



## BRIEFING PAPER

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

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## Summary

Since April 2015, new rules have applied on paying for care respect of those who either reside in a care home, or receive domiciliary care (i.e. care at home) and are in need of care and support from their local authority. The rules are set out in the Department of Health's [Care and Support Statutory Guidance](#) (last updated in August 2017).

In summary:

- everyone whose needs are met by the local authority must have a personal budget detailing how much support they are entitled to;
- there is a means-test applied to determine if someone is eligible for local authority financial support towards the cost of their care and support costs;
- where someone is receiving such support, they are expected to contribute their income (except any exempt income); however, they should have a specified amount left over each week for personal spending;
- if someone in a care home meets the eligibility criteria or if the local authority, at its discretion, otherwise allows, that person can defer paying for their care and support costs through, in effect, a loan, although they may be charged interest (a "deferred payments agreement");
- a care home resident's local authority funding can be "topped-up" to allow them to live in a more expensive care home, although in most cases such top-ups can only be made by a third party (i.e. not the care home resident).

At present, the value of a person's home is only taken into account in the means-test if they are a care home resident - even then there a number of circumstances where it has to be disregarded (e.g. if a spouse and certain other relatives continues to live it), and local authorities also have a general discretion to choose to disregard it.

In terms of possible reforms, information can be found in the Library briefing paper [Social care: Conservative manifesto's commitments on the means-test including the £100,000 limit \(England\)](#). For background on previous proposals for social care reform, see [Social care: Government reviews and policy proposals for paying for care since 1997 \(England\)](#).

This note applies to England only.

Further information on the current social care funding system can be found in:

- [Social Care: Direct Payments from a local authority \(England\)](#) (SN03735)
- [NHS Continuing Healthcare in England](#) (SN06128).

# 1. Personal budgets

The *Care Act 2014* provided the statutory basis for personal budgets for the first time, although they had previously been made available by local authorities.<sup>1</sup>

The Department of Health's [Care and Support Statutory Guidance](#) (CASS) explains that "the personal budget is the mechanism that, in conjunction with the care and support plan, or [for carers] support plan, enables the person, and their advocate if they have one, to exercise greater choice and take control over how their care and support needs are met".<sup>2</sup>

In terms of who is eligible for a personal budget, the CASS states that "everyone whose needs are met by the local authority, whether those needs are eligible, or if the authority has chosen to meet other needs, must receive a personal budget as part of the care and support plan, or support plan".<sup>3</sup> This means that people who are entirely self-funding their care and support needs without assistance from the local authority will not have a personal budget.<sup>4</sup>

The Department of Health explains that personal budgets mean:

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

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<sup>1</sup> The commitment to provide personal budgets was set out in the 2007 [Putting People First](#) 'concordat', signed by Central Government, Local Government, the professional leadership of adult social care and the NHS. The Labour Government expected the personal budget policy to be in place by 2011. The 2010 Coalition Government made a commitment to have all councils in England offering personal budgets by 2013 [see Department of Health press release, *Personal budgets for all and more breaks for carers*, November 2010], but this target was changed to moving 70% of users on to a personal budget by April 2013 [["Lamb scraps 100% personal budgets target"](#), *Community Care*, 26 October 2012].

<sup>2</sup> Department of Health, [Care and Support Statutory Guidance](#), 17 August 2017, para 11.3

<sup>3</sup> As above, para 11.7

<sup>4</sup> Under the proposals for the cap on social care costs – which was due to be introduced in April 2016 but has been deferred until April 2020 – self-funders were to have an "independent personal budget" calculated by their local authority in order to calculate their "care account", which would have allowed progress towards the cap on social care costs to be monitored. For more information, see the Library Briefing Paper, [Social care: how the postponed changes to paying for care, including the cap, would have worked \(England\)](#) (CBP 07106)



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- having greater choice and control over the way the personal budget is used to purchase care and support, and from whom.<sup>5</sup>

The CASS notes that “at all times, the wishes of the person must be considered and respected”, and that “the personal budget should not assume that people are forced to accept specific care options, such as moving into care homes, against their will because this is perceived to be the cheapest option”.<sup>6</sup>

Transparency is a key feature of the personal budget: the CASS states that “it is vital that the process used to establish the personal budget is transparent so that people are clear how their budget was calculated, and the method used is robust so that people have confidence that the personal budget allocation is correct and therefore sufficient to meet their care and support needs”.<sup>7</sup>

While the CASS does not specify how a personal budget should be calculated (noting that there are “many variations of systems used to arrive at personal budget amounts”), it does state that “regardless of the process used, the most important principles in setting the personal budget are transparency, timeliness and sufficiency”.<sup>8</sup> It adds that:

Local authorities should ensure that the method used for calculating the personal budget produces equitable outcomes to ensure fairness in care and support packages regardless of the environment in which care and support takes place, for example, in a care home or someone’s own home. Local authorities should not have arbitrary ceilings to personal budgets that result in people being forced to accept to move into care homes against their will.<sup>9</sup>

Anyone not satisfied with the level of their personal budget allocation can make a complaint to the local authority.<sup>10</sup>

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<sup>5</sup> Department of Health, *Care and Support Statutory Guidance*, 17 August 2017, para 11.3

<sup>6</sup> As above, para 11.7

<sup>7</sup> As above, para 11.4

<sup>8</sup> As above, paras 11.23 and 11.24

<sup>9</sup> As above, para 11.22

<sup>10</sup> As above, paras 11.47–11.48

## 2. The means-test guidance

### 2.1 The approach prior to April 2015

For care home residents, the Department of Health (DH) published the (now superseded) *Charging for Residential Accommodation Guide* (CRAG), which local authorities had to follow.<sup>11</sup> While there were some aspects for which a local authority had flexibility, for example in regard to disregarding a care home resident's property from the means-test, the guidance was quite prescriptive.

For those receiving domiciliary care, the DH's (now superseded) guidance *Fairer Charging Policies for Home Care and other non-residential Social Services* (often referred to as the "Fairer Charging" guidance) was applicable to local authorities with social services responsibilities. Unlike the CRAG, the *Fairer Charging* guidance set out minimum standards for local authorities upon which they should develop their own home care charging policies (should they have decided to charge in the first place).<sup>12</sup>

### 2.2 Changes from April 2015 – introduction of the Care and Support Statutory Guidance

From April 2015 following the implementation of the *Care Act 2014*, both the CRAG and the *Fairer Charging* guidance were replaced by the *Care and Support Statutory Guidance* (CASS).

Although there is now a single document covering both care home residents and recipients of care in their own home, there continue to be different approaches for care home residents versus others in the CASS, as it explains:

The detail of how to charge is different depending on whether someone is receiving care in a care home, or their own home, or another setting. However, they share some common elements [...].

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

Where a local authority chooses to charge, regulations determine the maximum amount a local authority can charge a person.

Only in care homes, where the financial assessment identifies that a person's resources exceed the capital limits, is a local authority precluded from paying towards the costs of care. Therefore, local authorities should develop and maintain a policy setting out how they will charge people in settings other than care homes. In deciding what it is reasonable to charge, local authorities must

<sup>11</sup> The last edition was published in April 2014 (Department of Health, [Charging for Residential Accommodation Guide](#), April 2014).

<sup>12</sup> The last edition was published in June 2013 (Department of Health, [Fairer Charging Policies for Home Care and other non-residential Social Services](#), June 2013).

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ensure that they do not charge more than is permitted under the regulations and as set out in this guidance<sup>13</sup>

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<sup>13</sup> Department of Health, [Care and Support Statutory Guidance](#), 17 August 2017, paras 8.4–8.7

## 3. The means-test

### 3.1 Summary

In order to receive local authority support towards the cost of care, whether in a care home or (where that local authority charges for such care) another setting such as at home, a person's finances are subject to an assessment (the means-test).

Both their capital and income are subject to the means-test. If a person has capital in excess of the higher capital limit (currently £23,250) and is in a care home they are always precluded from receiving financial support from their local authority towards the cost of their care; in other settings, the local authority might exercise its discretion to provide funding.<sup>14</sup>

For those who do receive local authority financial support, they are expected to contribute their income (except any income that is disregarded from the means-test), although they keep a certain prescribed amount each week for their own spending plus any additional income that, at its discretion, a local authority might permit.

Below are some of the key metrics for the means-test:

#### Capital means-test

• Higher capital limit	£23,250
• Lower capital limit	£14,250
Personal Expenses Allowance (care home residents only)	£24.90 per week
Minimum Income Guarantee (settings other than a care home)	basic levels of Income Support or the Guaranteed Credit element of Pension Credit plus a buffer of 25% e.g. for a single person over pension credit age, the MIG is £189.00, see the Annex to this note for a list

### 3.2 Key changes to the means-test from April 2015

Key changes made to the means-test in April 2015 included:

- allowing all care home residents (subject to meeting certain conditions) to have deferred payment agreements (in effect a loan), meaning that they are not required to sell their house to pay for the costs of their care home place during their lifetime;
- introducing interest charges on deferred payment agreements during a care home resident's lifetime.

<sup>14</sup> As above, para 8.7



### 3.3 The requirement to undertake a means-test

The CASS states that “where a local authority has decided to charge [for social care] ... it must carry out a financial assessment of what the person can afford to pay”. The assessment must be shared with the person once it is completed.<sup>15</sup>

In terms of reviewing the means-test, the CASS states that “a local authority must regularly reassess a person’s ability to meet the cost of any charges to take account of any changes to their resources. This is likely to be on an annual basis, but may vary according to individual circumstances” including “if there is a change in circumstance or at the request of the person”.<sup>16</sup>

There are, however, specified exceptions from undertaking a means-test: the “light-touch financial assessment” applies where it is apparent the person has significant financial resources that will mean they fail the means-test, are claiming certain benefits (for example, means-tested benefits), or where the local authority charges a small or nominal amount for a particular service which a person is clearly able to meet and would clearly have the relevant minimum income left.<sup>17</sup>

The means-test has two key parts: an assessment of capital, and of income.

### 3.4 The capital part of the means-test

Annex B of the CASS provides the detailed explanation of the capital part of the means-test.

There are two capital limits:

- an upper limit of £23,250; and
- a lower capital limit of £14,250.<sup>18</sup>

People who have income below the upper capital limit receive local authority support; however, for every full or part £250 above the lower limit, they are charged an additional £1 of “tariff income” per week which they have to pay towards the cost of their care.

People in settings other than care homes with capital in excess of the upper limit might be eligible for local authority support, at the local authority’s discretion.<sup>19</sup>

#### What is classed as capital

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

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<sup>15</sup> As above, para 8.16

<sup>16</sup> As above, para 8.17

<sup>17</sup> As above, paras 8.22–8.26

<sup>18</sup> As above, Annex B, para 3

<sup>19</sup> As above, para 8.7

Examples cited in the CASS include a person's home (although see section below), buildings, land, stocks and shares, bank and building society accounts and trust funds whether held in the UK or abroad (subject to any restrictions in repatriating the capital).<sup>20</sup> In addition, interest paid on savings accounts or dividends paid from shares, among other things, are treated as capital.<sup>21</sup>

## What is not classed as capital

A number of capital assets are specified in the CASS as being disregarded (i.e. not included) in the capital means-test, including the value of the home in certain circumstances (see below), the surrender value of any life assurance policy or annuity, and any social fund payment for example. A full list can be found in paragraph 33 in Annex B of the CASS.

## Who owns the capital

The key distinction is between the "legal owner" and the "beneficial owner".

A person might be the legal owner of a bank account, but not the beneficial owner, for example if someone is holding money in a bank account in their name but there is sufficient evidence to prove that the beneficial owner is someone else.<sup>22</sup>

The CASS provides the following example:

Lisa has £10,000 in a bank account in her own name and shares valued at £6,500. She provides evidence to show that the shares were purchased on behalf of her son who is abroad and that they will be transferred to her son when he returns to the UK. Although Lisa is the legal owner, she is holding the shares in trust for her son who is the beneficial owner. Only the £10,000 is therefore treated as Lisa's capital.<sup>23</sup>

## How capital is valued

The valuation of capital is usually the current market or surrender value of the capital asset, although where there are "expenses connected with the actual sale", such as legal fees to sell a house, then 10% of the capital value is deducted. Also, any outstanding debts secured on an asset (e.g. a mortgage) are offset against its valuation.<sup>24</sup>

## When capital can be disregarded from the means-test for a limited period

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

- "at least" a 26-week disregard (or longer at the discretion of the local authority), including business assets owned or part-owned by the person (who was self-employed) requiring social care after disease or disablement where they intend to resume business

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<sup>20</sup> As above, Annex B, paras 5–6 and Annex B, paras 20–22

<sup>21</sup> As above, Annex B, para 57

<sup>22</sup> As above, Annex B, paras 10–13

<sup>23</sup> As above, Annex B, para 11

<sup>24</sup> As above, Annex B, paras 14 and 15

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when fit again – a full list can be found in paragraph 47 in Annex B of the CASS;

- a maximum 52-week disregard for certain capital set out in paragraph 48 in Annex B of the CASS including, for example, arrears of or compensation due to non-payment of certain social security benefits, and personal injury payments;
- a 2-year disregard for payments to relatives to a victim of vCJD (Variant Creutzfeldt-Jakob disease) for 2 years from the date of death of the victim (or from the date of payment from the trust if later), or to a dependent child or young person until they turn 18.<sup>25</sup>

The CASS also allows a local authority to disregard the assets that are tied up in a business that someone owns or part-owns, but only where the person “is taking steps to realise their share of the assets”. In determining the length of time of the disregard, the local authority “must disregard the value for a period that it considers to be reasonable ... tak[ing] into account the length of time of any legal processes that may be needed”.<sup>26</sup>

### 3.5 Property and the capital part of the means-test (care home residents only)

When someone is a resident in a care home, it might be the case that their property is included in the capital part of the means-test. If this is the case, they might wish to enter into a deferred payment agreement which means that the property need not be sold until their death, although there are additional costs to this agreement – for more information, see section 4.1. In some cases, however, the value of the home is disregarded from the means-test.

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

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

- when a person first enters a care home as a permanent resident; or
- when a property disregard (other than the 12-week disregard) unexpectedly ends because the qualifying relative living at the home has died or moved into a care home; or
- at the discretion of the local authority, if there is a sudden and unexpected change in the person’s financial circumstances.<sup>27</sup>

#### When property is excluded from the means-test (long-term)

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

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<sup>25</sup> As above, Annex B, para 49

<sup>26</sup> As above, Annex B, paras 50–51

<sup>27</sup> As above, Annex B, paras 45–46

If a person's stay in a care home is temporary and they intend to return to their home, or are in the process of selling it in order to buy a new home that is more suitable to their needs.<sup>28</sup>

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

- the person's partner, former partner or civil partner, except where they are estranged;
- a lone parent who is the person's estranged or divorced partner;
- a "member of the person's family" or a "relative" of the person who is:
  - aged 60 or over, or
  - is a child of the resident aged under 18, or
  - is "incapacitated".

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

The term "relative" is quite broad and includes parent, children (including adopted and step-children), son- or daughter-in-law, uncle, aunt, nephew or niece, and (for some relatives) their spouse, civil partner or unmarried partner.<sup>29</sup> A full list can be found in this footnote.<sup>30</sup>

The term "incapacitated" is, as the CASS states, "not closely defined", although it adds that "it will be reasonable to conclude that a relative is incapacitated" if they are in receipt of a disability-related benefit (such as Personal Independence Payment), or their disability is such that they would qualify (although medical or other evidence may be needed).<sup>31</sup>

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

The CASS gives the example that "it may be appropriate to apply the disregard ... where it is the sole residence of someone who has given up their own home in order to care for the person who is now in a care home or is perhaps the elderly companion of the person".<sup>32</sup>

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<sup>28</sup> As above, Annex B, para 34

<sup>29</sup> As above, Annex B, paras 34–35

<sup>30</sup> The term "relative" includes: (a) Parent (including an adoptive parent); (b) Parent-in-law; (c) Son (including an adopted son); (d) Son-in-law; (e) Daughter (including an adopted daughter); (f) Daughter-in-law; (g) Step-parent; (h) Step-son; (i) Step-daughter; (j) Brother; (k) Sister; (l) Grandparent; (m) Grandchild; (n) Uncle; (o) Aunt; (p) Nephew; (q) Niece; (r) the spouse, civil partner or unmarried partner of (a) to (k) inclusive.

<sup>31</sup> Department of Health, [Care and Support Statutory Guidance](#), 17 August 2017, Annex B, para 37

<sup>32</sup> As above, Annex B, para 42

### 3.6 What happens if someone has capital in excess of the upper capital limit?

The CASS states that:

Only in care homes, where the financial assessment identifies that a person's resources exceed the capital limits, is a local authority precluded from paying towards the costs of care. Therefore, local authorities should develop and maintain a policy setting out how they will charge people in settings other than care homes. In deciding what it is reasonable to charge, local authorities must ensure that they do not charge more than is permitted under the regulations and as set out in this guidance.<sup>33</sup>

This means that if a care home resident has capital in excess of the upper capital limit, they cannot receive any local authority funding support.

However, in settings other than a care home, if someone has capital in excess of the upper limit they may, at the discretion of the local authority, still be entitled to financial support from it, subject to the local authority's policy. Further, while the local authority cannot charge more than is permitted in regulations and guidance, it can be more generous.

### 3.7 The income part of the means-test

As the CASS notes:

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.<sup>34</sup>

#### Applicable to all settings

The CASS states that "only the income of the cared-for person can be taken into account in the financial assessment of what they can afford to pay for their care and support" and that "employed and self-employed earnings are fully disregarded" although there are rules on what are, and are not, classed as earnings.<sup>35</sup>

Pensions (both occupational and state, including Pension Credit) should be counted as income. However, "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".<sup>36</sup>

Most social security benefits should be counted as income, although a number should be disregarded including:

- Guaranteed Income Payments made to veterans under the Armed Forces Compensation Scheme;

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<sup>33</sup> As above, paras 8.7

<sup>34</sup> As above, Annex C, para 2

<sup>35</sup> As above, Annex C, paras 4–13

<sup>36</sup> As above, Annex C, para 20

- the mobility component of Disability Living Allowance (DLA) or Personal Independence Payments (PIP).<sup>37</sup>

A list of other income, including some social security benefits, that must be fully disregarded from the income part of the means-test is set out in paragraph 29 in Annex C of the CASS.

The first £10 is disregarded of some other forms of income, including War Widows' and War Widowers' pension, survivor's Guaranteed Income Payments from the Armed Forces Compensation Scheme, Civilian War Injury pension, War Disablement pension and payments to victims of National Socialist (Nazi) persecution.<sup>38</sup>

As AgeUK notes, "qualifying income for Pension Credit Savings Credit equivalent to the amount of Savings Credit received is disregarded up to a maximum of £5.75 per week (£8.60 for a couple)". For individuals or couples with higher incomes "who are unable to claim Pension Credit or have been awarded less than £5.75/£8.60 per week, a flat-rate disregard of £5.75/£8.60 per week is applied".<sup>39</sup>

The CASS also includes the concept of "notional income" i.e. "in some circumstances a person may be treated as having income that they do not actually have". As noted above, someone with capital between the lower and higher limits is treated as having £1 notional income ("tariff income") per week for every full or part £250 of capital in excess of the lower capital limit (see section 3.4).

The CASS provides further examples of notional income:

This might include for example income that would be available on application but has not been applied for, income that is due but has not been received or income that the person has deliberately deprived themselves of for the purpose of reducing the amount they are liable to pay for their care.<sup>40</sup>

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

## Allowing some income to be kept for personal expenses

For both care home residents and people in other settings, the CASS specifies minimum levels of income which they should retain to spend on themselves – these are:

- the Personal Expenses Allowance (or PEA) for care home residents and
- the Minimum Income Guarantee (or MIG) for people in other settings.

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<sup>37</sup> As above, Annex C, para 15

<sup>38</sup> As above, Annex C, para 33

<sup>39</sup> AgeUK, [Paying for permanent residential care](#), Factsheet 10, April 2017, pp10–11, see Department of Health, [Care and Support Statutory Guidance](#), 17 August 2017, Annex C, para 33

<sup>40</sup> Department of Health, [Care and Support Statutory Guidance](#), 17 August 2017, Annex C, para 34



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

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

[...]

Where disability-related benefits are taken into account, the local authority should make an assessment and allow the person to keep enough benefit to pay for necessary disability-related expenditure to meet any needs which are not being met by the local authority.<sup>41</sup>

### **Personal Expenses Allowance (care home residents)**

The CASS explains that “the PEA is not a benefit but the amount of a person’s own income that they must be left with after charges have been deducted”. Because PEA is not a benefit, “where a person has no income, the local authority is not responsible for providing one [a PEA]”.<sup>42</sup>

The CASS states that:

The purpose of the PEA is to ensure that a person has money to spend as they wish. It must not be used to cover any aspect of their care and support that have been contracted for by the local authority and/or assessed as necessary to meet the person’s eligible needs. This money is for the person to spend as they wish and any pressure from a local authority or provider to do otherwise is not permitted.<sup>43</sup>

Examples of where a local authority should allow a person to be left with income in excess of the PEA set out in the CASS include where a care home resident has a dependent child, or where the care home resident is paying half their occupational pension to their spouse or civil partner who is not living in the same care home.<sup>44</sup>

The current rate of the PEA is £24.90 per week.<sup>45</sup>

### **Minimum Income Guarantee (settings other than a care home)**

The CASS explains that “the purpose of the minimum income guarantee is to promote independence and social inclusion and ensure that they have sufficient funds to meet basic needs such as purchasing food, utility costs or insurance. This must be after any housing costs such as rent and council tax net of any benefits provided to support these costs – and after any disability related expenditure”.<sup>46</sup>

The exact rates of the MIG depend on the age and circumstances of the person and can be found in regulation 7 of the *Care and Support (Charging and Assessment of Resources) Regulations 2014* (SI

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<sup>41</sup> As above, Annex C, paras 14 and 39

<sup>42</sup> As above, Annex C, para 44

<sup>43</sup> As above, Annex C, para 45

<sup>44</sup> As above, Annex C, para 46

<sup>45</sup> Department of Health, [Social Care - Charging for Care and Support](#), Local Authority Circular, LAC(DH)(2017)1, January 2017, p1

<sup>46</sup> Department of Health, [Care and Support Statutory Guidance](#), 17 August 2017, Annex C, para 49

2014/2672) as amended by the *Care and Support (Miscellaneous Amendments) Regulations 2015* (SI 2015/644). The CASS notes that “this is only a minimum and local authorities have discretion to set a higher level if they wish”.<sup>47</sup>

For example:

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

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

### 3.8 Key elements of the means-test frozen for 2017/18

The key elements of the means-test, namely:

- the upper and lower capital limits;
- the Personal Expenses Allowance or PEA;
- the Minimum Income Guarantee or MIG; and
- the savings credit disregards

were all frozen in the 2017/18 financial year.<sup>48</sup>

The last time the upper and lower capital limits were increased was April 2010.<sup>49</sup>

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<sup>47</sup> As above, Annex C, para 48

<sup>48</sup> Department of Health, [Social Care - Charging for Care and Support](#), Local Authority Circular, LAC(DH)(2017)1, January 2017, p1

<sup>49</sup> Department of Health, [Charges for Residential Accommodation – CRAG Amendment No 29](#), Local Authority Circular, LAC (DH) (2010) 2, March 2010. The CRAG set the upper and lower limits for care home residents, but the guidance for people receiving social care in other settings noted that “savings may be taken into account to calculate a tariff income on the same basis as set out in the Charges for Residential Accommodation Guidance (CRAG) ... Users with savings of more than the upper limit may be asked to pay a full charge for the service. These savings levels will be updated automatically in line with any uplifts in CRAG. Councils may wish to set higher savings limits or more generous charging policies than those specified in CRAG for users with savings, but should not set lower limits” [Department of Health, [Fairer Charging Policies for Home Care and other non-residential Social Services](#), June 2013, p21, para 62].

## 4. Alternative ways to fund care

### 4.1 Universal Deferred Payment Agreement

A deferred payment agreement is essentially a loan given by the local authority secured on the value of the person's property.

From April 2015,<sup>50</sup> as the CASS explains, the deferred payment agreement scheme is "universally available throughout England, and local authorities will be required to offer deferred payment agreements to people who meet certain criteria governing eligibility for the scheme".<sup>51</sup>

#### How much can be deferred

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

- a) The amount of equity a person has available in their chosen form of security (usually their property);
- b) The amount a person is contributing to their care costs from other sources, including income and (where they choose to) any contribution from savings, a financial product or a third-party; and
- c) The total care costs a person will face, including any top-ups the person might be seeking.<sup>52</sup>

Local authorities must set an "equity limit" to determine how much equity can be deferred; a "buffer" should be left over from the asset "to cover any subsequent interest which continues to accrue, and will provide a small 'cushion' in case of small variations in value of the security".<sup>53</sup>

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

- ten percent;
- £14,250 – for financial year 2017/18 this is in line with the lower capital limit, so ensuring that a person does not spend all of their capital on social care;
- "the amount of encumbrance secured on it" (e.g. a mortgage).<sup>54</sup>

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<sup>50</sup> Before April 2015, deferred payment agreements were only available to those who had insufficient income and (besides the value of their home) capital to meet the care home's charge. Further, local authorities determined whether or not to make a deferred payment agreement.

<sup>51</sup> Department of Health, [Care and Support Statutory Guidance](#), 17 August 2017, para 9.5

<sup>52</sup> As above, paras 9.32 and 9.34

<sup>53</sup> As above, para 9.36

<sup>54</sup> As above, para 9.38

## Interest rates and administration charges

An important change from April 2015 is that an arrangement fee and also interest on the amount of the deferred payment can be payable while the person to whom it applies is alive.<sup>55</sup>

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

Under the new arrangements, the CASS provides the following guidance on the interest rate and administrative charges payable under a deferred payment agreement:

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

[...]

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

[...]

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

[...]

Local authorities must set their administration charge at a reasonable level, and this level must not be more than the actual costs incurred by the local authority in provision of the Universal Deferred Payment Scheme, as set out in regulations ... It is good practice to separate charges into a fixed set-up fee for deferred payment agreements, reflective of the costs incurred by the local authority in setting up and securing a typical deferred payment agreement, and other reasonable one-time fees during the course of the agreement (reflecting actual charges incurred in the course of the agreement).<sup>56</sup>

The maximum interest rate is specified in regulations as being the "the weighted average interest rate on conventional gilts" over the period in consideration plus 0.15%.<sup>57</sup> The CASS notes that "the national maximum interest rate will change every 6 months on the first of January and July respectively, to track the market gilts rate specified in the most recently published report by the Office of Budget Responsibility (OBR) plus a 0.15% default component".<sup>58</sup>

<sup>55</sup> Previously, as AgeUK noted, "during the period of the agreement no interest can be charged"; adding that only "if your property remains unsold for longer than 56 days after your death, interest may start to accrue on the debt". [AgeUK, *Treatment of property in the means test for permanent care home provision*, Factsheet 38, April 2014, section 7, pp15–17].

<sup>56</sup> Department of Health, [Care and Support Statutory Guidance](#), 17 August 2017, paras 9.65–9.73

<sup>57</sup> *Care and Support (Deferred Payment) Regulations 2014* (SI 2014/2671), regulation 9

<sup>58</sup> Department of Health, [Care and Support Statutory Guidance](#), 17 August 2017, paras 9.67

## Eligibility and “permission to refuse”

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

Someone must be offered a deferred payment agreement if they meet all three of the following criteria at the point of applying (subject to a “permission to refuse”, see below):

- a) anyone whose needs are to be met by the provision of care in a care home ... ;
- b) anyone who has less than (or equal to) £23,250 in assets excluding the value of their home (for example, in savings and other non-housing assets); and
- c) anyone whose home is not disregarded, for example it is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support (i.e. someone whose home is taken into account in the local authority financial assessment and so might need to be sold).<sup>59</sup>

As the CASS notes, “local authorities are, at their discretion, permitted to be more generous than these criteria and offer deferred payment agreements to people who do not meet the above criteria”.<sup>60</sup>

In addition to those in care home settings, a deferred payment agreement may be offered by a local authority, “at their discretion”, to “people whose care and support is provided in supported living accommodation. The local authority should not exercise this discretion unless the person intends to retain their former home and pay the associated care and accommodation rental costs from their deferred payment”.<sup>61</sup>

However, a local authority may exercise its “permission to refuse”, even if someone meets the three eligibility criteria above. The CASS explains that the “permission (or discretion) to refuse is intended to provide local authorities with a reasonable safeguard against default or non-repayment of debt”.<sup>62</sup> This permission may be exercised where a local authority is “unable to secure a first charge on the person’s property, someone is seeking a top-up and/or where a person does not agree to the terms and conditions of the agreement, for example a requirement to insure and maintain the property”.<sup>63</sup>

However, the CASS adds that:

In these situations, a local authority should still seek to offer a deferred payment agreement but should be guided by principles in the section below (entitled ‘how much to defer’) to determine a maximum amount that is sustainable (or reflects their core care

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<sup>59</sup> Department of Health, [Care and Support Statutory Guidance](#), 17 August 2017, para 9.7

<sup>60</sup> As above, para 9.8

<sup>61</sup> As above, para 9.9

<sup>62</sup> As above, para 9.11

<sup>63</sup> As above, para 9.12

costs without any top-ups) and agree a deferral. The person can then choose whether they wish to agree.<sup>64</sup>

In certain circumstances, a local authority may cease making further payments under a deferred payments agreement, for example when a person becomes eligible for local authority support in paying for their care, leaves a care home, or if a person breaches certain predefined terms of their contract and the contract has specified that the authority will stop making further payments in such a case.<sup>65</sup>

A local authority must also cease deferring further amounts when a person has reached the “equity limit” that they are allowed to defer.<sup>66</sup>

## 4.2 Top-ups

The CASS notes that:

In some cases, a person may actively choose a setting that is more expensive than the amount identified for the provision of the accommodation in the personal budget. Where they have chosen a setting that costs more than this, an arrangement will need to be made as to how the difference will be met. This is known as an additional cost or ‘top-up’ payment and is the difference between the amount specified in the personal budget and the actual cost.<sup>67</sup>

However, “where someone is placed in a more expensive setting solely because the local authority has been unable to make arrangements at the anticipated cost, the personal budget must reflect this amount”.<sup>68</sup>

As AgeUK notes:

You should not be asked for third party top-up payments if you have moved into [a] more expensive home out of necessity rather than personal preference – it must always be your choice. Your local authority needs assessment should highlight this kind of issue.<sup>69</sup>

There are two types of top-up:

- first-party top-up, where the person provides their own money – at present, there are only limited circumstances in which first-party top-ups may be made;<sup>70</sup>
- third-party top-up, where the top-up is funded by someone else e.g. a relative.

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

- they are subject to a 12-week property disregard [...];
- they have a deferred payment agreement in place with the local authority [...]; or

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<sup>64</sup> As above, para 9.12 Note 3

<sup>65</sup> As above, para 9.16

<sup>66</sup> As above, para 9.18

<sup>67</sup> As above, Annex A, para 20

<sup>68</sup> As above, Annex A, para 21

<sup>69</sup> AgeUK, *Choice of accommodation - care homes*, Factsheet 60, April 2016, p6

<sup>70</sup> The Government has said that, from April 2020, restrictions on first party top-up arrangements will be lifted [Department of Health, [Guidance – Care Act factsheets](#), factsheet 6, 19 April 2016]



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- they are receiving accommodation provided under S117 [section 117 of the *Mental Health Act 1983*] for mental health aftercare.<sup>71</sup>

The top-up should be the difference between the cost of the care home place preferred by the person and the person's personal budget, based on "what personal budget it would have set at the time care and support is needed". The CASS notes that a local authority "is likely to identify a range of costs which apply to different circumstances and settings" and for the purposes of calculating the top-up "it should not automatically default to the cheapest rate or to any other arbitrary figure".<sup>72</sup>

In order to agree to a top-up agreement, a local authority "must ensure that the person paying the 'top-up' is willing and able to meet the additional cost for the likely duration of the arrangement, recognising that this may be for some time into the future". The CASS states that a local authority "must ensure that the person paying the 'top-up' enters into a written agreement with the local authority, agreeing to meet that cost".<sup>73</sup>

The CASS states that top-up arrangements should be reviewed "at least annually" and "in line with wider reviews of the financial assessment", noting that "local authorities should also consider how often it may be appropriate to review the arrangements".<sup>74</sup>

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<sup>71</sup> Department of Health, [Care and Support Statutory Guidance](#), 17 August 2017, Annex A, para 39

<sup>72</sup> As above, Annex A, para 26

<sup>73</sup> As above, Annex A, para 23

<sup>74</sup> As above, Annex A, para 32

## Annex – List of MIG rates

### Extract from the Department of Health's [Social Care - Charging for Care and Support](#), LAC(DH)(2017)1, January 2017

10. For the next financial year (2017/18), the rates of the Minimum Income Guarantee will remain at their current levels as follows:

- 7(1)(b) where the adult concerned is responsible for, and a member of the same household as, a child, the amount of £83.65 in respect of each child.
- 7(2) Where the adult concerned is a single person and—
  - a. is aged 18 or older but less than 25, the amount of £72.40;
  - b. is aged 25 or older but less than pension credit age, the amount of £91.40;
  - c. has attained pension credit age, the amount of £189.00.
- 7(3) Where the adult concerned is a lone parent aged 18 or over, the amount of £91.40.
- 7(4) Where the adult concerned is a member of a couple and—
  - a. one or both are aged 18 or over, the amount of £71.80;
  - b. one or both have attained pension credit age, the amount of £144.30.
- 7(5) Where the adult concerned is a single person who is in receipt of, or the local authority considers would, if in receipt of income support, be in receipt of—
  - a. disability premium, the amount of the applicable premium is £40.35;
  - b. enhanced disability premium, the amount of the applicable premium is £19.70.
- 7(6) Where the adult concerned is a member of a couple and one member of that couple is in receipt of, or the local authority considers would, if in receipt of income support, be in receipt of—
  - a. (a) disability premium, the amount of the applicable premium is £28.75;
  - b. (b) enhanced disability premium, the amount of the applicable premium is £14.15.
- 7(7) Where the adult concerned is in receipt of, or the local authority considers would, if in receipt of income support be in receipt of, carer premium, the amount of the applicable premium is £43.25.

[The above figures are set out in regulation 7 of the *Care and Support (Charging and Assessment of Resources) Regulations 2014* (SI 2014/2672) as amended by the *Care and Support (Miscellaneous Amendments) Regulations 2015* (SI 2015/644) – the changes came into effect on 6 April 2015]

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