Appendix C

Care and Support Statutory Guidance

Annex C: Treatment of income

This annex covers the treatment of income when conducting a financial assessment in all circumstances. This is divided into:

- care homes
- all other settings

The purpose of this annex is to provide local authorities with detailed guidance on how to apply to the Care and Support (Charging and Assessment of Resources) Regulations 2014, in terms of how to treat different types of income when calculating what a person can afford to contribute to the cost of their eligible care needs.

1) This section of the guidance only applies where a local authority has chosen to charge a person for the services it is arranging and therefore must undertake a financial assessment. When doing so, it must assess the income and capital of the person.

2) There are differences in how income is treated in a care home and in all other settings. Charging a person in a care home is provided for in a consistent national framework. When charging a person in all other settings, a local authority has more discretion to enable it to take account of local practices and innovations. The guidance sets out the common issues and then those particular to each setting. Local authorities must read this guidance in all circumstances.

3) This annex covers the treatment of income and should be read in conjunction with Annex B on the treatment of capital. The detail of the sources of income which local authorities must disregard are set out in the regulations which accompany this guidance.

Common issues

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

5) 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. A local authority should also consider the implications for the cared-for person's partner.

6) Income is net of any tax or National Insurance contributions.

7) Income will always be taken into account unless it is disregarded under the regulations. Income that is disregarded will either be:

1. (a) partially disregarded
2. (b) fully disregarded

8) In all cases, irrespective of setting, employed and self-employed earnings are fully disregarded. [Regulation 13]

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

1. (a) any bonus or commission
2. (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
3. (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
4. (d) any holiday pay except any payable more than four weeks after the termination or interruption of employment
5. (e) any payment by way of a retainer
6. (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
7. (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)
8. (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)
9. (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
10. (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
11. (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

10) Earnings in relation to an employed earner do not include:

1. (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
2. (b) any payment made by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment
3. (c) any occupational/personal pension

11) 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.

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

1. (a) any payment to the person by way of a charge for board and lodging accommodation provided by the person
2. (b) any sports award

13) 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

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

15) Any income from the following sources must be fully disregarded:

1. (a) Direct Payments
2. (b) Guaranteed Income Payments made to veterans under the Armed Forces Compensation Scheme
3. (c) War Pension Scheme payments made to veterans with the exception of Constant Attendance Allowance payments
4. (d) the mobility component of Disability Living Allowance
5. (e) the mobility component of Personal Independence Payments

16) Any income from the following benefits must be taken into account when considering what a person can afford to pay from their income towards the cost of their care and support in a care home:

1. (a) Attendance Allowance, including Constant Attendance Allowance and Exceptionally Severe Disablement Allowance
2. (b) Bereavement Allowance
3. (c) Carers Allowance
4. (d) Disability Living Allowance (Care component)
5. (e) Employment and Support Allowance or the benefits this replaces such as Severe Disablement Allowance and Incapacity Benefit
6. (f) Income Support
7. (g) Industrial Injuries Disablement Benefit or equivalent benefits
8. (h) Jobseeker's Allowance
9. (i) Maternity Allowance
10. (j) Pension Credit
11. (k) Personal Independence Payment (Daily Living component)
12. (l) State Pension
13. (m) Universal Credit

17) Working Tax Credits must be taken into account when considering what a person can afford to pay from their income towards the cost of their care in a care home. However, they should be disregarded in the calculation of income for care and support arranged other than in a care home.

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

Annuity and pension income

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

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

20) Where a person is in a care home and has a spouse or civil partner who is not living in the same care home and is paying half of the value of their occupational pension, personal pension or retirement annuity to their spouse or civil partner, the local authority **must** disregard this payment.

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

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

23) Where the disregard is applied, only the following aspects may be disregarded:

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

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

1. (a) the loan must have been made as part of a scheme that required that at least 90% of that loan be used to purchase the annuity
2. (b) the annuity ends with the life of the person who obtained the loan, or where there are 2 or more annuitants (including the person who obtained the loan), with the life of the last surviving annuitant
3. (c) the person who obtained the loan or one of the other annuitants is liable to pay the interest on the loan
4. (d) the person who obtained the loan (or each of the annuitant where there are more than one) must have reached the age of 65 at the time the loan was made
5. (e) the loan was secured on a property in Great Britain and the person who obtained the loan (or one of the other annuitants) owns an estate or interest in that property
6. (f) the person who obtained the loan or one of the other annuitant occupies the property as their main or only home at the time the interest is paid

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

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

1. (a) if a person has removed the funds and placed them in another product or savings account, they should be treated according to the rules for that product
2. (b) if a person is only drawing a minimal income, or choosing not to draw income, then a local authority can apply notional income. This must be the maximum income that could be drawn under an annuity product. If applying maximum notional income, any actual income should be disregarded to avoid double counting
3. (c) if a person is drawing down an income that is higher than the maximum available under an annuity product, the actual income that is being drawn down should be taken into account

Mortgage protection insurance policies

27) Any income from an insurance policy is usually taken into account. In the case of mortgage protection policies where the income is specifically intended to support the person to acquire or retain an interest in their main or only home or to support them to make repairs or improvements to their main or only home it must be disregarded. However, the income must be being used to meet the repayments on the loan. The amount of income from a mortgage protection insurance policy that should be disregarded is the **weekly sum of (a+b+c) listed below:**

1. a) the amount which covers the interest on the loan
2. b) the amount of the repayment which reduced the capital outstanding
3. c) the amount of the premium due on the policy

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

Other income that must be fully disregarded

29) Any income from the following sources **must** be fully disregarded:

1. (a) Armed Forces Independence Payments and Mobility Supplement
2. (b) Child Support Maintenance Payments and Child Benefit, except where the accommodation is arranged under the Care Act in which the adult and child both live
3. (c) Child Tax Credit
4. (d) Council Tax Reduction Schemes where this involves a payment to the person
5. (e) Disability Living Allowance (Mobility Component) and Mobility Supplement
6. (f) Christmas bonus
7. (g) dependency increases paid with certain benefits
8. (h) Discretionary Trust
9. (i) Gallantry Awards
10. (j) Guardian's Allowance
11. (k) Guaranteed Income Payments made to Veterans under the Armed Forces Compensation Scheme
12. (l) Payments made to Veterans under the War Pension Scheme with the exception of Constant Attendance Allowance
13. (m) Income frozen abroad
14. (n) income in kind
15. (o) pensioners Christmas payments
16. (p) Personal Independence Payment (Mobility Component) and Mobility Supplement
17. (q) personal injury trust, including those administered by a Court
18. (r) resettlement benefit
19. (s) savings credit disregard
20. (t) Social Fund payments (including winter fuel payments)
21. (u) war widows and widowers special payments
22. (v) any payments received as a holder of the Victoria Cross, George Cross or equivalent
23. (w) any grants or loans paid for the purposes of education; and
24. (x) payments made in relation to training for employment.
25. (y) any payment from the:
    1. (i) Macfarlane Trust
    2. (ii) Macfarlane (Special Payments) Trust
    3. (iii) Macfarlane (Special Payment) (No 2) Trust
    4. (iv) Caxton Foundation
    5. (v) The Fund (payments to non-haemophiliacs infected with HIV)

6. (vi) Eileen Trust
7. (vii) MFET Limited
8. (viii) Independent Living Fund (2006)
9. (ix) Skipton Fund
10. (x) London Bombings Relief Charitable Fund
11. (xi) Scottish Infected Blood Support Scheme
12. (xii) London Emergencies Trust
13. (xiii) We Love Manchester Emergency Fund

Savings credit

30) For people receiving care and support other than in a care home, the savings credit the adult receives should be fully disregarded.

Charitable and voluntary payments

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

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

Partially disregarded income

33) The following income is partially disregarded:

1. (a) the first £10 per week of War Widows and War Widowers pension, survivors Guaranteed Income Payments from the Armed Forces Compensation Scheme, Civilian War Injury pension, any War Disablement pension paid to non-veterans and payments to victims of National Socialist persecution (paid under German or Austrian law)
2. (b) a savings disregard based on qualifying is made to people as follows:

For individuals:

- where a person is in receipt of qualifying income of less than £133.82 per week there will be no Savings Disregard made
- where a person is in receipt of qualifying income between £133.82 and £155.60 per week the savings disregard is made, which will equal the actual amount of the savings credit received or a sum of £5.75 whichever is less
- where a person is in receipt of qualifying income in excess of £155.60 per week, and a savings credit reward is in payment, a flat rate savings disregard of £5.75 per week is made irrespective of how much the savings credit payment is
- where a person has qualifying income above the limit for receiving a savings credit reward (around £190.00 but could be higher if the person is severely disabled, has caring responsibilities or certain housing costs) a flat rate savings disregard of £5.75 is made

For couples:

- where a person is part of a couple (including a civil partnership) and is in receipt of qualifying income of less than £212.97 per week there will be no savings disregard made
- where a person who is part of a couple (including a civil partnership) and is in receipt of qualifying income between £212.97 and £237.55 per week the savings disregard is made, which will equal the actual amount of the savings credit received or a sum of £8.60 whichever is less
- where a person who is part of a couple (including a civil partnership) and is in receipt of qualifying income in excess of £237.55 per week, and a savings credit reward is in payment, a flat rate savings disregard of £8.60 per week is made irrespective of how much the savings credit payment is
- where a person who is part of a couple (including a civil partnership) and has qualifying income above the limit for receiving savings credit (around £278.00 but could be higher if the person is severely disabled, has caring responsibilities or certain housing costs) a flat rate savings disregard of £8.60 is made

The values of £155.60 and £237.55 above represent the standard minimum guarantee for an individual and couple respectively. These amounts are increased to an appropriate minimum guarantee where individuals and couples qualify as severely disabled or as carers because of receipt of qualifying benefits.

Notional income

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

35) Notional income should also be applied where a person who has reached pension credit qualifying age and has a personal pension plan but has not purchased an annuity or arranged to draw down the equivalent maximum annuity income that would be available from the plan. Notional income should be applied in line with paragraph 25 above. Estimates of the notional income can be received from the pension provider or from estimates provided by the Government Actuary's Department.

Example of notional income

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

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

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

Example of notional income in relation to new pension flexibilities

Ben has a pension fund worth £30,000. He has taken the opportunity to access this flexibly and as a result is only drawing down £5 a week as income at the point he begins to receive care and support. The equivalent maximum annuity income would be £120 per week. For the purposes of the financial assessment, the local authority can assume an income £120 per week.

38) However, there are some exemptions and the following sources of income must not be treated as notional income:

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

Disability-related expenditure

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

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

1. (a) payment for any community alarm system
2. (b) costs of any privately arranged care services required, including respite care
3. (c) costs of any specialist items needed to meet the person's disability needs, for example:
    1. (i) Day or night care which is not being arranged by the local authority
    2. (ii) specialist washing powders or laundry
    3. (iii) additional costs of special dietary needs due to illness or disability (the person may be asked for permission to approach their GP in cases of doubt)
    4. (iv) special clothing or footwear, for example, where this needs to be specially made; or additional wear and tear to clothing and footwear caused by disability
    5. (v) additional costs of bedding, for example, because of incontinence
    6. (vi) any heating costs, or metered costs of water, above the average levels for the area and housing type
    7. (vii) occasioned by age, medical condition or disability
    8. (viii) reasonable costs of basic garden maintenance, cleaning, or domestic help, if necessitated by the individual's disability and not met by social services

9. (ix) purchase, maintenance, and repair of disability-related equipment, including equipment or transport needed to enter or remain in work; this may include IT costs, where necessitated by the disability; reasonable hire costs of equipment may be included, if due to waiting for supply of equipment from the local council
10. (x) personal assistance costs, including any household or other necessary costs arising for the person
11. (xi) internet access for example for blind and partially sighted people
12. (xii) other transport costs necessitated by illness or disability, including costs of transport to day centres, over and above the mobility component of DLA or PIP, if in payment and available for these costs. In some cases, it may be reasonable for a council not to take account of claimed transport costs – if, for example, a suitable, cheaper form of transport, for example, council-provided transport to day centres is available, but has not been used
13. (xiii) in other cases, it may be reasonable for a council not to allow for items where a reasonable alternative is available at lesser cost. For example, a council might adopt a policy not to allow for the private purchase cost of continence pads, where these are available from the NHS

41) The care plan may be a good starting point for considering what is necessary disability-related expenditure. However, flexibility is needed. What is disability-related expenditure should not be limited to what is necessary for care and support. For example, above average heating costs should be considered.

Example of disability related expenditure

Zach is visually impaired and describes the internet as a portal into the seeing world – in enabling him to access information that sighted people take for granted. For example he explains that if a sighted person wants to access information they can go to a library, pick up a book or buy an appropriate magazine that provides them with the information they need.

The internet is also a portal into shopping. For example without the internet if Zach wanted to shop for clothes, food or a gift he would have to wait until a friend or family member could accompany him on a trip out, he would be held by their schedule and they would then have to explain what goods were on offer, what an item looked like, the colour and would inevitably be based on the opinion and advice of said friend. A sighted person would be able to go into a shop when their schedule suits and consider what purchase to make on their own. The internet provides Zach with the freedom and independence to do these things on his own.