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Practice Guidance

Financial assessments under the Care Act 2014

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Learning points

- The purpose of a financial assessment and when one should and should not be completed.
- What is taken into account during a financial assessment and what is disregarded.
- An understanding of top-ups, deferred payments and deprivation of assets.

Contents

Introduction

Under the Care Act 2014 local authorities are responsible for financial assessment and charging for services, an issue on which the Local Government and Social Care Ombudsman (LGO) receives a considerable number of complaints every year.

While at first glance it may appear that either local policy or the actions of the team that carried out the financial assessment are responsible for these complaints, if you track back further you can find that practitioners in frontline teams have sometimes missed opportunities to provide good information and advice or have provided inadequate or incorrect information.

Financial assessment is complex which may explain why, despite the need for local authorities to provide information to help people understand what they may have to pay, when and why and how it relates to people's individual circumstances (care and support statutory guidance 3.43), many working in teams such as first point of contact, reablement and social work frequently lack the knowledge or confidence to do so.

The purpose of this guide is to provide accessible information and practical support to those practitioners. Some of the landmark LGO investigations from 2017-2018 will be referenced throughout the guide to shed light on some of the key pitfalls that can be encountered.

The main legal framework for charging and financial assessments is set out in:

- sections 14, 17 and 69-70 of the Care Act 2014;
- the Care and Support (Charging and Assessment of Resources) Regulations 2014;
- the Care and Support and Aftercare (Choice of Accommodation) Regulations 2014;

- chapter 8 and annexes A to F of the care and support statutory guidance.

As mentioned, this can be a complex area and further legal advice may need to be sought.

What you need to know: summary

Here in summary is what all social care practitioners in frontline teams should know about financial assessment and charging, and which will be discussed in detail in this guide:

- purpose of a financial assessment and possible outcomes;
- when a financial assessment must be completed;
- when a financial assessment should not be completed;
- difference between a light touch financial assessment and a full assessment;
- what is taken into account in a financial assessment and what is disregarded;
- what a top-up is and the local policy around top-ups;
- what a deferred payment is;
- what deprivation of assets is.

You should also know:

- Local processes for requesting a financial assessment (including, where available, the use of online self-assessments).
- Local policies around the financial assessment of carers, equipment, reablement that extends beyond six weeks and charging to arrange services for self-funders.
- Where a person can access independent financial advice locally.

What you need to know: financial assessment

Purpose and possible outcomes

The purpose of a financial assessment is simply to determine how much (if any) financial support a person with care needs or a carer may be entitled to from the local authority (from now on the person with eligible care needs will be referred to just as “the person”).

In broad terms, there are three possible decisions that a local authority could make following a financial assessment:

- The local authority will provide no financial support. In this case the person or carer might be self-funding, meaning they meet the full cost of their needs.
- The local authority will provide some financial support, but not enough to cover the full personal budget amount. In this case the person or carer would be expected to contribute the difference.
- The local authority will provide full financial support. In this case the person or carer will not have to make any contribution towards the cost of their personal budget.

When a financial assessment must be completed

Under the Care Act, a financial assessment must be carried out after an eligibility determination has been made and the local authority has decided that if it were to meet the person's or carer's needs it would charge (this would include a decision about ordinary residence (for more information see Inform Adults' guide on the Care Act and ordinary residence).

In some cases, the local policy may provide for a financial assessment to run before this point. The Care Act guidance explains: "The eligibility determination cannot take place until an assessment has been completed, except in cases where the local authority is meeting urgent needs. The financial assessment may in practice run parallel to the needs assessment, but it must never influence an assessment of needs. Local authorities must inform individuals that a financial assessment will determine whether or not they pay towards their care and support, but this must have no bearing on the assessment process itself." (paragraph 6.12)

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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". A financial reassessment should also be carried out if there have been changes in circumstances including the person's ability to make a financial contribution, for example, if their level of savings reduces or they start to claim a new benefit, or at the request of the person (care and support statutory guidance, paragraph 8.17).

Note: in broad terms, the same charging rules apply for people who lack capacity to consent to a financial assessment (although see paragraphs 8.9, 8.18 and 8.19 of the care and support statutory guidance), or who do not manage their own finances, and for those who are in prison (paragraph 8.10 of the care and support statutory guidance).

Note: if support is to be provided to a carer by way of a service for the cared-for person, it is the latter's finances that should be assessed and not the carer's (sections 14(3) and 17(4) of the Care Act).

LGO investigation: overcharging after Independent Living Fund ended

Case reference: **16000571**

Mrs X has a brain injury and needs support with all aspects of daily living. Her husband, Mr X, managed her financial affairs as her appointee. Mrs X's care package was jointly funded by the council and the Independent Living Fund (ILF).

When the ILF closed in June 2015, funding transferred to the council. In Mrs X's case, the council delayed reassessing the couple's ability to contribute to the costs and continued to charge them at the same level, subsequently found to be an overcharge. Mr X made several requests for the financial contribution, along with the care and support plan, to be reviewed before the matter was resolved.

The ombudsman found the council at fault because of the delays in completing a financial reassessment when the person's financial circumstances had changed, and also asked it to confirm that it had taken steps to reassess other ILF users in its area and apply the local charging policy accordingly.

Ombudsman's decision: there was fault and delay in the way the council handled the transfer of Mrs X's care and funding from the ILF which has led to it overcharging Mrs X. There was also poor complaint handling. The council will apologise, backdate Mrs X's financial assessment to July 2015, refund excess charges, review its procedures and make a payment of £300 in recognition of the time and trouble involved in bringing the complaint.

When a financial assessment should not be completed

Local authorities cannot charge for certain types of care and support and therefore a financial assessment should not be carried out. The relevant services (paragraph 8.14) are:

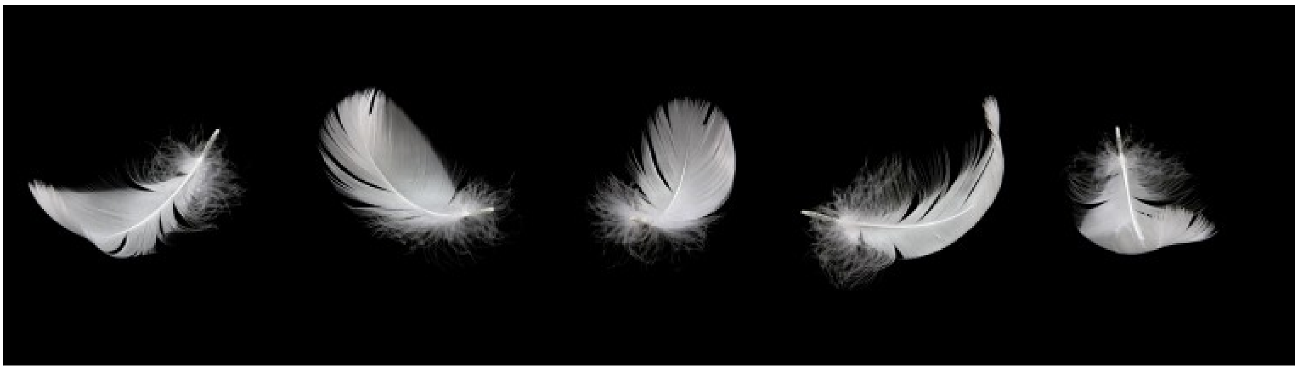
- intermediate care (for the first six weeks);
- reablement (for the first six weeks);
- community equipment (aids and minor adaptations – the latter being defined as adaptations costing £1,000 or less);
- aftercare services provided under section 117 of the Mental Health Act 1983;
- all care and support provided to a person with a diagnosis of Creutzfeldt-Jakob disease;
- assessment of needs and care planning;
- any service that the NHS is under a duty to provide;
- more broadly, any services provided under legislation other than the Care Act cannot be charged for under the Care Act.

In all other circumstances the local authority has a power to charge, but you should familiarise yourself with local policy, especially around charging for carers' services, reablement or intermediate care beyond six weeks, and adaptations over £1,000. There is likely to be significant local variation.

Difference between a light touch and full assessment

Note: the decision to undertake a light touch or full assessment is normally made by the team assessing finances, and practitioners should not pre-empt what this will be.

Light touch assessment



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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, a light touch financial assessment would be needed. A light touch financial assessment involves gathering sufficient financial information to satisfy itself that the person or carer is either:

- eligible for no financial support from the local authority; or
- eligible for full financial support from the local authority.

Since it does not involve gathering comprehensive information, a light touch assessment can be a more proportionate method in the following circumstances (paragraph 8.23):

- Where a person or carer knows they have significant financial resources, does not wish to undergo a full financial assessment and is willing to pay the full charge.
- Where a person or carer has limited capital financial resource and is in receipt of benefits, demonstrating that they would not be able to contribute to their care and support costs.
- Where the service to be provided has only a nominal charge that a person is able and willing to meet, and where doing so would not leave them with an income below the minimum income guarantee limit (the amount of disposable income set by the government on which a full assessment of finances would be based).

Full assessment
A full financial assessment involves gathering more comprehensive information about the individual's or carer's capital and income.

Examples of when a full assessment may be required include:

- When the person or carer is not clear about their level of resource.
- Where there is cause to question the level of resource being declared.
- Where the levels of capital resource fall somewhere between the minimum and maximum financial limits, meaning that the amount of financial support from the local authority cannot be accurately determined without a full assessment.

What is taken into account

Regardless of whether it is a full or light touch financial assessment, it will take into account both capital and income. In some cases what is taken into account depends on the type of service to be provided; these are indicated in brackets in the list below.

Examples of capital include:

- buildings and land;
- any main property (for people living in a care home only);
- any additional properties (in all cases);
- national savings certificates and Ulster savings certificates;
- premium bonds;
- stocks and shares;
- capital held by the Court of Protection or a deputy appointed by it;
- cash;

- savings held in a building society or bank accounts of any nature;
- savings held in a trust fund;
- save as you earn schemes (SAYE);
- unit trusts.

(Annex B, paragraph 6 of the care and support statutory guidance).

Examples of income include:

- attendance allowance (including constant attendance allowance and severe disablement allowance);
- bereavement allowance;
- carer's allowance;
- disability living allowance (care component);
- employment and support allowance (ESA);
- income support;
- jobseeker's allowance;
- universal credit;
- pension credit;
- personal independence payment (daily living component);
- maternity allowance;
- industrial injuries disablement benefit or equivalent;
- state pension;
- working tax credits (for people living in a care home only).

(Annex C, paragraph 16 of the care and support statutory guidance).

What is disregarded

Under the Care Act the number of factors that must be disregarded or partially disregarded is vast (see, for example, annexes B and C of the care and support statutory guidance), and as a social care practitioner in a frontline team you are not expected to know them all. The following are the most commonly disregarded factors that you should be aware of.

Note: in all cases if the person or carer being financially assessed has a spouse, parent or child etc, the income and capital of that parent, spouse or child etc **must** be disregarded (see, for example, paragraph 8.8 of the care and support statutory guidance).

Disregarded income

In all cases the following income, for example, must be disregarded:

- all earnings through employment or self-employment;
- mobility component of the disability living allowance;

- mobility component of the personal independence payment;
- direct payments;
- guaranteed income payments made to veterans under the armed forces compensation scheme.

In addition to the above, if the person being financially assessed lives in the community (any setting other than a care home) any working tax credit income they receive must also be disregarded.

Non-discretionary property disregard

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The value of a person's main or only home **must** be disregarded for as long as the following circumstances apply (annex B, paragraphs 12 and 34 of the care and support statutory guidance):

- The person is **not** receiving care in a registered nursing or care home.
- The person's stay in a care home is temporary and they either: intend to return to their home, or are taking reasonable steps to dispose of the property and buy a more suitable property to return to.
- Where the person no longer occupies the property, but they shared it with: their partner/spouse, or another relative over the age of 60, under the age of 18 or who is incapacitated; and that person still lives there.
- Where the person legally owns the property but has no beneficial rights to it (meaning they are not entitled to the proceeds of any sale).

Non-discretionary 12-week property disregard

Local authorities **must** disregard the value of a person's main or only home for 12 weeks in the following circumstances (annex B, paragraph 45 of the care and support statutory guidance):

- When they first enter a care home as a permanent resident.

- When a non-discretionary property disregard unexpectedly ends because the qualifying relative remaining in the property has died or moved into a care home themselves.

This 12-week period allows the person time to consider fully any other options for meeting their needs.

Discretionary property disregard

A local authority can choose to disregard a person's property in any situation other than those outlined above if it considers it appropriate. However, the statutory guidance advises that a local authority will need to balance this discretion with ensuring a person's assets are not maintained at public expense (annex B, paragraphs 42 to 44).

Local policy should provide guidance about when a property disregard will or will not be considered and the decision would normally be made by the team assessing finances.

Discretionary 12-week disregard

Local authorities can also choose to apply a discretionary 12-week disregard of all capital and income if there has been a sudden change in the person's financial circumstances (annex B, paragraph 46, care and support statutory guidance).

As in the case of a discretionary property disregard, this should be determined by local policy and the decision would normally be made by the team assessing finances.

Disability-related expenditure

Where disability-related benefits are taken into account, the local authority should carry out an assessment and allow the person to keep enough benefit to pay for necessary disability-related expenditure (DRE) to meet any needs that are not being met by the local authority. A non-exhaustive list of what should be included in the assessment is provided at annex B, paragraph 40 of the care and support statutory guidance.

Example: a person in receipt of a disability-related benefit has a specialist diet and needs to purchase particular food that is more expensive than traditional options. Receipts demonstrate how much money is being spent on a regular basis and the local authority disregards this amount from their income during the financial assessment.

LGO investigation: change in local DRE policy not communicated

Case reference: **16010469**

Mr B complained about the way the council dealt with his mother's disability-related expenditure (DRE), saying that first it had said his mother didn't need to provide receipts and then said it needed receipts after they had been destroyed.

Ombudsman's decision: The local authority did not properly explain the change in policy. Within one month of the decision the local authority should apologise to Mr B and his mother.

LGO investigation: arbitrary limit set on benefits to be disregarded

Case reference: **16004530**

A policy was introduced by the council of disregarding 10% of disability benefits during a financial assessment to allow for DRE. But the effect of replacing the previous policy on DRE was that Ms S's financial contribution to her care costs increased substantially.

This was done without any financial reassessment or taking into account Ms S's individual circumstances. The first she knew of the change was a notification in writing. When a concern was raised, the council allocated a social worker to Ms S and she was wrongly informed that she had been given the maximum reduction for DRE.

The matter went to a council panel, which agreed to raise the amount of DRE permitted, but this decision was not communicated to Ms S in a timely way.

Ombudsman's decision: there was fault in the way the council carried out a financial reassessment for care costs and in its failure to communicate the outcome of review decisions. This had resulted in "unnecessary anxiety and uncertainty" for Ms S. The council should apologise, review its procedures and pay £500 in recognition of the distress caused.

What you need to know: top-ups

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What a top-up is

The Care Act provides that where an adult's needs are to be met by the provision of specified types of accommodation, and the adult has expressed a preference for particular accommodation of that type, the local authority must meet the adult's preference, provided that specified conditions are met. This applies to care homes, supported living and shared lives accommodation. Put simply, a top-up (referred to in the regulations as the "additional cost") is a payment which covers the difference between the cost of the person's preferred accommodation and the amount that the local authority has specified in the person's personal budget in relation to the provision of accommodation.

When a top-up applies

A top-up applies when certain conditions are met, for example:

- The needs assessment has determined that a person's needs are best met at a care home, supported living or shared lives accommodation.
- The person has chosen alternative accommodation which exceeds the amount set in their personal budget and is suitable to meet their needs and is available.
- The local authority is satisfied that a third party or (in some cases) the person themselves is able and willing to pay the additional cost of the preferred accommodation.

Note: if the person lacks capacity to express a choice regarding their accommodation, the statutory guidance advises that local authorities should act on the choice expressed by the person's advocate, carer or legal guardian in the same way that they would on the person's own wishes, unless it would be against the wishes of the person (annex A, paragraph 40).

When a top-up does not apply

Top-ups do not apply when someone is placed in more expensive accommodation solely because the local authority has been unable to make arrangements at the normal cost. In such cases the statutory care and support guidance sets out that the personal budget should reflect this amount and the person would contribute towards the costs in accordance with the financial assessment (annex A, paragraph 21).

LGO investigation: top-up fees charged incorrectly

Case reference: **16013790**

Mr C complained that the council failed to properly explain how his mother's care home fees would be paid. As a result, the family chose a care home which they later found out would be unaffordable once his mother's capital reduced to £23,250.

Mr C's mother was placed in a care home that exceeded the personal budget and the council did not take any steps to identify a more affordable option. Instead, the council asked for a top-up.

Furthermore, the council did not disregard the person's property when calculating their financial contribution during the first 12 weeks of the placement.

Mr C blamed the social worker for a lack of information about charging, which resulted in the son choosing a placement that cost more than the personal budget. The social worker denied the son's claim but there was no evidence to support this denial in the social care record.

Ombudsman's decision: the complaint was upheld and the LGO found fault causing injustice. The council agreed to apologise to Mr C and his family; pay him £300 for the time, trouble and distress it caused him; review the process it has in place; ensure that staff involved in needs and financial assessments know what type of key information they need to provide and at what stage; remind staff about the importance of keeping records; review its policy on charging; and review whether there had been similar cases in the last 12 months.

Who can pay a top-up?

Financial assessments determine the *maximum* amount that a person can afford to contribute to the cost of their personal budget. As the cost of the accommodation is above the personal budget amount, this creates a void in funds that the person could only fill if they exceeded the maximum amount they have been assessed as able to pay, which is not legally permitted.

In the vast majority of cases this means that top-up payments must be made by a third party (usually a family member).

There are, however, a few exceptions when the person receiving care and support *is* legally able to pay the top-up themselves:

- When they are subject to a 12-week property disregard.
- They have a deferred payment agreement in place and the terms of that agreement specify they will be paying the top-up.
- The accommodation is provided under section 117 of the Mental Health Act.

How top-up payments can be made

Local policy will determine the exact arrangements for making top-up payments, which should reflect one of the methods recommended by the care and support statutory guidance (annex A, paragraph 29):

- Local authority pays the full cost of the placement to the provider and recovers the top-up amount through the person's financial assessment (where the top-up is made by a third party, this requires the third party to pay the top-up into the account from which the financial contribution is made).
- Local authority pays the full cost of the placement to the provider and the person paying the top-up makes payments directly to the local authority.

Note: statutory guidance recommends that local authorities should avoid arrangements in which the third party makes top-up payments directly to the provider (annex A, paragraphs 25 and 29), given that this does not ensure that the full cost of the service is paid or allow for the local authority to effectively monitor top-up payments.

Withheld top-up payments

When entering into a contract to provide accommodation that is more expensive than the amount identified in the personal budget, the local authority is responsible for the total cost of that placement. This means that if top-ups are not paid it is the responsibility of the local authority to pay the provider any money owed and seek reimbursement through debt recovery from the person who had agreed to make payments.

Depending on the circumstances the person with care and support needs may be moved to an alternative placement within the personal budget amount. However, this can only take place:

- subject to a further needs assessment (which must include having regard to the person's wellbeing); and
- if there is a suitable and available alternative.

If, following assessment, the local authority decides that there are no other suitable alternatives, adjustments should be made to the personal budget amount to reflect this.

Discussing top-ups

As demonstrated by the LGO investigation involving Mr C's complaint, poor initial information and advice about top-ups can lead to complaints further down the line.

Before entering into an agreement, the local authority should ensure that the person making the payment has sufficient information and advice so that they understand the terms and conditions, including actively considering the provision of independent information and advice (annex A, paragraphs 24 and 51 to 53). It will be particularly important to ensure that:

- Someone has been identified as responsible for making the top-up payments.
- The responsible person has confirmed they are willing and able to make the top-up payments for the duration of the placement.
- Both the person with care and support needs and the person who will be making the top-up payments understand that if top-up payments are not made, the person may be required to move to alternative accommodation.

Note: if the person lacks capacity to consent to top-ups, all of the above points are applicable to someone with legal authority to make the decision on their behalf. This should **not** be an "appointee" (a role which relates solely to welfare benefits), but could include, for example, a deputy authorised by the Court of Protection or the donee of a registered power of attorney.

What you need to know: deferred payments

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What a deferred payment is

A deferred payment is an optional arrangement between a person receiving care and support in a care home or supported living and the local authority. It allows the person to delay making some or all of their financial contribution to the local authority until a later date.

It works by securing an asset (normally property) until such time as the deferred payment agreement ends, when the asset is then sold or released and the deferred costs are paid to the local authority in full.

Note: the responsibility for making a decision about offering a deferred payment normally lies with the team assessing finances and social care practitioners should not pre-empt what this may be.

Eligibility for a deferred payment

Under the Care and Support (Deferred Payment) Regulations 2014 there are qualifying criteria to determine whether a person is entitled to a deferred payment. Broadly, the criteria are that:

- The person has been assessed as having needs which are to be met by the provision of a care home placement (or in the case of a self-funder and the authority has not carried out an assessment, this condition is satisfied when the person would be assessed as having eligible needs were the authority to have carried out such an assessment).
- The person has capacity to enter into a deferred payment agreement and has agreed to all the terms and conditions (or, if lacking capacity, there is someone with legal authority to do so on their behalf).
- The local authority is satisfied the person has a beneficial or legal entitlement to a property that is their only or main home and is not subject to a property disregard.
- A financial assessment has been completed and the person has assets less than (or equal to) the upper capital limit (£23,250 in 2019/20), excluding the value of the property.
- The local authority has obtained adequate financial security that the deferred payment, alongside interest charged and administrative costs, will be paid when the agreement is terminated.

Note: the upper capital financial limit is set by central government and subject to annual review.

If eligibility is met

The local authority **must** offer a deferred payment to anyone who is eligible for it (based on the above criteria) unless:

- The local authority is unable to secure the value of the deferred payment against the person's property (usually by registering the arrangement with the Land Registry).
- Someone is seeking a top-up to be added to the deferred amount (for example, because they have moved into a care home that is above what the local authority would reasonably pay).
- The person does not agree to the terms and conditions of the agreement (for example, a requirement to insure and maintain the property) (paragraph 9.16).

Once offered, it is up to the person whether or not they would like to make the arrangement.

Under the Care and Support (Deferred Payment) Regulations 2014 local authorities have discretion to offer a deferred payment agreement to people living in supported living accommodation if certain qualifying criteria are met. The care and support statutory guidance advises that a 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 (paragraph 9.9).

If eligibility is not met

Local authorities also have the power to offer a deferred payment agreement to someone living in a care home or supported living scheme who does not meet all of the criteria set by the regulations. For example, a person may not own property but may have other assets upon which a deferred payment can be secured (eg artwork).

The care and support statutory guidance (paragraph 9.8) suggests the following considerations when deciding whether to offer a deferred payment agreement:

- Whether meeting care costs would leave someone with very few accessible assets (this might include assets which cannot quickly or easily be liquidated or converted to cash).
- If someone would like to use wealth tied up in their home to fund more than just their core care costs and purchase affordable top-ups.
- Whether someone has any other accessible means to help them meet the cost of their care and support.
- If a person is narrowly not entitled to a deferred payment agreement given the criteria above, for example, because they have slightly more than the capital asset threshold (£23,250 in 2019/20). This should include where someone is likely to meet the criteria in the near future.

Deferred amount

In principle, a person should be able to defer the entirety of their care costs (subject to any contributions the local authority can require from their income). The local authority will need to consider whether the person can provide adequate security for the deferred payment in order to determine the sustainability of the arrangement. According to the care and support statutory guidance (paragraph 9.3) three elements will dictate how much can be deferred:

- The amount of equity the person has available in their chosen form of security (usually their property).
- 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.
- The total care costs a person will face, including the top-ups the person might be seeking.

In broad terms, this may mean, for example, that if the person wishes to defer less than their total care costs, the local authority will need to be satisfied that they are able and willing to pay the difference.

The local authority may not offer the full costs of care if it determines through a process of financial assessment that the person has a regular income that exceeds the personal expenses allowance from which they can make a regular partial contribution.

Note: personal expenses allowance is set by the regulations and is a specified amount of the person's own income so that they have enough to spend on personal items such as clothes (paragraph 8.35).

Note: payments can only be deferred for costs associated with the person's care and support needs, not accommodation or other non-related costs that the provider may have included in their contract.

Note: if a person has chosen to live in a care home that costs more than the personal budget amount, the local authority does not have to defer the top-up amount payable, although it has the power to do so if it wishes. If the local authority does not decide to defer the top-up amount, then it remains payable (paragraph 9.53).

Interest and other charges

Local authorities are permitted to add administration costs and interest charges to the deferred payment agreement. This could include legal fees the authority pays to arrange a charge with the land registry, photocopying or printing costs and time spent arranging the agreement, although it must not make a profit from this.

Payments relating to interest and charges made by the local authority can also be deferred.

Ending a deferred payment agreement

The person (or someone acting on their behalf) may terminate the deferred payment agreement at any time by giving notice in writing to the local authority. There are a number of reasons for terminating agreements, for example:

- The person may die.
- The person may leave the care home or supported living accommodation and return to their own home.
- The person may wish to settle their deferred payment agreement account by another means (for example, another asset has come of age).
- The person may sell their home or form of security and wish to settle their deferred payment.

Note: if the person has ended the agreement because they have moved back to their home no further deferred payments can be made against the property and it must be disregarded in respect of any new financial assessment. But the person remains liable for deferred payments to date and interest will continue to accrue until the account is settled.

What you need to know: deprivation of assets

Photo: Piman Khrutmuang/AdobeStock

What constitutes a deprivation of assets?

"Deprivation of assets" is the term for intentionally depriving oneself of an asset for the specific purpose of trying to reduce or avoid making a financial contribution. Local authorities have the power to seek to recover debts through the county courts, although the care and support statutory guidance advises that this should only be used after other avenues have been exhausted (annex E, paragraph 23).

How "deprivation" occurs

A person can deprive themselves of assets (capital) in many ways, but common approaches may be (annex E, paragraph 9):

- Making a lump sum payment from savings to someone else, for example, as a gift.

- Substantial sudden expenditure that is out of character with the person's previous spending habits.
- Transferring the title deeds of a property to someone else.
- Putting assets into a trust that cannot be revoked.
- Converting assets into another form that would be disregarded under a financial assessment (for example, using savings to purchase jewellery or a car).
- Spending assets through a change in lifestyle (for example, through gambling excessively).
- Using assets to purchase an investment bond with life insurance.

Deprivations of income

A deprivation of income is less common, but is still possible, for example:

- giving away or selling rights to an occupational pension income;
- transferring income from a property or business rental to someone else.

Deciding whether a deprivation has occurred

As a social care practitioner in a frontline team, it is not your direct responsibility to decide whether or not a deprivation of assets has occurred. This normally lies with the team assessing finances. You should, however, notify them if:

- a person informs you of their intention to deprive themselves of an asset;
- you have reason to suspect that it is the person's intention to do so, or they have already done so.

In such cases, you should consider informing the person that their actions could be unlawful and inform them of the possible actions the local authority may take. These include:

- Charging the person as if they still possess the asset or income.
- Charging the person as if they still possess some of the value of the asset or income.
- If the asset or income has been transferred to someone else, seeking to recover charges from that person.
- Seeking to recover the debt in the county court.

Not all deprivations will be with the intention of avoiding charges and the local authority will need to consider whether there are any valid reasons why the person or carer no longer has the asset or income before instigating any financial claim. In considering this they must take into account the person's wellbeing and right to choose how to spend their money.

Note: whether or not a person has or may have deprived themselves of an asset intentionally, it has no bearing on the duty to meet eligible needs and should have no impact on the services or support being provided to them.

LGO investigation: council wrongly concludes deprivation of assets

Case reference: **16006552**

Mrs X complained on behalf of her mother, Mrs Y, that the council's financial assessment was wrong because it should not treat gifted money as deprivation of assets. Mrs Y had been self-funding a care home placement for eight years. When her assets fell below the capital threshold, the council was asked to fund the placement. A needs assessment was undertaken and the council agreed to continue funding the placement.

However, prior to completion of the financial assessment the council discovered that Mrs Y had been regularly giving financial gifts to family members. It took the view that this was a deprivation of assets and terminated the contract with her care home, leaving Mrs Y with a growing debt to the home.

But the ombudsman noted that Mrs Y had a history of making financial gifts to family members, even before entering care. The current gifts were more substantial but there was no evidence that they were being made with the specific intention of avoiding a financial contribution.

Ombudsman's decision: the complaint was upheld and fault was found causing injustice. The council should apologise to Mrs X for its failure to complete a financial assessment in 2015 and its failure to evidence why it considered the gifted money to have been done with the intention of avoiding care charges; pay Mrs Y £250 to recognise the distress caused; complete a financial assessment for Mrs Y; review her current financial position and look at how her debt to the care home can be reduced/settled; review its procedures and guidance for staff on how to deal with cases where deprivation of capital may have occurred.

What you don't need to know

As a social care practitioner in a frontline team you are not expected to:

- Know what the outcome of a financial assessment will be (or anticipate this).
- Provide bespoke financial advice.
- Understand complex financial assets and capital, like stocks and shares.
- Understand exactly how the contribution will be calculated, as this is complex and there are intricacies.

However, what you must do is ensure that the person has access to appropriate information and advice, including to somebody able to provide the above information if it is required or more detailed information and advice. This could be, for example, the team responsible for assessing finances or an independent financial organisation.

Summary of the main pitfalls

The table below summarises the main pitfalls facing social care practitioners in frontline teams and some of the steps that can be taken to try and overcome or avoid them.

Pitfall	Steps to overcome pitfall
General inadequate knowledge of financial assessment and charging under the Care Act.	Use supervision as a mechanism to discuss any aspects of the financial assessment and charging policy that you don’t understand. Take responsibility to access any training and advice that is available to you. Take responsibility to ensure that you are accessing appropriate guidance. Sign up to resources that provide updates and information, read articles, go to seminars etc. Expect guidance and support from your management team with regard to continuing professional development (CPD). CPD is an agenda item that is discussed during supervision. If the charging policy and assessment process is an area that you feel you need further support with, then you should raise this with your manager.

Pitfall	Steps to overcome pitfall
Not taking a strengths-based approach to meeting eligible needs, resulting in the unnecessary commissioning of traditional services and associated financial contributions.	Base assessments on what the person or carer is able to do and not what they are unable to do. Focus on sustaining existing networks of support rather than identifying chargeable services. “Think outside the box”. For example, are there any community services or networks of support that may be better placed to provide support? Is there any equipment that could increase independence and reduce the need for a service? Is there a housing service? Look at alternatives to “traditional” services. Signpost to health if you consider that a person has health needs that are not being met. If a person is identified as having significant health needs, consider whether they may be eligible for health funding (which is not financially assessed) and whether an NHS continuing healthcare checklist should be completed. Remember that under the Care and Support (Assessment) Regulations 2014 you are required to refer the case to the relevant body if it appears that an adult may be eligible. Give people good information and time to make informed decisions about the right support for them. Draw their attention to available information resources (such as your local authority website). If they lack mental capacity for these purposes, ensure that they have access to the support they need including through the provision of advocacy.
Inability to answer questions about financial assessment or provide good information and advice.	Set aside some time to think about the information you may be asked for, based on what you know about the person’s/carer’s circumstances. Prepare using this guide and any other resources available to you (such as the care and support statutory guidance). If your local authority has leaflets, take them with you. If these aren’t available, have a look at the toolkits identified in the online resources section below and use them to act as a guide for a person or carer to use. It is ok to say to someone that you don’t know but you will find out and come back to them – just make sure that you do.

Pitfall	Steps to overcome pitfall
Providing poor/no information and advice about financial assessment or charging, eg disability-related expenditure, top-ups, property disregard.	Ensure you have the information to hand and that you feel confident with the local policy and overall legal framework. Spend time with the team which completes the financial assessments. Perhaps find out if you can shadow a visit with them so you can see what questions are asked and what the responses are. Remember everyone's circumstances will be different. What applies to one person will not apply to the next. You shouldn't give information based on the outcome of another's circumstances. If specific information or advice is requested signpost the person or carer to appropriate sources, such as the team responsible for assessing finances or an independent adviser.
Not knowing or letting people know about – or not signposting to – local independent financial advisers.	Make sure that you know where to signpost to. Have leaflets available. Have the website links written down so you can provide this to the person or carer and their family. Always consider whether advocacy services will be appropriate and able to facilitate the person's or carer's access to independent financial advice.
Not being aware of local charging policy around things like care workers, equipment, reablement (after six weeks).	Use supervision to check out anything you are not sure about. It is useful to make a list of questions as and when they come to mind so you can discuss them in supervision. Look at your local policies and procedures. They are there to guide your practice. Also use the care and support statutory guidance to ensure you understand the general legal framework. Speak to or spend time with colleagues in other teams, eg reablement or occupational therapy, to find out about charging in their area. Not only will you feel much more knowledgeable, but you will have created a great foundation for joint working!
Not requesting a financial assessment in a timely way.	Request a financial assessment as soon as you know a service is to be provided, or earlier if appropriate, for example, if the person requests it. Understand the process for requesting a financial assessment.
Poor communication with the person while financial assessment is under way.	Find out how the financial assessment is progressing and update the person and your own records, even if no progress has been made.

Pitfall	Steps to overcome pitfall
Not reviewing a person’s ability to make/continue to make a financial contribution as part of a care and support plan review.	Keep under review the person’s ability to make a financial contribution generally, as well as when undertaking a formal review. As part of any review process, ask the person if there have been any changes to their financial circumstances (eg to income or disability-related expenditure), and make a record of this in the review. If there have been changes, request a financial reassessment as soon as possible after the review. Find out how to report a potential deprivation of assets.
Not knowing who to contact/signpost to if a person has a query about their contribution or experiences difficulties making payments or has a change of financial circumstances.	Find out if there is a phone number, email or online message facility that the person can use to contact the team responsible for assessing finances, or for managing payments (if this is a different team). Find out if there is an online facility the person can use to report a change in financial circumstances, as many local authorities now offer this. Keep a record of all of the above and ensure it is safe and accessible.
Working in a silo, with no clear handover points or processes for co-operative working with the team assessing finances.	Develop processes together, so handover points can be agreed and both services develop an awareness of the wider system in which financial assessment sits. Provide additional information to help prepare the team that will be assessing finances, for example, does the person have any complex assets, do they have any specific questions they would like answered or could they be eligible for a deferred payment? Invite someone from the team responsible for assessing finances to a team meeting, so they can explain their role and expectations of your team/service.

Responding to some frequently asked questions

Often a person or carer will ask a question that is unexpected. The following table sets out some examples of those questions, as well as helpful information that can aid your response.

Note: the responses are not comprehensive and you should always seek further advice, for example, from the team responsible for assessing finances before responding if you are unclear.

Note: as stated previously, it is ok to say to someone that you don't know but you will find out and come back to them – just make sure that you do.

Question	Information for response
What will I need for the assessment?	In order to complete a financial assessment, the following is needed: 1. Information about regular income from employment, benefits or other sources. 2. Information about available capital. Information may include bank or building society statements, letters relating to any benefits the person receives, pension statements, details of stocks and shares held etc.
Will someone visit me at home?	Decisions about the need to visit a person at home to complete a financial assessment will be made on a case-by-case basis, taking into account whether the person wants a visit, their communication needs and what benefit a visit will bring to them and also to the assessor. The need for an assessor to visit should be discussed with the assessor when an assessment is being arranged.
Can you give me an indication about what I may have to pay?	It is not possible to say without an assessment of finances what a person's contribution may or may not be. There are, however, some boundaries set by government that a person can use to self-assess whether they are likely to have to make a contribution, although even these cannot be specific due to their range and the number of different possibilities. The amounts are also subject to annual change. The team assessing finances will be able to explain the different amounts set by government and how they may apply to the person's particular situation. If the person wishes to obtain further financial advice before their financial assessment, they can speak to a general advice service, such as Citizens Advice, or to an independent financial adviser.
Whose finances are assessed?	Under the Care Act, the only finances that can be assessed are those belonging to the person who will be receiving the service. This means that if the person has a spouse, or if there is another person living at the address, the finances of that spouse or other person will not be taken into account.

Question	Information for response
Will the assessment take my home into account?	If the person is receiving care in the community, then their main home will not be taken into account during a financial assessment. If the person is receiving care in a care home, then their main home will be taken into account after 12 weeks unless: 1.They intend to return home to that house. 2. They are taking reasonable steps to sell the house and will be using the funds to buy a more suitable home in which to live. 3.The property is occupied in part or whole as their main or only home by, for example, a spouse, partner, other relative over the age of 60, a child under 18 or a person who themselves is incapacitated. In some cases the disregard will be mandatory, and in other cases discretionary. 4.They own the property in name but have no rights to the proceeds when sold. If the property is to be taken into account, the team assessing finances will consider whether a deferred payment agreement may be possible and offer one if so.
I am a carer and the person I care for is going to get a respite service. Who will be financially assessed?	Legally, the person being financially assessed must be the person being provided directly with the service regardless of who is benefitting from it as a result. In this situation that would be the person and not the carer.
I have loans/other debts. Will these be taken into account?	Loan and debt payments are not considered as expenses in a financial assessment. This means the local authority does not have to consider them when assessing a person's income and expenditure so, no, these would not be taken into account.

Question	Information for response
Can a person who lacks capacity be charged a financial contribution?	Yes, in broad terms, the same charging rules apply for people who lack capacity to consent to a financial assessment.
I'm going into a care home but my husband is still living at home. Will we have to sell the house?	Legally, if a spouse lived in a property before the person went into a care home and intends to keep living there, then that property must not be taken into account for the purposes of financial assessment.
I have a second property. Will this be considered?	Legally, any second property a person owns can be taken into account in a financial assessment and it is the decision of the local authority whether or not it chooses to do so. The team assessing finances will be able to explain the local policy.
What happens if I go into hospital?	If the cost of the services used in the current financial assessment charging period (normally a four-week period) is equal to or exceeds the amount of financial contribution the person normally pays, they will in most cases be expected to pay the normal amount. This includes the cost of any additional services provided prior to or during admission (for example, if a paid carer stays with the person while waiting for an ambulance or travels to the hospital with them). If the cost of the services used in the charging period is less than the person's normal financial contribution, however, they should only be asked to contribute up to the cost of the services received. If the person has an extended admission and receives no services in a charging period they should not be required to make a financial contribution for that period. If the provider has charged for any missed home visits these should not be taken into account in any calculation.

Question	Information for response
If I stop making payments will my services stop?	Services meeting eligible needs: local authorities have a duty to meet eligible needs, so they must do so even if the person stops paying their financial contribution. But local authorities are permitted to seek reimbursement for any costs they incur in meeting the eligible needs of a person who is not paying their assessed contribution. Services meeting ineligible needs: there is no duty to meet ineligible needs. As such the local authority may decide to stop providing such services. Local policy should set out the position.

Further information

Local Government and Social Care Ombudsman (2018)
Under Pressure – the impact of the changing environment on local government complaints

Local Government and Social Care Ombudsman (2018)
Review of Adult Social Care Complaints 2017-2018

Online resources for people and carers

The following is a list of information, leaflets and factsheets that may be useful when providing information and advice about financial assessment and charging.

Care Act Fact Sheet 5 gives a helpful brief summary of the rules around financial assessment and charging.

The Money Advice Service gives more detail on paying for care, the means test and what is taken into account in a financial assessment.

Mencap offers helpful guidance, particularly around the implication of benefits and disability-related expenditure.

Age UK explains financial assessments with information and advice on things like the means test and selling one's home to pay for care.

Paying for care and support in England is an online resource from the Alzheimer's Society, providing information aimed at people with dementia and their carers.

Some local authorities offer good information and advice to their residents about financial assessment and charging. Here is a selection of examples from Southwark, Hillingdon, Telford and Wrekin, Barking and Dagenham and Dorset.

Some people may ask about NHS continuing healthcare funding, which a person is eligible to receive when they have been assessed as having a "primary health need". For more information, see Inform Adults' guides to applying the primary health needs test for CHC and understanding the legal framework of CHC.