediately if your financial circumstances change so a reassessment can be undertaken. If your financial circumstances change, and leads to you being able to pay towards your care costs, you will be liable for the relevant weekly charge from the date of the change, regardless of when the Council was informed of the change.

‘Light-touch’ Financial Assessments

- 5.15 The Care Act 2014 introduces the concept of “light touch” financial assessments in the situations set out in statutory guidance. The guidance states that in some circumstances a local authority may choose to treat a person as if a financial assessment had been carried out. In order to do so, the local authority must be satisfied on the basis of evidence provided by you that you can afford, and will continue to be able to afford, any charges due. This allows Councils where possible, to undertake financial assessments by accessing Department for Work and Pensions information or through telephone discussion rather than visiting to verify financial information or by implementing low flat rate charges
- 5.16 The main circumstances in which the Council will consider carrying out a light-touch financial assessment are:
- If you have significant financial resources, and do not wish to undergo a full financial assessment for personal reasons, but wish nonetheless to access the Councils support in meeting your needs. In these situations the Council may accept other evidence in lieu of carrying out the financial assessment and consider you to have significant financial resources that would result in you paying full cost for your care and support.
 - Where the Council charges a small or nominal amount for a particular service which you would clearly both be able to meet and would have the relevant minimum income left, and carrying out a financial assessment would be disproportionate.

- If you are in receipt of benefits which demonstrate that you would not be able to contribute towards your care and support costs. This might include income from Jobseeker's Allowance.
- 5.17 Ways the Council may be satisfied that you are able to afford any charges due might include evidence that you have:
- property clearly worth more than the upper capital limit when in a care home, where you are the sole owner or it is clear what your share is;
 - savings clearly worth more than the upper capital limit when in a care home; or,
 - sufficient income and tariff income from savings available to pay the charge due.
- 5.18 DWP information further supported by Housing Benefit and Council tax systems collection will form the initial basis of undertaking light-touch financial assessments
- 5.19 Where it has not been possible to undertake a light touch assessment through the DWP, Housing Benefits or Council Tax system, or information exists which suggests a full assessment is necessary, the financial assessment team will contact you/your representative to verify contribution. The Council can decide to carry at its discretion to carry out a full financial assessment.
- 5.20 Where the Council is going to meet your care and support needs, and it proposes to undertake a light-touch financial assessment, the Council will take steps to assure itself that you are willing, and will continue to be willing, to pay all charges due. The Council has the responsibility for ensuring that you are not charged more than it is reasonable for you to pay. If you do not agree to the charges that you have been assessed as being able to afford, a full financial assessment may be needed.
- 5.21 When deciding whether or not to undertake a light-touch financial assessment, the Council will consider both the level of the charge it proposes to make, as well as the evidence or other certification you are able to provide. The Council will also inform you when a light-touch assessment has taken place and make clear that you have the right to request a full financial assessment should you so wish, as well the option of seeking independent financial information and advice.
- 5.22 If you have capital in excess of the higher capital limit, you can request a 'light-touch' financial assessment. In carrying out financial assessments the Council will ensure that you retain at least the 'Minimum Income Guarantee.' This retained income level is designed to promote independence and social inclusion and is intended to cover basic needs such as purchasing food, and housing costs. Direct housing costs will only be considered where you are liable for such costs, i.e. you hold the tenancy agreement or are party to the mortgage. The 'Minimum Income Guarantee' ensures that you retain income to the equivalent of Income Support or the Guaranteed Credit element of Pension Credit, plus a minimum buffer of 25%.

6 Management of Charges

- 6.1 Under the Care Act the Council has the power to charge from the moment it starts to meet your care and support needs. The Council will notify you of the outcome of their

financial assessment, in writing, within 5 working days of receipt of a fully completed pre-service referral being received from adult social care staff. Once the financial assessment team receive appropriate confirmation from adult social care staff that the care package has been agreed and implemented: the financial assessment will be backdated to the day the care and support started.

- 6.2 It is the responsibility of you or your representative to advise the Council of any change in your financial circumstances as this may prompt a review of your contribution.
- 6.3 Any increase in contributions due to an award, benefit increase, increase in other income or amount of capital held will take effect from the date of change in circumstances.
- 6.4 In the event of a reduction of income or benefit received, any amendment to the assessed contribution will take effect from the date of the change in circumstances, provided the council is advised in writing with appropriate supporting evidence of the change within two weeks of the change occurring.
- 6.5 Billing for your assessed contribution will be at 4 weekly intervals
- 6.6 If you have a suspension in your non-residential services (for example because of a hospital stay) you may be entitled to receive a reduction to your assessed charge depending on the suspension duration. This may not be the case if you are in receipt of a Direct Payment and are purchasing services whilst in hospital.
- 6.7 Any deviation from the timings above, whatever the reason, shall not invalidate the contribution due but will be taken into account if there is a dispute and/or arrears on the account.
- 6.8 If you do not disclose financial information at the point of request; it will result in you being charged the full cost of your care and support. If at a later date the financial information is provided, any revision to the assessed charge may only be effective from the date of disclosure and may not be backdated, at the discretion of the council.
- 6.9 Failure to inform the Council of additional income received eg additional benefits or inheritance that would result in an increase in the charges made, will lead to a backdated charge to the point of when the additional income was received.
- 6.10 You have the right to choose not to provide your financial details to the Council. In such cases the Council is unable to undertake a financial assessment and you will be charged for the full cost of support you receive.

7 How the Contribution is calculated

- 7.1 When the Council assesses your ability to pay a contribution towards the cost of your support, it ensures that you maintain a portion of their income that is at least the level of basic living allowance (the Minimum Income Guarantee as outlined at 5.22) if you are receiving a non-residential service or Personal Expenses Allowance (PEA) if you are in a care home.

- 7.2 The maximum contribution you can be asked to make per week to your care and support costs is calculated using financial information received from you and other information available to the Council. The calculation will take account of all relevant income and capital. Your assessed weekly charge will usually be the lower of your maximum contribution and the cost of the service.
- 7.3 The income that will be taken into account includes:
- all the benefits you receive (except those listed in paragraph 7.12 below),
 - state pension,
 - occupational pensions,
 - any other income
- 7.4 Full details of the treatment of income for financial assessment purposes is outlined at Appendix C.
- 7.5 The lower Capital savings limit is currently £14,250. Capital below this limit will be disregarded in the financial assessment if you live in your own home or in a care home. The upper capital limit is £23,250. The council will apply this upper limit to your assessment if you are living in a care home. The capital limits will be revised in line with Department of Health advice. Full details of the treatment of capital for financial assessment purposes is set out in Appendix B.
- 7.6 Savings between the lower threshold (£14,250) and the upper threshold (£23,250) will attract a surcharge of £1 per week for each £250 (or part of £250) to calculate your notional income from the savings. For example, if you have savings of £17,250 the notional income from that would be £12 per week, this is calculated as follows:
$$\text{£17,250 minus £14,250 (= £3,000) divided by £250 (= £12)}$$
This is known as tariff income.
- 7.7 Capital includes but is not restricted to any savings in bank or building society accounts; National Savings bank accounts; PEP, ISA or TESSA accounts; SAYE (Save as You Earn) schemes; cash; Premium Bonds or National Savings Certificates; stocks, shares, trust funds and investments in property, building and land (rental income will be included); or where someone else is holding any of these on your behalf.
- 7.8 If there are joint savings with a spouse or partner, 50% of the total amount will be taken into account unless you or your representative can prove that the holding percentages are different.
- 7.9 When calculating your maximum contribution for non-residential care, the value of your main residence occupied by you will be ignored. However, if the property is subsequently sold, the proceeds of sale will be subject to financial assessment. If you own a second property, 100% of the beneficial value will be taken into account. The maximum contribution you will have to make will be the full cost of care.
- 7.10 When calculating the maximum contribution for residential care, your beneficial interest in all property will be taken into consideration for the purposes of a financial assessment. However, the main dwelling will be disregarded only if one or more of the following are resident in that property and has been continuously occupied by them since before you went into residential care:

- your current or , former partner or civil partner except where you are estranged
 - a lone parent who is your estranged or divorced partner and who is caring for a child/children under 18
 - your children under 18 years of age
 - an immediate relative aged 60 or over
 - a relative who is incapacitated
- 7.11 You will be assessed in your own right, and the income of your carer, parent, partner, or spouse will not be taken into account
- 7.12 There are some forms of income which are partly or wholly disregarded and do not form part of the financial assessment. These include but are not limited to:
- The mobility component of Disability Living Allowance;
 - War pension or £10 of war widow's pension;
 - Survivors Guaranteed Income Payments (GIPs) made under the Armed Forces Compensation Scheme (AFCS)
 - Child benefit and child tax credit
 - The part of Attendance Allowance (AA), Disability Living Allowance (care component) (DLA), Constant Attendance Allowance (CAA) and Exceptional Severe Disability Allowance (ESDA) that covers care at night where the council purchases no element of night care.
 - Working tax credit
 - Savings credit disregard
 - ex gratia payments made to former Far Eastern prisoners of war
 - Payments made under the Vaccine Damage Payment
 - Compensation from personal injuries awards are disregarded for assessment purposes for a period of 52 weeks, with the exception of any part of the award provided to meet care costs. There are specific circumstances under which these compensation payments are fully disregarded for assessment purposes and it will not always be possible to ask recipients of these awards to make a contribution. Where you are in receipt of compensation for personal injuries, your contribution will be considered on a 'case by case' basis. But if you are unwilling to disclose the terms of any compensation payment then they will be assessed at full cost
- 7.13 If you receive care in your own home, all costs incurred directly for your housing costs, mortgage, rent or Council Tax (net of related benefits) will be deducted from the relevant income, before calculating the maximum contribution you need to make to your care. If you are in residential care with a property which has been taken into account for assessment purposes, you will be expected to pay for the mortgage, insurance, maintenance and upkeep of the property from your personal allowance. Anyone living in the property will be expected to contribute their share. Further consideration will be given to assessments where you are in residential care but you were previously the sole or main breadwinner.
- 7.14 **Disability Related Expenses (DRE)** – this will be considered when there are extra costs to meet your specific need due to a condition or disability where you have little or no choice other than to incur the expenditure, in order to maintain independence or quality of life. Examples of types of expenditure which can be considered are included in Appendix B: Disability-Related Expenditure, however it is to be noted that this list is not exhaustive. The Council will disregard these costs from any income where it is satisfied that the cost has been incurred by you as a direct result of your

disability, and it is not reasonable for a lower cost alternative item or service to be used. Receipts and other evidence of expenditure may be requested. We will only consider expenditure where the service/item has been incurred by a recognised/qualified provider. DRE will be assessed on a case by case basis.

- 7.15 In addition to the above, if your expenditure related to night care exceeds the level of the night care element of Attendance Allowance, Disability Living Allowance, Personal Independence Payment, Constant Attendance Allowance or Exceptional Severe Disability Allowance, any such excess amount would be taken into full consideration upon application and appropriate evidence of that expense. Full details are set out in Appendix E.
- 7.16 Non-disability related expenses – the calculation of your maximum contribution will take into account such expenses as referred to in the Care Act 2014 Statutory Guidance. Some expenses – for example, household content insurances, water rates, etc. – are deemed to be afforded by you from your prescribed protected income. The Council will seek to allow additional costs, together with other essential expenses, such as service charges and ground rent that owner occupiers incur if you are not receiving related benefits to cover those costs. Essential expenses may include home maintenance (where this is not provided by a third party e.g. landlord or council and required for your health and safety (e.g. electrical, heating system repairs, home accessibility) and payments under court order (e.g. child maintenance)
- 7.17 Dependants: The calculation of your maximum contribution will take into account the financial implications if you have dependent children up to 18 years of age or for whom you provide maintenance payments. In exceptional circumstances, regarding dependant adults (e.g. those in full time education, post 18 and who remain resident at the your home or reside temporarily elsewhere during term-term), you will be required to evidence all financial support provided, as well as evidence that the dependant relative has utilised all alternative funding support.
- 7.18 Your assessable income is worked out by adding together all identified weekly income and then subtracting;
- any appropriate housing costs;
 - any income that must be disregarded in accordance with the Care Act 2014 Statutory Guidance;
 - any disability-related expenditure; and
 - the minimum income guarantee (MIG)
- 7.19 The result of that calculation is your assessable income. The maximum that you could be asked to contribute each week will be the lower of the assessable income and the full cost of the support being received. A breakdown of how the contribution has been calculated will be provided to you.

8 Charging and Financial Assessment of Non-Residential Services

- 8.1 If you require care and support in your own home or other community settings you must initially satisfy an eligibility assessment.

- 8.2 The Council will charge for care and support delivered in your home and other community settings. Only where you have an eligible need will a financial assessment be required.
- 8.3 Almost all non-residential community based services fall within the scope of this policy and include:
- Home Care
 - Supported Living/Housing
 - Extra Care
 - Sitting Services
 - Shared Lives Service
 - Day Care services/activities, both building based and in the community
 - Respite
 - Enablement service after first 6 weeks
 - Housing related support services, housework etc.
 - Shopping services
 - Direct Payments
 - Outreach
 - Joint funded services – service users will be required to contribute towards the total cost of the services provided by the Council
- 8.4 Meals in day centres are outside of the scope of the financial assessment since such meals are considered a substitute for ordinary living costs.
- 8.5 If you receive care and support that is likely to be ongoing you will have your costs administered through a personal budget. A personal budget is the total amount of money we assess will be needed to meet your eligible care and support needs, inclusive of any required respite care. A personal budget includes the amount you can contribute towards the cost and the amount of funding support that the local authority will provide. Personal budgets may also contain funding towards care and support costs from the NHS.
- 8.6 If you have an eligible on-going care and support need, the Council will calculate how much your personal budget might be, using its Resource Allocation System (RAS). This 'guide' amount is known as the 'indicative budget'. Once the indicative budget is calculated, the care and support planning and authorisation process, taking into account your views and your agreed social care outcomes, will determine the final personal budget required.
- 8.7 You might choose varied forms of care and support to meet your specific desired outcomes, as defined in your care and support plan. If respite is identified as necessary within your care and support plan this will be calculated within the cost of the care and support package across the course of a year
- 8.8 If you are not self-funding your care and support costs you will have the option to take a personal budget as Council commissioned services, as a direct payment, or a combination of both. If you take your personal budget as a direct payment you may purchase alternative types of care to meet your assessed care and support needs as defined in Sections 31 to 33 of The Care Act 2014.

- 8.9 The Council publishes guidance that sets out the criteria for care and support being managed through Direct Payments. This information is available on the Council website at www.lewisham.gov.uk , or on request in a leaflet format.
- 8.10 If you receive your care and support costs through direct payments you will usually receive payments every four weeks in advance. These payments will reflect the agreed weekly budget, less your financially assessed contribution. At the Council's discretion some Direct Payments will be paid including the financially assessed contribution, and invoices will be raised for the contribution.
- 8.11 Direct Payments will not be made to anyone self-funding their care and support costs unless this is agreed as an 'exceptional circumstance' case by Council officers. The reason for this is that in such a case the Council would be paying the Direct Payment amount, and then invoicing you to recover this same amount, which is administratively burdensome.
- 8.12 As a minimum, your assessed contribution will be reviewed on an annual basis and you will be advised when this is taking place; this date is typically in line with the increase in state benefits and is at the beginning of April each year. Changes to circumstances may also lead to a new financial assessment being undertaken. If requested by you, your contribution can be reviewed, and if you feel it necessary you can request a further review of the financial assessment decision. Such a request would need to be supported with evidence showing why you believe an error or omission has occurred within the financial assessment calculation.
- 8.13 The review procedure is fair and equitable. You will be given an explanation for any decisions made, and a chance to provide further information if relevant to the financial assessment.

9 Charging and Financial Assessment of Residential Services

Permanent admission to a care home

- 9.1 If you have care and support needs identified that can only be met in a care home, you will need to pay towards your accommodation fees in the care home.
- If your capital assets (such as savings and investments) are above the upper capital limit, you will need to pay the full cost of your care home fees – usually directly to the care home.
 - If your capital assets are below the upper capital limit, we will carry out a financial assessment with you to work out how much you can afford to pay towards your care home fees. This is called an 'Assessed Weekly Charge'.
 - If you own a property, or a part of a property, or have a beneficial interest in a property, there are rules around whether this is counted within your capital assets or disregarded. See Appendix B Treatment of Capital for further details.

- If your care home placement is partially funded through NHS Funded Nursing Care, you will not need to pay towards the costs of your nursing care, but the care costs will be taken into account in the financial assessment.

Exceptions to being charged

9.2 You will not be charged :

- If your care home placement is an 'After-care' support service provided under section 117 of the Mental Health Act 1983, you will not need to have a financial assessment as you will be exempt from charges.
- If your care home placement is fully paid for by the NHS through Continuing Healthcare, you will not need a financial assessment as that care and support is provided free by the NHS.

9.3 Enablement services are provided free of charge for up to the first six weeks. Any services following enablement that are arranged by the council are chargeable in line with this charging policy document, and any enablement service still being received beyond six weeks will be chargeable from the beginning of the seventh week.

If you are responsible for the full cost of care home fees

9.4 If your identified needs indicate that you need to live permanently in a care home and your savings/investments (excluding your former home) are well above the Upper Capital Limit, we will arrange advice and support to help you choose a suitable care home that will meet your needs.

9.5 Some important things to consider when choosing a suitable care home are:

- find out from the care home what would happen if your savings/investments fell to the upper capital limit – for example – would that care home accept local authority payment rates or would they ask you to nominate someone to pay a Third Party Top Up? (This is an additional payment to make up any shortfall, paid by someone other than you). If you don't have anyone willing and able to pay a Third Party Top Up, and it is possible that your savings/investments may reduce over time to the upper capital limit, you should choose a care home that will accept local authority rates.
- You would be responsible for paying the full care home fees directly to the provider of the care home accommodation. If you are eligible for an NHS contribution towards Registered Nursing Care (in a nursing home), your care home will reduce the level of your fees by the amount of funding they receive from the NHS.
- While you are responsible for paying the full costs of your care home fees (excluding any fees that the NHS covers), you are likely to be entitled to receive Attendance Allowance (if you are aged 65 or over) or Disability Living

Allowance (Care Component) or Personal Independence Payment (Daily Living Component). These benefit payments will help go towards meeting your care home fees. More information on these benefits can be found on the www.gov.uk website.

- It is important to seek independent financial information and advice so that you can make informed decisions about how to manage your financial resources. We can help you to access independent financial information and advice.
- If, over time, your savings/investments reduce to approach the Upper Capital Limit, you should contact the local authority where you live to request a care assessment and ask for help with your care home costs. The local authority will also review your care and support needs at that time to make sure that the care home still meets your identified needs.

Working out your Assessed Weekly Charge for your care home

- 9.6 If your capital resources are below the Upper Capital Limit, and you don't own any property or capital, we will carry out a full financial assessment of your income and capital assets to work out your 'assessed weekly charge' for your care home accommodation. We use national rules to do this called 'Care and Support (Assessment of Resources) Regulations 2014' which are issued under section 17 of the Care Act 2014.
- 9.7 If you have chosen to move to a care home that is more expensive than the care homes that we have identified to meet your needs, you will need to identify a person who is willing and able to make top-up payments – to make up the shortfall. This is called a Third Party Top-Up.

How we work out your Assessed Weekly Charge

- 9.8 The calculation of your Assessed Weekly Charge for your care home is shown as below, and may include the following where applicable:

Regarded weekly Income

+ 'tariff income' on savings/investments

- Personal Expenses Allowance

- Savings Disregard (where this applies)

- Allowable expenses (where these apply)

= Assessed Weekly Charge

Regarded Weekly Income: is the amount of income you receive that is included in your financial assessment. Your income is converted to a weekly figure in the

financial assessment. We use the national rules set out in *The Care and Support (Charging and Assessment of Resources) Regulations 2014* and *The Care and Support Statutory Guidance: Annex C: Treatment of Income* when working out how much of your income should be regarded in your financial assessment for permanent care home accommodation.

Tariff Income on savings / investments: is a weekly amount calculated from capital assets (such as savings and investments) that are not disregarded. The weekly amount is added to your regarded income in your financial assessment. The way in which 'tariff income is calculated is shown in Appendix B – Capital Limits Schedule We use the national rules set out in *The Care and Support (Charging and Assessment of Resources) Regulations 2014* and *The Care and Support Statutory Guidance: Annex B: Treatment of Capital* when working out how much of your capital (such as savings and investments), should be regarded in your financial assessment for permanent care home accommodation.

Personal Expenses Allowance: Your financial assessment will always make sure you are left with an amount for you to use for your day-to-day personal expenses in the care home. There is a standard amount for this Personal Expenses Allowance set out in *The Care and Support (Charging and Assessment of Resources) Regulations 2014* which is reviewed each year by the Government.

Savings Disregard: If you are aged 65 or over, and you are in permanent residential accommodation and have more than a basic pension income, or savings, you may be given an additional allowance called a 'Savings Disregard' allowance. This is calculated using the national rules set out in *The Care and Support (Charging and Assessment of Resources) Regulations 2014*.

Other specified allowances

- The rules allow councils discretion to increase the Personal Expenses Allowance where it would not be appropriate to leave a person with only the standard Personal Expenses Allowance. For example – a person with a dependent child.
- In certain situations, allowances for continuing home commitments (for example, where committed costs on previous accommodation need to be paid for a period of time).
- If you enter into a Deferred Payment Agreement with us, your Personal Expenses Allowance will be replaced by a 'disposable income allowance'.

9.9 The Care Act 2014 requires that financial assessments are completed for service users as individuals. Where capital is held and income is received on a joint basis, then it is assumed that each party is entitled to 50% of that capital/income. A couple is defined (for the purposes of this charging policy) as two people living together as spouses or partners.

Changes to benefits when you move to a care home

- 9.10 Often a permanent move to a care home will mean a change in some benefit payments to you. It is best to contact the office that pays you the benefit as soon as possible—to tell them that you have moved to a care home, and the date.
- 9.11 When we complete a financial assessment with you, we will tell you if there are any changes to benefit entitlements and give you information about how to not if your change of address. Where new claims have been made, we will tell you how the award of a new welfare benefit might affect your assessment outcome.

If you own your property

- 9.12 If you own your home, or have a beneficial interest in your home, from which you have left to move to a care home, you will need to check whether your property capital will be disregarded.
- 9.13 The Care and Support (Charging and Assessment of Resources) Regulations 2014 and The Care and Support Statutory Guidance set out the circumstances in which property capital is always disregarded.
- 9.14 For example:
- If your spouse or partner still lives in the property—your property capital would be disregarded (ignored) in the financial assessment for as long as your spouse/partner continues to live there.
 - If you have a relative aged over 60, or a disabled relative who still lives in the property, the property would also be disregarded for as long as that relative, or relatives, were living there.
- 9.15 The Regulations state who counts as a ‘relative’ and the Statutory Guidance gives more information about these disregards.
- 9.16 The Regulations also give councils discretion to disregard property in other situations. See ‘Discretionary Disregard of Property’ below.
- 9.17 In any case, your property capital is disregarded for up to the first 12 weeks of moving permanently to a care home.
- 9.18 You are still required to pay your assessed weekly charge during those 12 weeks, but your assessed weekly charge is based on your financial situation (excluding your property capital). See ‘12-week Property Disregard’ below.
- 9.19 It is important that you seek independent financial information and advice so that you have good information when considering options for your future funding.
- 9.20 If your property is not disregarded under the Regulations you may wish to apply for a Deferred Payment Agreement with the Council.
- 9.21 If you own a property or other valuable asset, over which security can be taken, you may be eligible to defer some care costs against the value of the property/asset. This

is known as a Deferred Payment Agreement. The Council will make deferred payment agreements available under its Deferred Payment Agreement Scheme providing the eligibility criteria have been met.

- 9.22 Details of deferred payment eligibility and agreements can be found within the Council's 'deferred payments for people in permanent residential care' fact sheet, which is available on the Council's website, and in leaflet format on request. The Council charges set up costs, an annual monitoring and administration fee, termination costs, and interest on all deferred payment loans agreed from April 2015 onwards.
- 9.23 Any properties you own other than your main or only home, either in the UK or abroad, will be included within the financial assessment as a capital asset. The only exception to this rule is where you are taking steps to occupy these premises as your permanent home where this is feasible to do so. In this case, subject to evidence of the same, the asset value will be disregarded for a maximum of 26 weeks.

12-Week Property Disregard

- 9.24 The purpose of the 12-week property disregard is to provide breathing space to allow a long-term decision about the property to be made.
- 9.25 The 12-week property disregard applies if:
- you move into a care home for the first time, and, as a result of the ownership of your own home, are responsible for the full cost of the care home fees; or you moved into a care home on a temporary basis initially but have now become a permanent resident in the care home; or
 - you are already living in a care home, and your property was previously disregarded in your financial assessment under a 'statutory disregard' (where national Regulations state it is disregarded) or under a 'discretionary disregard' (where the Council agreed to disregard it), but, due to a change of circumstances those disregards are no longer relevant and the value of the property means you would be responsible for the full cost of your care home fees. A change of circumstances could be, for example, a partner or relative living in the property goes into a care home themselves, or moves house, or dies.
- 9.26 The 12-week property disregard only applies to your sole or main residence prior to moving to a care home. It does not apply to any other property or land you own.
- 9.27 If you have savings and investments above the upper capital limit at the start of your placement in a care home, and you own a property, you have the opportunity to make decisions about what to do with your property during the period you are able to fund yourself - unless this is less than 12 weeks. In this event you will be entitled to the remaining period of the 12-week property disregard from the start of your placement.

Your financial contribution during the Property Disregard period

- 9.28 We will carry out a financial assessment with you to work out your Assessed Weekly Charge for your care home during the period of the property disregard.
- 9.29 This financial assessment will be based on your financial situation excluding the value of your main property. This will take account of your income and any savings or assets above the lower capital limit and leave you with a personal expenses allowance.
- 9.30 The Assessed Weekly Charge is due for payment at the time we raise an invoice to you.

If you receive Attendance Allowance or Disability Living Allowance (Care Component) or Personal Independence Payment (Daily Living Component):

If you receive one of these benefits listed above, these benefits continue to be paid to you by the Department of Work and Pensions for only the first four weeks after being in a care environment. A care environment includes hospital and care homes. After those first four weeks, these benefits are **not** payable to you while a council provides funding towards your care home costs. At the end of your property disregard period, you become responsible for the full cost of your care home placement, and your entitlement to have Attendance Allowance or Disability Living Allowance (Care Component) or Personal Independence Payment (Daily Living Component) restarts.

Discretionary Disregard of Property

- 9.31 The *Care Act 2014* sets out a number of situations where the property you lived in and own, or have a beneficial interest in, must be disregarded. However there may be other circumstances where we consider it appropriate to disregard your interest in the property, even though we are not required by the national Regulations to do this. This is a discretionary disregard.
- 9.32 We have to balance the use of this discretion with the need to ensure that residents with assets are not maintained at public expense.
- 9.33 If you ask us to consider a discretionary disregard because your property is being occupied by a third party, we will consider:
- the reason for the occupation of the property by the third party
 - the timing of the move into the property by the third party
 - any other relevant issue or circumstance

How do I ask the Council to consider a request for a Discretionary Property Disregard?

- 9.34 You can ask the financial assessment team.
- 9.35 We will gather relevant information from you about your property and details of who lives there now. We will gather any other information relevant to your request and will talk to you about any other information that is needed from you.
- 9.36 Once all relevant information has been gathered a decision will be made and notified to you in writing.

- 9.37 All the facts of the case will be considered, and a decision made on the merits of the case, whether to agree to a disregard of the property. In cases of difficulty the Head of Service will seek advice from the Council's legal advisers. We will keep you updated of the progress of your request.
- 9.38 If your request for a discretionary property disregard is turned down, we will tell you the reasons. The financial assessments team will put these reasons in writing to you and will tell you how to request a review of the decision if you disagree with the outcome.

Accommodation located outside of Lewisham

- 9.39 We understand that being close to family support is a key factor in people's selection of preferred accommodation. The location of preferred accommodation is not limited to the boundaries of Lewisham; accommodation anywhere within the United Kingdom (England, Wales, Scotland or Northern Ireland) are permitted, provided it still meets the other criteria - such as for suitability, availability and cost. Chapter 21 of the Care Act Statutory Guidance provides more information about cross-border placements (Care and Support Statutory Guidance Chapter 21 – Cross-border placements: www.gov.uk/guidance/care-and-support-statutory-guidance). Although we aim to ensure that people have a choice of accommodation to meet their assessed care and support needs in the local area, we will sometimes place people in other areas if there is not enough suitable accommodation within the Lewisham locality to meet a person's assessed needs (if they need very specialist support, for example) or if their needs would be best met in a different area.
- 9.40 We may refer to our own usual costs when making placements in another council area. However, because costs vary from area to area, we will negotiate with the provider to determine a reasonable cost to meet the assessed needs as outlined in the person's care plan. If accommodation in another council area is more expensive than someone's Personal Budget for their assessed needs, and that is identified as the most suitable accommodation to meet a person's needs, we will meet this additional cost.
- 9.41 We will ensure that satisfactory arrangements are made before a person moves to accommodation in another council area, including planning for regular reviews. We will be responsible for any changes to the person's accommodation such as moving to a different provider, unless there is an emergency situation, where we should be involved as soon as possible

Residence when moving to accommodation outside Lewisham

- 9.42 If you move to accommodation outside of Lewisham while we are responsible for funding your care (either through choice, or because of the availability of suitable accommodation) to meet your care and support needs, you still remain a Lewisham resident. We will keep the same responsibility for you that we have for someone living in the Lewisham area. Only if you later choose to move by private arrangement may you become 'ordinarily resident' in your new area. If this happens, your new

council becomes responsible for any future care and support assessment and/or funding. If you fund your own care and support and choose to move to a different area for accommodation to meet your needs (for example, to be closer to your family) you will usually become 'ordinarily resident' in the new area. If you become eligible for support from adult social care services in the future, the council in your new area would be expected to fulfil this responsibility.

The Cost of Accommodation

9.43 We use your assessment and support planning to identify your personal budget – the amount of money that we would expect to pay for care and support to meet your assessed needs.

- For care home accommodation, we identify the expected cost of your accommodation based on the amount that we would normally pay to meet your assessed needs in a residential or nursing home, reflecting the local market conditions.
- For supported accommodation and Extra Care Housing, the housing costs are normally separate to your care and support package. You would own or rent your accommodation and pay for this independently (claiming Housing Benefit and using this to pay the landlord of a shared house if you had a tenancy agreement, for example). We will work with you to make sure you have suitable accommodation for your care and support needs to be met.

9.44 When establishing how much we would expect to pay for your care and support, we will take account of your individual circumstances such as medical, cultural or dietary needs, to ensure that your needs can be properly met.

Choosing more expensive accommodation:

Care homes

9.45 If your preferred care home is more expensive than your Personal Budget for your assessed needs, you will be advised of the higher cost of your choice. You will be given the opportunity to make an alternative choice that fits within your Personal Budget, or to put an arrangement in place to meet the additional cost.

9.46 If your preferred accommodation meets all other requirements, we will support you to move to that accommodation that costs more than your Personal Budget says we would expect to pay for your assessed needs, provided that:

- you can arrange for a third party to pay the additional amount - known as the Third-Party Top-Up (TPTU), or;
- you can pay the additional amount from your own resources - a 'First-Party

Top-Up’.

- 9.47 The rules about the situations where you can pay the additional amount yourself are shown below.

Third-Party Top-Ups (TPTU)

- 9.48 For a Third-Party Top-Up to be put in place, a third-party – such as a family member(s), friend, employer, organisation or charity – must be **willing and able** to pay the difference between the Personal Budget and the actual cost of the accommodation (or the associated accommodation costs for supported accommodation).
- 9.49 To avoid the risk of you needing to move to different accommodation, we will usually discourage a Third-Party Top-Up unless the nominated Third Party can demonstrate that they are willing and able to pay the additional costs for at least a period of two years (or up to the duration of the service user’s likely time living in the accommodation if it is a short-term arrangement).
- 9.50 This additional cost (known as a ‘top-up) must be sustainable and the Council has the right to refuse you using their assets for this purpose, if the costs cannot be met over a sustained length of time. This is to try to safeguard you from needing to move to another care home in the future should you no longer be able to pay the agreed top-up amount. If the Council does not agree to provide funding towards a more expensive care home due to concerns over the affordability of the top-up required, you or your representative can seek legal advice, or advice from an independent advocate, and request a review of the decision as set out in section 14.
- 9.51 **Where the Third Party is an organisation**, we will require a letter from a legal representative of the organisation confirming that the organisation has the means **and** capacity to sustain payments for the period required to accompany a signed Third-Party Top-Up Agreement.
- 9.52 **Where the Third Party is one or more individuals**, we will undertake a financial assessment of the individual(s) requiring documentary evidence of financial resources identified to meet the top-up payments, such as bank statement and details of financial commitments. This is to ensure that they have the means and capacity to sustain the payments for the period required. Completion of this assessment along with a signed Third-Party Top-Up Agreement and completed Direct Debit mandate is usually needed before we will agree to someone moving to the more expensive preferred accommodation.
- 9.53 We will review all Third Party Top-Up Agreements at least annually, and sooner where there is a change to someone’s situation. The Third Party/ies have a responsibility to report any changes which may affect their ability to sustain their ability to contribute as per the Third-Party Top-Up Agreement within one calendar month of the date of that change to the Financial Assessment Team.

First-Party Top-Ups (sometimes known as Resident Top-Ups) In specific circumstances it is possible for you to pay a 'top up' for your preferred accommodation from your own resources. These circumstances are shown below:

1. A person entering care home accommodation whose property capital is disregarded for up to the first 12 weeks of the placement **and** who has either sufficient savings to pay the top-up during those 12 weeks, or disregarded income sufficient to pay the top up during those 12 weeks.

2. A person entering care home accommodation whose property capital is disregarded for up to the first 12 weeks of the placement **and** who immediately enters into a Deferred Payment Agreement.

- 9.54 You would still be responsible for paying an assessed contribution from your capital and income during those 12 weeks. The First Party Top-Up payment will be in addition to your assessed charge shown by your financial assessment. You would need to sign a Top-Up Agreement. With our permission, payment of a First Party Top-Up can be deferred providing that a Deferred Payment Agreement is agreed between you and the Council before your funding starts - that is, you intend to apply for a Deferred Payment Agreement (to start after the 12-week property disregard period), and you consent to a first legal charge on your property under a Deferred Payment Agreement from the **start** of your property-disregard period.
- 9.55 We may consider the use of a First Party Top-Up in circumstances other than those set out above; for example, in the exceptional case that a Deferred Payment Agreement is accepted for a person in rented supported accommodation such as Extra Care Housing. People who would like to apply for a First Party Top-Up in a situation other than those set out above should contact our Financial Assessments Team to explain the exceptional circumstances in their situation for consideration. We may need to seek specialist legal advice on a case by case basis and the costs of this legal advice will be recharged to the individual.

Paying for accommodation

- 9.56 We will pay the total cost of the accommodation (or associated accommodation costs for supported accommodation) to the care provider, and then recover any top-up directly from the person/organisation who has agreed to pay this. To mitigate against adverse safeguarding issues (such as the accrual of arrears with a provider) we will usually only enter into Top-Up arrangements where the top-up is paid to us, and not to the provider directly.
- 9.57 From time to time we will review our rates for accommodation. As a result the amount that we would expect to pay to meet someone's assessed needs may remain the same, increase or decrease. This may impact on the amount that an individual or organisation is asked to pay as the top-up. Similarly, if the accommodation increases in price (for example, an annual uplift to reflect inflation, or a restructuring of fees because of a new provider), we will have no liability for the increased charges and will expect the individual or organisation paying the top-up to pay the additional costs

above the amount the Council would expect to pay to meet that person's needs.

- 9.58 When a person/organisation takes on a Top-Up, they assume the contractual responsibility for the duration of the person's residence in the accommodation to pay the difference in fees between the amount we would usually expect to pay to meet your assessed needs and the actual cost of your accommodation. We will advise the person/organisation in writing that fees are not fixed or guaranteed to remain at the same level, and that the contribution of the resident or third party may rise faster than the Council's. We will also advise that we have no liability for debts accrued by a person/organisation due to non-payment or a shortfall in payment. We will notify people/organisations of the likely consequences if they fail to maintain payments. These may include legal action to recover the accrued arrears and/or you having to move to other accommodation (unless after an assessment of need, it is shown that your assessed needs can only be met in the current accommodation). The Council has the right, subject to notice, to terminate the contract should the top-up payments cease to be adequate.

People who pay the full cost of their care and support

- 9.59 If someone paying the full cost of their care and support has made their own private arrangement for services, the provider may take any action needed to obtain outstanding payments including legal action against the person or third-party who signed the contract and agreed to make payments but has failed to do so. The provider can also cancel the contract and give notice requiring the person to leave their accommodation.
- 9.60 If you pay the full cost of your care and support we will encourage you to consider what will happen if, over time, your savings/investments reduce and you become eligible for financial support with your care and support costs from the Council. If you have existing accommodation that is more expensive than we would usually expect to pay, this may result in you having to move to other accommodation, unless arrangements can be secured by way of another alternative such as a Third-Party Top-Up. In this instance, we will support you to find an alternative placement of your choice, provided this meets the Council's criteria around suitability, availability, conditions, cost and quality. If a reassessment shows that your needs can only be met in the current accommodation, we will endeavour, by way of negotiation, to make up the reasonable cost difference between your assessed contribution and the accommodation's fees.

Existing residents

- 9.61 If you currently live in accommodation that is more expensive than we would usually expect to pay to meet your assessed needs, a review of your situation may result in you having to move to other accommodation, unless arrangements such as a Third-Party Top-Up can be put in place to meet the additional cost. If a reassessment shows that your needs can only be met in the current accommodation, we will

endeavour, by way of negotiation, to make up the reasonable cost difference between your assessed contribution and the accommodations' fees.

- 9.62 If you are eligible to receive local authority funding support, but decide to reside in another local authority area, Lewisham Council will have regard to the cost of care in that area when setting the personal budget and match the local authority usual rate for such care relevant to the area where the service user decides to live

New residents

- 9.63 The Council will undertake a financial assessment and benefits check if you are entering residential care on a permanent basis. This is normally done before you start to receive care wherever possible. Contributions are payable from the date care commences. The Council publishes a fact sheet containing details on residential care charging, which is available on the Council's website, and in leaflet format on request.

Self-funders/Those paying the full cost of their services

- 9.64 A self-funder is a service user whose savings/capital exceed the higher capital threshold limit for residential care, or whose income is deemed to be sufficient to pay the weekly cost of their care in full, for example, from private pensions, investment funds, and property rental income.
- 9.65 Residential care service users in this position will need to make their own arrangements with the care home regarding their permanent residency and payment of the care fees. If you are unable to do so and there is no one else who is willing and able to act for you, in exceptional circumstances the Council may make arrangements with the care home on your behalf. The Council can however offer a range of information and guidance to assist people who are self-funding to find the right care for themselves.
- 9.66 If your capital falls to the higher capital limit or below it, a care assessment or care review will be completed to determine eligibility for Council funding, and a financial assessment will be completed to determine your financial circumstances.

Short Term, Respite and Temporary Stays in Care Homes

- 9.67 The Council will charge for care and support delivered in a care home on a temporary basis (unless it is provided under **CHC** s.117 or is part of a 6 week enablement package).
- 9.68 The financial assessment for temporary stays will completely disregard your main or only home where you intend to return to that home. This decision will be reviewed, and continuation of the property disregard will depend on the extended length of stay in a care home after 52 weeks has elapsed, and the individual circumstances affecting this.

- 9.69 The Council will ensure that where your spouse or partner resides in the same residence as you, that your spouse/partner will have an income of at least the basic level of income support or pension credit, to which they would be entitled to in their own right.
- 9.70 The Council will ensure that where housing benefit is paid, this is disregarded so it can continue to meet the housing costs, as intended.
- 9.71 The Council will ensure that payments made by you to keep and maintain your home, such as rent, water rates, insurance premiums are disregarded when financially assessing available income. Similarly, expenses that you would normally incur and would continue to pay may also be considered for a disregard from the available income for the purposes of the financial assessment. Contributions are usually payable from the date care commences. A new financial assessment will be required in each financial year where you require respite accommodation in a care home.
- 9.72 Following an assessment of your eligible care and support needs, a decision may be taken that you would benefit from a temporary stay in a care home. A temporary resident is defined as a person whose need to stay in a care home is intended to last for a limited period of time, and where there is a plan to return home. The service user's stay should be unlikely to exceed 52 weeks, or in exceptional circumstances, unlikely to substantially exceed 52 weeks.
- 9.73 If you have a temporary stay in a care home that becomes permanent you will be assessed for a permanent stay at the date permanency is confirmed and the care plan is amended.
- 9.74 The Council will financially assess everyone who has a temporary stay in a care home, and will charge from the date of admission.
- 9.75 **If your savings and investments are above the upper capital limit:** you will need to pay the full cost of your accommodation. We will give you advice and support to arrange this with a care home provider of your choice.
- 9.76 **If your total savings and investments are below the upper capital limit** we will carry out a full financial assessment with you to work out how much (if anything) you can afford to pay for your care and support. Your financial assessment will show your 'Assessed Maximum Weekly Contribution'.

10 Deprivation of Assets

- 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. However, it is also important that people pay their fair contribution towards their care and support costs.
- 10.2 There are some cases where a person may have tried to deliberately avoid paying for care and support costs through depriving themselves of assets – either capital or income. Where the Council believes they have evidence to support this we may either charge the person as if they still possessed the asset or, if the asset has been transferred to someone else, seek to recover the lost income from charges from that

person. However, the Council cannot recover more than the person gained from the transfer.

- 10.3 If this is the case it is up to you to prove that you no longer have a resource. Failure to do so will result in the council treating you as if you still possess the actual capital. Examples of acceptable evidence of the disposal of capital would include: a trust deed, deed of gift, receipts for expenditure, proof that debts had been repaid.
- 10.4 Even if you prove that you no longer have the asset, the Council may still deem you to have the asset for the purposes of assessment. The timing of the disposal will be taken into account when considering the purpose of the disposal.
- 10.5 Where, for the purpose of avoiding or reducing the contribution, capital which would not have been disregarded has been used to acquire personal possessions, the current market value of those possessions should be taken into account as an actual resource. Their market value should not be disregarded.
- 10.6 If in depriving yourself of an actual resource, you converted that resource into another actual resource of lesser value, you will be treated as notionally possessing the difference between the value of the new resource and the one which it replaced e.g., if the value of personal possessions acquired is less than the sum spent on them the difference should be treated as a notional resource.
- 10.7 If the Council decides that you have disposed of capital in order to avoid paying a contribution or to reduce the contribution payable, the Council will decide whether to treat you as having the capital (notional capital) and assess the contribution payable accordingly; and then whether to:
- recover the assessed contribution from you in full; or
 - recover an amount equal to the amount disposed of from the recipient of the disposed asset or its value; or
 - recover the assessed contribution by instalment; or
 - defer payment until a later date; or
 - take appropriate action as agreed by either guidance or management
- 10.8 The Council will determine whether to conduct an investigation into whether deprivation of income or assets has occurred. Where an investigation is conducted, this will be conducted under guidance contained within the Regulation of Investigatory Powers Act 2000. Following the investigation, if the Council decides that you have deliberately deprived yourself of an asset or income in order to reduce a charge for care and support, the Council will charge you as though you still own the asset or income.
- 10.9 Deprivation of income and/or assets is the disposal of income and capital (for example, property and investments) in order to avoid or reduce care charges. Disposal can take the form of transfer of ownership or conversion into a disregarded form. In all cases, it is up to the service user to prove to the Council that you no longer possess an income or an asset, and the reason for this. The Council will determine whether to conduct an investigation into whether deprivation of income or assets has occurred. Where an investigation is conducted, this will be conducted under guidance contained within the Regulation of Investigatory Powers Act 2000.

11 Charging for Support to Carers

- 11.1 Where a carer has eligible support needs of their own, the Council has a duty, or in some cases a power, to arrange support to meet their needs. When the Council is meeting this need by providing a service directly to a carer, it has the power to charge the carer.
- 11.2 The Care Act 2014 provides councils with the power to charge for support for carers, where they have an eligible support need in their own right.
- 11.3 The Council values carers within its local community as partners in care and recognises the significant contribution they 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. Currently the Council does not charge carers for any care and support provided directly to the carer.

12 Pension Reforms

- 12.1 The Council will follow the guidance set out on the treatment of income and capital in Appendices [B and C] and treat a person's assets accordingly. Where a person has chosen to withdraw funds from their pension pot and manage it directly, for example combining it with other assets rather than through a pension's product, this may be treated as capital under the rules laid out in Appendix B.

13 Methods of Payment and Debt Recovery

- 13.1 The following methods of payment are available:
- Direct Debit
 - Bank Transfer
 - By Phone
 - Debit or Credit card
 - Post office
 - PayPoint
- 13.2 The Council's preferred method of payment is direct debit. Full details of how to make payments are at Appendix F.
- 13.3 The Care Act 2014 consolidates the Council's powers to recover money owed for arrangement and provision of care and support for a service user. These powers can be exercised where a service user refuses to pay the amount they have been assessed as being able to pay, or have been asked to pay (where the cost of care and support is less than their assessed contribution).
- 13.4 The powers granted to the Council for the recovery of debt also extends to the service user or their representative, where they have misrepresented or have failed to disclose (whether fraudulently or otherwise), information relevant to the financial

assessment of what they can afford to pay. Social workers will be advised of the debt, and may become involved if appropriate to your on-going care/well-being.

- 13.5 If you fail and/or neglect and/or refuse to pay your assessed contribution, the Council will take steps to recover any amounts owing, including if appropriate legal action. This will be in line with the Council's Debt Recovery policy.

14 Review of Financial Assessment

- 14.1 You or someone acting on your behalf have the right to ask the Council for a review of a charge for which you have been assessed if you consider that you cannot pay it or believe that:
- The charge is too high
 - Information given may have been misrepresented
 - Some information may have been missed
 - A change in circumstances has occurred
 - A mistake may have been made in applying the charging guidance, or
 - The calculation is inaccurate
 - There are other exceptional circumstances that need to be considered

- 14.2 Other than in response to a change of circumstances, the Council will consider reviews or appeals within 3 months of the date of charge notification and will only accept at its discretion those received outside this timescale

- 14.3 There are two stages to the review process.

Stage 1: Informal review

- 14.4 You, or someone acting on your behalf should write to the department giving details of why you are requesting a review.
- 14.5 When a request for a review is received an officer, independent of the disputed financial assessment, will reassess the information provided by the service user at the time of assessment. Any additional information that was omitted from the initial assessment will be considered upon submission of evidence. However, the Council is under no obligation to backdate the outcome to the date of the original assessment, but will consider the appropriate effective date for any change during the review process. An exception to this is where benefit income has stopped without your prior knowledge, and where you could not have been reasonably expected to know your benefit income had ceased, which will always result in a backdated charging decision to coincide with the date the benefit income ceased to be payable
- 14.6 The review will take place within 14 working days. You will be advised of the outcome of the review within 7 working days of a decision being taken. If the charge is found to be incorrect, this will be explained in writing, with reasons, also within 7 working days. Overall, this stage should take no longer than 28 working days.

Stage 2: Contributions review panel

- 14.7 If you or your representative remains unhappy after the charge has been reviewed under Stage 1, you or your representative should contact the Council in writing. You

or your representative should provide clear information on why you remain dissatisfied with the outcome which must pertain to a material fact within the reviewed assessment and include evidence to support the same.

- 14.8 A Charges Review Panel will be convened to review the assessment to date and initial review. The panel will consist of an Adult Social Care Manager and a Finance manager with advice from the legal department of the Council. All appropriate stakeholders will be invited to give their view to the panel.
- 14.9 The panel will make recommendations and you will be informed of the outcome and any effect on your charges within 14 days.
- 14.10 Where the Council still considers that the financial assessment is correct, and the service user does not agree with this decision, any resultant complaints about the level of charge are subject to the Care and Support Complaints Procedure, as set out in The Local Authority Social Services and NHS Complaints Regulations 2009. The Council will make clear what its complaint's procedure is and provide information and advice on how to lodge a complaint.
- 14.11 Written requests for reviews should be directed to:

Financial Assessment Team
4th floor, Laurence House
Catford
SE6 4RU

Email: financialassessment@lewisham.gov.uk

15 Complaints

- 15.1 The council welcomes feedback and has dedicated officers to manage complaints.
- 15.2 If you are dissatisfied with the way that you have been treated during the financial assessment process, or with the service that you receive, you have the right to make a complaint to the complaints officer. The Council has a statutory complaints process to ensure that service user' views and concerns are considered and dealt with appropriately and the Council holds itself accountable to the highest standards
- 15.3 Complaints should be directed to :

Community services customer relations team
5th floor Laurence House
Catford
London
SE6 4RU

Email: community.services@lewisham.gov.uk

16 Use of Financial Information and Privacy

- 16.1 The information the Council collects and keeps about you is confidential and can only be seen by authorised staff. This information will only be shared with other relevant people and agencies in accordance with the Data Protection Act 1998 or with the written consent of you or your legally appointed representative. This Act also gives you the right to see information that the Council keeps about you at any stage.

17 Equality Impact

- 17.1 The Council has considered the impact this framework will have on the diverse communities of Lewisham. As this guidance merely applies the Care Act 2014, the Council has assessed that this guidance does not discriminate against groups of service users or present adverse impacts due to any characteristics protected under the Equality Act 2010.

18 Reviewing the Contributions Guidance

- 18.1 This policy document will be reviewed as and when there are amendments or additions to the Care Act 2014, statutory guidance, and/or Regulations.

19 Phasing of changes

- 19.1 Where a decision taken by the Council, including a change in this charging policy, results in an increased charge to a service user, the Council may decide not to implement this immediately with existing clients and may, instead, phase the increase. Decisions on this phasing will be taken by the Executive

Appendix [A]: Choice of Accommodation and Additional Payments

Introduction

1. This Appendix covers:
 - Choice of accommodation when arranging care and support in an accommodation setting;
 - Making additional payments for preferred accommodation.
- 1.1. A person's ability to make an informed choice is a key element of the care and support system. This extends to where the care and support planning 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 planning process will have determined what type of accommodation will best suit the person's needs. This could be, for example, a care home, shared lives or extra care housing. Where the type of accommodation is one of those specified in regulations, the person will have a right to choose the particular provider or location, subject to certain conditions. Where this is the case, the following guidance should be applied and in doing so, the Council will 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 'top-up' arrangements;
 - clear understanding of potential consequences should 'top-up' arrangements fail with clear exit strategies; and
 - the choice is suitable to the person's needs.
- 1.3. The Council is aware that the regulations and guidance on choice of accommodation and additional costs apply equally to those entering care for the first time, those who have already been placed by the Council, and those who have been self-funders, but because of diminishing resources are on the verge of needing local authority support.

Choice of Accommodation

- 1.4. Where the Council 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 order to ensure that they are met, the person will have the right to choose between different providers of the specified type of accommodation provided that:
 - the accommodation is suitable in relation to the person's assessed needs;
 - to do so would not cost the Council more than the amount specified in the adult's personal budget for accommodation of that type;
 - the accommodation is available; and
 - the provider of the accommodation is willing to enter into a contract with the Council to provide the care at the rate identified in the person's personal budget on the Council's terms and conditions.
- 1.5. This choice is not to be limited to those settings or individual providers with which the Council already contracts or operates, or those that are within the Council's geographical boundary. It will be a genuine choice across the appropriate provision.

- 1.6. If a person chooses to be placed in a setting that is outside the Council's area, the Council will still arrange for their preferred care. In doing so, the Council would have regard to the cost of care in that area when setting a person's personal budget.

Suitability of Accommodation

- 1.7. In exercising a choice, the Council will ensure that the accommodation is suitable to meet a person's assessed needs and identified outcomes established as part of the care and support planning process which will also include communication with care provider.
- 1.8. 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 settings, not different types. For example, a person cannot exercise the right to a choice of accommodation to choose a shared lives scheme when the care and support planning process, which involves the person, has assessed their needs as needing to be met in a care home.

Cost

- 1.9. The care and support planning process will identify how best to meet a person's needs. As part of that, the Council will provide the person with a personal budget.
- 1.10. The personal budget is defined as the cost to the Council of meeting the person's needs which the Council is required to meet. However, the Council will endeavour to take into consideration cases or circumstances where this 'cost to the Council' 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 Council will have regard to the actual cost of care in deciding the personal budget to ensure that the amount is one that reflects local market conditions. This should/will also reflect other factors such as the person's circumstances and the availability of provision. In addition, the Council will not set arbitrary amounts or ceilings for particular types of accommodation that do not reflect a fair cost of care.
- 1.11. A person must not be asked to pay a 'top-up' towards the cost of their accommodation because of market inadequacies or commissioning failures and must ensure there is a genuine choice. The Council will therefore ensure that at least one option is available that is affordable within a person's personal budget and will endeavour that there is more than one. If no preference has been expressed and no suitable accommodation is available at the amount identified in a personal budget, the Council will arrange care in a more expensive setting and adjust the personal budget accordingly to ensure that needs are met. In such circumstances, the Council will not ask for the payment of a 'top-up' fee. Only when a person has chosen a more expensive accommodation can a 'top-up' payment be sought. Refer to point 8 of this policy which sets out further guidance on Additional Costs.

Availability

- 1.12. The Council has specific duties to shape and facilitate the market of care and support services locally, including ensuring sufficient supply where possible. As a result, a person should 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 of their preferred choice of provider for example. The Council acknowledges that such arrangements can be unsettling for the person and reasonable attempts will be made for it to be avoided wherever possible.

- 1.13. In such cases, the Council will endeavour that in the interim adequate alternative services are provided. In establishing any temporary arrangements, the Council will provide the person with clear information in writing on the detail of the arrangements as part of their care and support plan. This would include 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 may be reassessed to ensure that both the interim and the preferred option are still able to meet the person's needs and that remains their choice.
- 1.14. Where a person contributes to the cost of their care following a financial assessment they will not be asked to pay more than their assessment shows they can afford.
- 1.15. 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 setting where they are temporarily resident is able to accommodate the arrangement on a permanent basis this will be arranged and the person will be removed from the waiting list of their original preferred setting. Before doing so, the Council will make clear any consequences of that choice, including any financial implications.

Choice that Cannot be Met and Refusal of Arrangements

- 1.16. Whilst the Council will do everything it can to meet a person's choice, 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, the Council will set out in writing where appropriate why it has not been able to meet that choice and will endeavour to offer suitable alternatives.
- 1.17. The Council will attempt to do everything it can to take into account a person's circumstances and preferences when arranging care. 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, the Council 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 is a step of last resort and the Council would consider the risks posed by such an approach, for both the Council itself and the person concerned. Should the person contact the Council again at a later date, the Council would consider reassessing the needs as necessary and re-open the care and support planning process.

Contractual Terms and Conditions

- 1.18. In supporting a person's choice of setting, the Council may need to enter into a contract with a provider that they do not currently have an arrangement with. In doing so, they would ensure that the contractual conditions are the same.

Additional Costs or 'Top-up' Payments

- 1.19. In some cases, a person may actively choose a setting that is more expensive than the amount identified for the provision of the accommodation in the personal budget.

Where they have chosen a setting that costs more than this, an arrangement will need to be made as to how the difference will be met. This is known as an additional cost or 'top-up' payment 15 and is the difference between the amount specified in the personal budget and the actual cost. In such cases, the Council will arrange for them to be placed there, provided a third party, or in certain circumstances the person in need of care and support, is willing and able to meet the additional cost.

- 1.20. The following sections of the policy only apply where the person has chosen a more expensive setting. Where someone is placed in a more expensive setting solely because the Council is unable to make arrangements at the anticipated cost, the personal budget will reflect this amount. The person would then contribute towards this personal budget according to the financial assessment. The additional cost provisions will not apply in such circumstances.

Agreeing a 'Top-up' Fee

- 1.21. Having chosen a setting that is more expensive, based on good information and advice, the Council will endeavour that the person understands the full implications of this choice, bearing in mind that this is often a point of crisis. This will 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; the person may be moved to an alternative setting.
- 1.22. The Council will ensure that the person paying the 'top-up' is willing and able to meet the additional cost for the likely duration of the arrangement, recognising that this may be for some time into the future. Therefore the Council will ensure that the person paying the 'top-up' enters into a written agreement with the Council, agreeing to meet that cost. The agreement will include the following:
- the additional amount to be paid;
 - the amount specified for the accommodation in the person's personal budget;
 - the frequency of the payments;
 - to whom the payments are to be made;
 - provisions for reviewing the agreement;
 - a statement on the consequences of ceasing to make payments;
 - a statement on the effect of any increases in charges that a provider may make;
 - a statement on the effect of any changes in the financial circumstances of the person paying the 'top-up'.
- 1.23. Before entering into the agreement, the Council will endeavour to provide the person paying the 'top-up' with sufficient information and advice to ensure that they understand the terms and conditions, including actively considering the provision of independent financial information and advice.
- 1.24. Ultimately, if the arrangements for a 'top-up' were to fail for any reason, the Council will conduct a needs assessment and offer in the first instance suitable alternative arrangements. In cases where alternative arrangements are deemed not feasible, the Council will endeavour to meet the cost of the 'top-up' until a suitable alternative is established.

The Amount to be Paid

- 1.25. The amount of the 'top-up' should be the difference between the fees charges by the preferred provider and the amount that the Council would have set in a personal budget or local mental health after-care limit to meet the person's eligible needs by arranging or providing accommodation of the same type. For the purposes of agreeing a 'top-up' fee the Council will consider what personal budget it would have set at the time care and support is needed. It will not automatically default to the cheapest rate or to any other arbitrary figure.

Frequency of Payments

- 1.26. In agreeing any 'top-up' arrangement, the Council will clearly set out how often such payments need to be made, e.g. on a weekly or monthly basis.

Responsibility for Costs and to whom the Payments are Made

- 1.27. When entering into a contract to provide care in a setting that is more expensive than the amount identified in the personal budget, the Council is responsible for the total cost of that placement. This means that if there is a break down in the arrangement of a 'top-up', for instance if the person making the 'top-up' ceases to make the agreed payments, then the Council would be liable for the fees until it has either recovered the additional costs it incurs or made alternative arrangements to meet the cared for person's needs.
- 1.28. In terms of securing the funds needed to meet the total cost of the care (including the 'top-up' element) the Council has three options, except where the care and support is being funded via a Deferred Payment Agreement, in which case it is added to the amount owed. In choosing which option to take the Council will need to consider the individual circumstances of the case, and should be able to assure itself of the security of the arrangements and that there is no undue pressure on the person making the 'top-up' payment to increase the level of payment. The options are:
- Treat the 'top-up' payment as part of the person's income and therefore recover the costs from the person concerned through the financial assessment (where the 'top-up' payments are 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 'top-up' (if this is not the cared for person) and the provider that payment for the 'top-up' element can be made directly to the provider with the Council paying the remainder.
 - The person making the 'top-up' payments pays the 'top-up' amount to the Council. The Council then pays the full amount to the provider.
- 1.29. In the case of people with eligible needs who pay in full for their own care and support who ask the Council to arrange their care, refer to point 19 of this policy.

Provisions for Reviewing the Agreement

- 1.30. As with any financial arrangement, an agreement to make a 'top-up' payment must be reviewed. The Council will 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.

Consequences of Ceasing to Make Payments

- 1.31. The Council will advise in writing the consequences should there be a break down in the arrangement to meet the cost of the 'top-up'. This should include that the person may be moved to an alternative accommodation where this would be suitable to meet their needs and affordable within the personal budget. As with any change of circumstance, the Council will undertake a new assessment before considering this course of action, including consideration of a requirement for an assessment of health needs, and have regard to the person's wellbeing.

Price Increases

- 1.32. 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 'top-up' payments (if this is different from the cared for person), the Council's commissioning arrangements or a change in provider costs. However, these changes may not occur together and the Council will set out in writing how these changes will be dealt with.
- 1.33. The Council will set out in writing to the person its approach to how any increased costs may be shared/met. This would also include details of how agreement will be reached on the sharing of any price increases. This will 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 Council would have increased the personal budget and there is an alternative option that would be affordable within that budget.
- 1.34. 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 themselves makes, this may not reduce the need for a 'top-up' payment.

Consequences of Changes in Circumstances of the Person Making the 'Top-up' Payment

- 1.35. The person making the 'top-up' payment could see an unexpected change in their financial circumstances that will impact their ability to continue to pay the 'top-up' fee. Where a person is unable to continue making 'top-up' payments, the Council 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 Council will set out in writing how it will respond to such a change and what the responsibilities of the person making the 'top-up' payment are in terms of informing the Council of the change in circumstances.

First Party 'Top ups'

- 1.36. The person whose needs are to be met by the accommodation may themselves choose to make a 'top-up' payment only in the following circumstances:
- Where they are subject to a 12-week property disregard;
 - Where they have a deferred payment agreement in place with the Council. Where this is the case, the terms of the agreement will reflect this arrangement.

- Where they are receiving accommodation provided under section 117 for mental health aftercare.

People who are Unable to Make Their Own Choice

- 1.37. There will be cases where a person lacks capacity to express a choice for themselves. The Council would 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 Council's opinion it would be against the best interests of the person.

Self-funders who ask the Local Authority to Arrange Their Care

- 1.38. In supporting self-funders to arrange care, the Council may choose to enter into a contract with the preferred provider, or may broker the contract on behalf of the person. Where the Council is arranging and managing the contract with the provider, it will ensure that there are clear arrangements in place as to how the costs will be met, including any 'top-up' element.
- 1.39. Ultimately, the Council will assure 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 for the costs of their care and support including, in cases where they choose a setting that is more expensive, the top-up element of the costs of that setting.

Choice of Accommodation and Mental Health After-Care

- 1.40. Regulations made under section 117A of the Mental Health Act 1983 enable persons who qualify for after-care under section 117 to express a preference for particular accommodation if accommodation of the types specified in the regulations is to be provided as part of that after-care. The Council is required to arrange the provision of the preferred accommodation if the conditions in the regulations are met.
- 1.41. The regulations give people who receive mental health after-care broadly the same rights to choice of accommodation as someone who receives care and support under the Care Act 2014. After-care is provided free of charge. The person will be fully involved in the care planning process.
- 1.42. An adult has the right to choose accommodation provided that:
- The preferred accommodation is of the same type that the Council has decided to provide or arrange;
 - It is suitable for the person's needs;
 - It is available for mental health after-care purposes; and
 - Where the accommodation is not provided by the Council, the provider of the accommodation agrees to provide the accommodation to the person on the Council's terms.
- 1.43. Where the cost of the person's preferred accommodation is more than the Council would provide in a personal budget or local mental health after-care limit to meet the person's needs, then the Council will arrange for them to be placed there, provided that either the person or a third party is willing and able to meet the additional cost.

- 1.44. Where the person subject to section 117 has chosen more expensive accommodation, the person or a third party can meet the additional cost when the Council is providing, or arranging for the provision of accommodation in discharge of the after-care duty.
- 1.45. In securing the funds needed to meet the additional cost, the Council may:
- Agree with the person and the provider, and in cases where a third party is paying the 'top-up', agree with that third party, that payment for the additional cost can be made directly to the provider with the Council paying the remainder; or
 - The person or the third party pays the 'top-up' amount to the Council. The Council then pays the full amount to the provider.

Information and Advice

- 1.46. Where a 'top-up' arrangement is being entered in to, all parties should fully understand their responsibilities, liabilities and the consequences of the arrangements. The Council will provide the third party with sufficient information and advice to support them to understand the terms of the proposed written agreement before entering in to it.

Appendix [B]: Treatment of Capital

Introduction

- 1.47. This Appendix covers:
- The treatment of capital when conducting a financial assessment in all circumstances.
- 1.48. The Council must assess the income and capital of the person when undertaking a financial assessment. This Appendix covers the treatment of capital and should be read in conjunction with Appendix [C] on the treatment of income. The details of the sources of capital which the Council will disregard are set out in the regulations.
- 1.49. The financial assessment will look across all of a person's assets – both capital and income – deciding which is capital and which income is, and assess those assets according to the regulations and guidance. The Council will refer to Appendix [C] on the treatment of income and Appendix [E] on deprivation of assets when conducting a financial assessment. The treatment of income will vary depending on the type of setting a person is receiving care in. The treatment of capital, as set out in this Appendix, is broadly the same for all settings. Where there is a distinction between care homes and all other settings, this is clearly set out.
- 1.50. In assessing what a person can afford to contribute the Council must apply the upper and lower capital limits. The upper capital limit is currently set at £23,250 and the lower capital limit at £14,250.
- 1.51. A person with assets above the upper capital limit will be deemed to be able to afford the full cost of their care. Those with capital between the lower and upper capital limit will be deemed as able to make a contribution, known as “tariff income”, from their capital. Any capital below the lower capital limit should be disregarded.

Defining Capital

- 1.52. Capital can mean many different things and the intention is not to give a definitive definition here as the Council will 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.
- 1.53. 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
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

- iii. Bank.
- iv. SAYE schemes.

Example of tariff income:

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

- v. Unit Trusts.
- vi. Co-operatives share accounts.
- vii. Cash.
- viii. Trust funds

Capital limits

- 2.8. The capital limits set out at what point a person is able to access the Councils support and how much support they receive. The Council apply both the upper and lower capital limit for people living in a care home but only the lower capital limit for people living outside of a care home setting. The capital limits for 2015/16 are:
- a. Upper capital limit: £23,250;
 - b. Lower capital limit: £14,250.

In a Care Home Setting

- 2.9. In assessing what a person can afford to contribute towards care in a care home setting, the Council will apply the upper and lower capital limits.
- 2.10. A person with assets above the upper capital limit will be deemed to be able to afford the full cost of their care. Those with capital between the lower and upper capital limit will be deemed as able to make a contribution, known as 'tariff income', from their capital.
- 2.11. If a person clearly has capital in excess of the upper capital limit, there will be no need to make a wider assessment. If a person is near the upper capital limit, the Council will plan ahead for when assets have been spent down and a person may therefore fall below the upper capital limit.
- 2.12. The capital which a person has below the lower capital limit will be disregarded in the calculation of tariff income.
- 2.13. Where a person has assets between the lower and upper capital limits the Council will apply tariff income. This assumes that for every £250 of capital, or part thereof, a person is able to afford to contribute £1 per week towards the cost of their eligible care needs.

Outside a Care Home Setting

- 2.14. The Council has not currently set an upper capital limit for a person receiving care and support outside of a care home setting.
- 2.15. The capital which a person has below the lower capital limit will be disregarded in the calculation of tariff income.

- 2.16. Where a person has assets above the lower capital limit the Council will apply tariff income. This assumes that for every £250 of capital, or part thereof, a person is able to afford to contribute £1 per week towards the cost of their eligible care needs.

Cases where it is Not Clear Whether a Payment is Capital or Income

Example of capital dispute:

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

Example of capital dispute:

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

- 2.18. 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 will be disregarded as capital.
- 2.19. In assessing a person's assets it may not be immediately clear where a resource is capital or income, particularly where a person is due to receive planned payments. In general, a planned payment of capital is one which is:
- a. Not in respect of a specified period; and
 - b. Not intended to form part of a series of payments.
- 2.20. The Council will also have regard to the guidance on capital treated as income.

Who Owns the Capital?

- 2.21. 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.
- 2.22. Where ownership is disputed, the Council will request written evidence to prove where the ownership lies. If a person states they are holding capital for someone else, the Council will obtain evidence of the arrangement, the origin of the capital and intentions for its future use and return to its rightful owner.
- 2.23. Where a person has joint beneficial ownership of capital, except where there is evidence that the person owns an unequal share, the total value will be divided equally between the joint owners and the person will 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.

- 2.24. In some cases, a person may be the legal owner of a property but not the beneficial owner of a property. They have no rights to the proceeds of any sale. In such circumstances the property will not be taken into account.

Calculating the Value of Capital

- 2.25. The Council will 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.
- 2.26. 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.
- 2.27. Where a precise valuation is required, a professional valuer may 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.
- 2.28. Where the value of a property is disputed, the Council will aim to resolve this as quickly as possible. The Council may 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 the Council 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.
- 2.29. The value of National Savings Certificates (and Ulster Savings Certificates) (Premium Bonds) is assessed in the same way as other capital assets. To enable an accurate value for the savings certificates the person must provide details of the:
- certificate issue number(s);
 - purchase price;
 - date of purchase.

Assets Held Abroad

- 2.3. Where capital is held abroad and all of it can be transferred to the UK, its value in the other country will be obtained and taken into account *less* any appropriate deductions under paragraph 14. Where capital is held jointly, it will 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.

- 2.31. Where the capital cannot be wholly transferred to the UK due to the rules of that country, for example currency restrictions, the Council will require evidence confirming this fact. Examples of acceptable evidence could include documentation from a bank, government official or solicitor in either this country or the country where the capital is held.
- 2.32. Where some restriction is in place, the Council will seek evidence showing what the asset is, what its value is and to understand the nature and terms of the restriction so that should this change, the amount can be taken into account. The Council will also take into account the value that a willing buyer would pay in the UK for those assets, but be aware that it may be less than the market or surrender value in the foreign country.

Capital Not Immediately Realisable

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

Example of diminishing notional capital:

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

The notional capital may therefore be reduced by the difference between the sum Hayley is paying (£400) and would have paid without the notional capital (£100). If she did not have the notional capital it would not affect her ability to pay. This is as she has an income of £124.40 and a personal allowance of £24.40 per week and would therefore be assessed as being able to pay £100.

Notional Capital

- 2.5. 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.
- 2.51. Notional capital may be capital which:
- a. would be available to the person if they applied for it;
 - b. is paid to a third party in respect of the person;
 - c. the person has deprived themselves of in order to reduce the amount of charge they have to pay for their care.
- 2.52. A person's capital will therefore be the total of both actual and notional capital. However, if a person has actual capital above the upper capital limit, it may not be necessary to consider notional capital in a care home setting.
- 2.53. Where a person has been assessed as having notional capital, the value of this will be reduced over time. The value of notional capital will be reduced weekly by the difference between the weekly rate the person is paying for their care and the weekly rate they would have paid if notional capital did not apply.
- 2.54. Where a person is benefiting from the 12-week property disregard and has chosen to pay a "top-up" fee from their capital resources between the upper and lower capital

limits, the level of tariff income that applies during those 12 weeks is the same as it would be if the person were not using the capital to “top-up”.

Capital Disregarded

- 2.6. The following capital assets will be disregarded:
- a. Property in specified circumstances (see point 12 of this policy);
 - 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. 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;
 - The value of a right to receive:
 - Income under an annuity;
 - Outstanding instalments under an agreement to repay a capital sum;
 - Payment under a trust where the funds derive from a personal injury;
 - Income under a life interest or a life-rent;
 - Income (including earnings) payable in a country outside the UK which cannot be transferred to the UK;
 - An occupational pension;
 - Any rent. Please note however that this does not necessarily mean the income is disregarded. Please see Appendix C for 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 area treated as income (and disregarded in the calculation of income);
 - m. Any Social Fund payment;
 - n. Refund of tax on interest on a loan which was obtained to acquire an interest in a home or for repairs or improvements to the home;
 - o. Any capital resources which the person has no rights to as yet, but which will come into his possession at a later date, for example on reaching a certain age;

- p. Payments from the Department of Work and Pensions to compensate for the loss of entitlement to Housing Benefit or Housing Benefit Supplement;
- q. The amount of any bank charges or commission paid to convert capital from foreign currency to sterling;
- r. Payments to jurors or witnesses for court attendance (but not compensation for loss of earnings or benefit);
- s. Community charge rebate/council tax rebate;
- t. Money deposited with a Housing Association as a condition of occupying a dwelling;
- u. Any Child Support Maintenance Payment;
- v. The value of any ex-gratia payments made on or after 1st February 2001 by the Secretary of State in consequence of a person's, or person's spouse or civil partner's imprisonment or internment by the Japanese during the Second World War;
- w. Any payment made by a local authority under the Adoption and Children Act 2002 (under section 2(b)(b) or 3 of this act);
- x. The value of any ex-gratia payments from the Skipton Fund made by the Secretary of State for Health to people infected with Hepatitis C as a result of NHS treatment with blood or blood products;
- y. Payments made under a trust established out of funds provided by the Secretary of State for Health in respect of persons suffering from variant Creutzfeldt-Jakob disease to the victim or their partner (at the time of death of the victim);
- z. Any payments under Section 2, 3 or 7 of the Age-Related Payments Act 2004 or Age Related Payments Regulations 2005 (SI No 1983);

Example of disregarded capital:

Mr T is a former Far East prisoner of war and receives a £10,000 ex-gratia payment as a result of his imprisonment. He now requires care and support and has a total of £25,000 in capital. When calculating how much capital should be taken into account, the Council will disregard the first £10,000 – the value of the ex-gratia payment. The normal capital rules are then applied to the remaining £15,000. In this case, the first £14,250 would be completely disregarded in addition to the £10,000. Tariff income would therefore only be applied to the remaining £750.00.

- (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

- 2.7. In the following circumstances the value of the person's *main or only* home will be disregarded:
- a. Where the person is receiving care in a setting that is not a care home;
 - b. If the person's stay in 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 35 of the person or member of the person's family who is:
 - Aged 60 or over, or
 - Is a child of the resident aged under 18, or
 - Is incapacitated.

- 2.8. 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

Example of emotional attachment to a property:

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

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

Example of occupying a property when not physically present:

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

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

o. Aunt

p. Nephew

q. Niece

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

- 2.9. 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.
- 2.10. 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 applies:
- 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.
- 2.11. 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 Council will 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.
- 2.12. 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 Council will 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.

Example of local authority discretion to apply a property disregard:

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

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

2.13. The Council will take account of the individual circumstances of each case and will consider the following factors in making a decision:

- Does the relative currently occupy another property?
- If the relative has somewhere else to live do they own or rent the property (i.e. how secure/permanent is it?)
- If the relative is not physically present is there evidence of a firm intention to return to or live in the property
- Where does the relative pay council tax?
- Where is the relative registered to vote?
- Where is the relative registered with a doctor?
- Are the relative's belongings located in the property?
- Is there evidence that the relative has a physical connection with the property?

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

Discretionary Disregard

2.15. The Council has a duty to ensure that expenditure incurred in relation to the cost of care is properly and fully recovered from qualifying assets. This means that, for any person receiving care, the cost of that care is properly met from income and capital assets, in accordance with legislative provision and guidance.

Such guidance also provides that the Council may wish to apply their discretion in disregarding property other than in those cases where it is mandatory to do so. The Council will consider such applications as may be made, however, Guidance also states that decisions must also be balanced against the need to ensure that a person's assets are not preserved at public expense.

In making a decision on whether to agree a discretionary disregard of your property we will consider our financial resources, and the following factors:

- What is the nature and closeness of the relationship between you and the person remaining in the property?
- Has the person cared for you and for how long? If so, what is the level and nature of the care provided by the person? Has any care been provided by others? If so what is the relationship to you and what is the level and nature of that care?
- How long has the person lived in the property?
- Where did the person reside (live as their main or usual place of residence) before moving in to the property and what has happened to their former accommodation and any proceeds of sale?
- What was the main reason for the person to move into your home? Were there any other factors affecting the decision to move into your home?

- What is the age, employment status and financial circumstances of the person?
- When did you first have identified care needs?
- When was care home accommodation first considered as an option for you?

The Council will consider such applications on a case by case basis.

12-week Property Disregard

- 2.16. A key aim of the charging policy is to prevent people being forced to sell their home at a time of crisis. The regulations under the Care 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.
- 2.17. The Council will disregard the value of a person's *main or only* home when the value of their non-housing assets is below the upper capital limit for 12 weeks in the following circumstances:
- a. When they first enter a care home as a permanent resident; or
 - b. When a property disregard other than the 12-week property disregard unexpectedly ends because the qualifying relative has died or moved into a care home.
- 2.18. In addition, the Council 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 Council will consider the individual circumstances of the case. Such circumstances might include a fall in share prices or an unanticipated debt. An example is given below.

Example of an unexpected change in financial circumstances:

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

Although already in a care home and likely to remain responsible for paying for this care, Harry approaches the Council for assistance and to seek a Deferred Payment Agreement. During the financial assessment the Council agrees that the circumstances could not have been foreseen and uses its discretion to disregard the value of his property for the first 12 weeks. This provides Harry with the space he needs to make arrangements for the Deferred Payment Agreement to be put in place and enable him to continue to meet the cost of his care.

Business Asset partial disregard 26-Week Disregard

- 2.19. The following capital assets must be disregarded for at least 26 weeks in a financial assessment. However, the Council 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.

- i. 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. [Schedule 2 Paragraph 9 of the Care and Support (Charging and Assessment of Resources) regulations]
- ii. 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. [Schedule 2 Paragraph 12 of the Care and Support (Charging and Assessment of Resources) regulations]
- iii. 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. [Schedule 2 Paragraph 22 of the Care and Support (Charging and Assessment of Resources) regulations]
- iv. 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. [Schedule 2 Paragraph 21 of the Care and Support (Charging and Assessment of Resources) regulations]
- v. 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. [Schedule 2 Paragraph 6 of the Care and Support (Charging and Assessment of Resources) regulations]
- vi. 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. [Schedule 2 Paragraph 11 of the Care and Support (Charging and Assessment of Resources) regulations]
- vii. 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. [Schedule 4 Paragraph 22 of the Care and Support (Charging and Assessment of Resources) regulations]

52-week Disregard

- 2.20. The following payments of capital will be disregarded for a maximum of 52 weeks from the date they are received.
- a. The balance of any arrears of or any compensation due to non-payment of:
 - i. Mobility supplement
 - ii. Attendance Allowance
 - iii. Constant Attendance Allowance
 - iv. Disability Living Allowance / Personal Independence Payment
 - v. Exceptionally Severe Disablement Allowance
 - vi. Severe Disablement Occupational Allowance
 - vii. Armed forces service pension based on need for attendance
 - viii. Pension under the Personal Injuries (Civilians) Scheme 1983, based on the need for attendance
 - ix. Income Support/Pension Credit

- x. 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 will be treated as income over the period for which they are payable. Any money left over after the period for which they are treated as income has elapsed will be treated as capital. [Schedule 2 Paragraphs 10 and 11 of the Care and Support (Charging and Assessment of Resources) regulations]

- 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. [Schedule 2 Paragraph 22]

- d. Personal Injury Payments.

2 Year Disregard

2.21. The Council will disregard payments made under a trust established out of funds by the Secretary of State for Health in respect of vCJD to:

- a. A member of the victim's family for 2 years from the date of death of the victim (or from the date of payment from the trust if later); or
- b. A dependent child or young person until they turn 18. [Schedule 2 Paragraph 27]

Other Disregards

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

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

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

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

Treatment of Investment Bonds

2.25. The treatment of investment bonds is currently complex. This is in part because of the differing products that are on offer. As such, the Council will seek advice from Legal Services.

2.26. 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 will be disregarded as a capital asset in the financial assessment.

Capital Treated as Income

2.27. The following capital payments will be treated as income. The Council therefore will have regard to Appendix C 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 Council 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. [Regulation 16 of the Care and Support (Charging and Assessment of Resources) regulations]

Earnings

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

Income Treated as Capital

2.29. The following types of income will be treated as capital:

- a. Any refund of income tax charged on profits of a business or earnings of an employed earner; Any holiday pay payable by an employer more than 4 weeks after the termination or interruption of employment;
- b. Income derived from a capital asset, for example, building society interest or dividends from shares. This should be treated as capital from the date it is normally due to be paid to the person. This does not apply to income from certain disregarded capital;
- c. Any advance of earnings or loan made to an employed earner by the employer if the person is still in work. This is as the payment does not form part of the employee's regular income and would have to be repaid;
- d. Any bounty payment paid at intervals of at least one year from employment as:
 - i. A part time fireman;
 - ii. An auxiliary coastguard;
 - iii. A part time lifeboat man;
 - iv. A member of the territorial or reserve forces.
- e. Charitable and voluntary payments which are neither made regularly nor due to be made regularly, apart from certain exemptions such as payments from AIDS trusts.

Payments will include those made by a third party to the person to support the clearing of charges for accommodation.

- f. Any payments of arrears of contributions by a local authority to a custodian towards the cost of accommodation and maintenance of a child. [Regulation 18 of the Care and Support (Charging and Assessment of Resources) regulations]

Capital Available on Application

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

- a. Capital held in a discretionary trust;
- b. Capital held in a trust derived from a payment in consequence of a personal injury;
- c. Capital derived from an award of damages for personal injury which is administered by a court;
- d. Any loan which could be raised against a capital asset which is disregarded, for example the home. [Regulation 21(2) of the Care and Support (Charging and Assessment of Resources) regulations]

2.31. The Council will distinguish between:

- a. Capital already owned by the person but which in order to access they must make an application for. For example:
 - i. Money held by the person's solicitor;
 - ii. Premium Bonds;
 - iii. National Savings Certificates;
 - iv. Money held by the Registrar of a County Court which will be released on application; and
- b. Capital not owned by the person that will become theirs on application, for example an unclaimed Premium Bond win. This will be treated as notional capital. [Regulation 21(2) of the Care and Support (Charging and Assessment of Resources) regulations]

2.32. Where the Council treats capital available on application as notional capital the Council will do so only from the date at which it could be acquired by the person. [Regulation 21(2) of the Care and Support (Charging and Assessment of Resources) regulations]

2.33. When applying notional income to a defined contribution pension this will be calculated as the maximum income that would be available if the person had taken out an annuity. Further guidance is provided in Appendix C.

Appendix [C]: Treatment of Income

3.1 The treatment of income when conducting a financial assessment in all circumstances.

This is divided into:

- Care homes;
- All other settings;

3.12. The Council will assess the income of the person when undertaking a financial assessment.

3.13. There are differences in how income is treated in a care home and in all other settings. Charging a person in a care home is provided for in a consistent national framework. When charging a person in all other settings, the Council has more discretion to enable it to take account of local practices and innovations. This policy sets out the common issues and then those particular to each setting.

3.14. This Appendix covers the treatment of income and should be read in conjunction with Appendix B on the treatment of capital. The detail of the sources of income which the Council will disregard is set out in this policy.

Common issues

3.2. The following section sets out the issues common to charging for all settings.

3.21. Only the income of the cared-for person can be taken into account in the financial assessment of what they can afford to pay for their care and support. Where this person receives income as one of a couple, the starting presumption is that the cared-for person

has an equal share of the income. The Council will also consider the implications for the cared-for person's partner.

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

3.23. Income will always be taken into account unless it is disregarded under the regulations.

3.24. Income that is disregarded will either be:

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

3.25. all cases, irrespective of setting, employed and self-employed earnings are fully disregarded. Any income earned by the service user's spouse, partner, or family member residing in the same address will also be fully disregarded

3.26. 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.

3.27. 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.

3.28. 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.

3.29. 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.

3.30. 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

3.31. The Council will take most of the benefits people receive into account. Those the Council will disregard are listed below. However, the Council will 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 Council.

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

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

3.33. Please refer to Table 1 below which details benefits that will be included in the assessment and benefits which will be disregarded in part or in full for people living in a 'Care Home Setting' and 'Any Other Setting'.

Table 1 Name of Benefit	Care Home Setting	Any Other Setting
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Attendance Allowance, including Constant Attendance Allowance	Included I thought they stopped receiving AA when in a perm care home? If a person goes in for a temporary period this benefit will be disregarded in full.	Included The Night Care element when the benefit is paid at the higher rate, will be disregarded if the care and support package does not include care during the night. Night services are defined as the period from when the household closes down for the night. Dressing in the morning and undressing before going to bed are daytime activities.
Disability Living Allowance (Care component)	Included As above If a person goes in for a temporary period this benefit will be disregarded in full.	Included The Night Care element when the benefit is paid at the higher rate, will be disregarded if the care and support package does not include care during the night. Night services are defined as the period from when the household closes down for the night. Dressing in the morning and undressing before going to bed are daytime activities.
Personal Independence Payment (Daily Living component)	Included As above If a person goes in for a temporary period this benefit will be disregarded in full.	Included with a disregarded element The Night Care element when the benefit is paid at the higher rate, will be disregarded if the care and support package does not include care during the night.

Appendix [D]: Household Related Expenditure (HRE)

What is HRE?

4.1. Household related expenditure is the cost incurred by the service user in maintaining their home. For this purpose the “home” is the service user’s main place of residence. Allowable housing costs (e.g. rent/mortgage/council tax) will only be allowed in the financial assessment where the service user is liable to pay these costs. Where the service user is not liable for these costs, but contributes towards these through a private board agreement or similar, then the service user will be expected to meet this expenditure from their guaranteed income

What expenditure can be taken into account?

4.12. The following items of HRE are fully taken into account in the financial assessment:

- **Council Tax** (net of Council Tax support)
- **Rent** (if payments are classed as rent for housing benefit purposes, amount taken into account is net of housing benefit if in payment)
- **Mortgage Payments** (unless paid through Income Support/Pension Credit)
- **Ground Rent Hire purchase** agreement to buy the home (e.g. caravan)
- Any other items of reasonable household expenditure that the service user wishes to claim for will need to be evidenced and included in the financial assessment form that is completed.

Appendix [E]: Disability Related Expenditure (DRE)

5.1. Disability related expenditure is the additional cost or costs incurred by the service user, as a direct result of their disability or medical condition.

Service users who are in receipt of care, with the exception of permanent care in a care home, and are in receipt of disability benefits (Attendance Allowance/Disability Living Allowance and Personal Independence Payment) will have a standard rate of DRE automatically applied to their financial assessment in recognition of their disability. The service user will also be invited to request a review of the DRE award within the assessment notification letter, if they feel the standard rate does not meet their current needs

5.2. Only costs incurred and evidenced by the service user will be considered as part of the assessment as allowable expenditure. The Council presently uses guide weekly disregard allowance rates for certain types of disability related expenditure, and usually these are treated as maximum amounts that can be disregarded in the financial assessment calculation.

5.3. However, individual circumstances are taken into account, and reasonableness is applied during the financial assessment determination process based on the information and evidence provided.

5.4. The Council has the right not to allow costs that should be met by other agencies, such as the NHS. This applies to therapies such as physiotherapy, chiropody and incontinence pads.

5.5. The Council will consider the following DRE within the financial assessment calculation:

- payment for any community alarm system;
- excessive laundry costs, bedding etc. due to incontinence. However, the Council will not make allowances at a higher rate where a reasonable alternative is available at a lower cost;
- heating or metered water costs, above average levels for the area and housing type, occasioned by age, medical condition or disability; special clothing and footwear; special medically advised dietary needs;
- reasonable costs of basic garden maintenance, cleaning or domestic help, if such is necessitated by the service user's disability and is not already met; reasonable costs paid to a personal assistant (not a household member) who carries out necessary tasks, for example, around the house;
- purchase, maintenance and repair of disability related equipment, including equipment or transport needed to enter or remain in work; this may include, for example, IT costs, where necessitated by the disability;
- specialist internet access, for example, for blind and partially sighted people; 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. Where the Council provides transport and the service user wishes to use alternative transport at a higher cost, the cost of Council provision will be used to determine any allowance

- All other expenditure will usually be assessed as either an everyday living cost, or will be reviewed as a specific need against the service users' care and support plan, taking individual circumstances into account.

5.6. Expenditure which is the responsibility of another organisation (such as the NHS/PCT) will not be considered as DRE by the Local Authority. Examples of this includes but is not limited to:

- a. Physiotherapy
- b. Travel to and from Hospital

5.7. In assessing disability-related expenditure, the authority should include the following (which costs may need to be evidenced):

- a. Payment for any community alarm system (net of Housing Benefit or Supporting People Grant)
- b. Costs of any privately arranged care services provided it is agreed necessary to meet eligible social care needs, including respite care
- c. Costs of any speciality items occasioned by disability, e.g.:
 - i. Specialist washing powders or laundry
 - ii. Additional costs of special dietary needs due to illness or disability (the user may be asked for permission for us to approach their GP in cases of doubt)
 - iii. Special clothing or footwear, for example, where this needs to be specially made, or additional wear and tear to clothing and footwear caused by disability
 - iiii. Additional costs of bedding, for example, because of incontinence
 - iv. Any heating costs or metered costs of water, above the average levels for the area and housing type, occasioned by age, medical condition, or disability
 - vi. Reasonable costs of basic garden maintenance, cleaning, or domestic help, if necessitated by the individuals disability and not met by social services
 - vii. 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
 - viii. Personal assistance costs, including any household or other necessary costs arising for the user
 - ix. Other transport costs necessitated by illness or disability, including costs of transport to day centres, over and above the mobility component of DLA, if in payment and available for these costs. In some cases, it may be reasonable for council not to take account of transport e.g. council-provided transport to day centres is available but has not been used
 - x. In other cases, it may be reasonable for Council not to allow for items where a reasonable alternative is available at lesser costs. For example, private purchases of incontinence pads, as these are available from the NHS.

Appendix [F]: Deferred payments

If you need to pay for your care but can't access all your money (for example, because it is tied up in a property you own) then a deferred payment agreement might be the right option for you.

Deferred payments have been introduced nationally as part of the Care Act and mean that people should not have to sell their homes to pay for their care, as they have sometimes had to do in the past.

With a deferred payment agreement we pay an agreed part of your weekly care and support bill for as long as necessary. You also pay a weekly contribution towards your care – that you have been assessed as being able to pay – from your income and other savings.

You can delay repaying us until you choose to sell your home, or until after your death.

How to find out if you are eligible for a deferred payment agreement

Deferred payment agreements will suit some people's circumstances better than others and not everyone will be eligible. You should be eligible for a deferred payment agreement if you:

- are receiving care in a care home (or you are going to move into one soon)
- own your own home (unless your partner or certain others live there)
- have savings and investments of less than £23,250 (not including the value of your home or your pension pot).

Use the online calculator on our website (link below) to give you an indication to whether you would be eligible to apply for a deferred payment and the amount you may receive.

The calculator does not replace our financial assessment.

<https://www.lewisham.gov.uk/myservices/socialcare/adult/money/Pages/Deferred-payments-scheme.aspx>

When to repay a deferred payment agreement

You have the option to sell your home and pay us back at any point. Or you can have a deferred payment agreement for the full length of your stay in a care home and pay it back out of your estate, following your death.

The amount you can defer by having a deferred payment agreement

The amount you can defer will depend on the value of your home, which determines your equity limit. As a guide, most people can use 80% to 90% of the equity available in their home.

The limit on equity is to protect you from not having enough money to pay for the costs of selling the property (like solicitor fees) and to protect us against a drop in housing prices and the risk that it may not get all the money back.

Applying for a deferred payment agreement if your spouse or civil partner lives in your house

If you need to move into a care home but your partner lives in your home then we will consider your partner's circumstances as well as your own.

Provided your partner lives in your home as their main or only home, and you are not estranged or divorced, then we will exclude the value of your home when it assesses your finances to work out how much you will have to pay for care and will not need a deferred payment agreement.

If you and another person part-own your property (and is disregarded) and you would otherwise be eligible for a deferred payment, we can consider a deferred payment.

Appendix [G]: Ways to Pay