Adult Social Care

Charging Policy and Procedures for Residential and Nursing Care Home Placements

2023 - 2024

To be read in conjunction with:
The Care and Support (Charging and Assessment of Resources) Regulations 2014 and updated The Care and Support Statutory Guidance

The document links in this policy are available in other formats. Please email alternativeformats@kent.gov.uk or call 03000 421553. Text relay 18001 03000 421553.

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Document Information

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Version control	Date issue	Summary Main Changes	**Reviewed**
2	17 May 2023	**Financial Assessment Referral Repositioning - Immediate changes from 5pm on 10th May 2023.** As agreed by the Senior Management Team, practitioners will now be responsible for requesting a financial assessment at the end of the care needs eligibility via a next action on Mosaic System Record. This enables the financial assessment to be completed by Client Financial Services in parallel with the care and support planning. This is a change to the current practice whereby the Purchasing team made the request after the commissioned care service had been arranged. There may be a need to request a financial assessment at other times. Therefore practitioners can also request the financial assessment from the Emergency Request and/ or the "*Significant Information on an Open Case*" (SIOC) available from the start menu on the Mosaic System Record. **Please note –** The SIOC should be used to make financial assessment referrals for all those who are already within the care and support planning and arranging services workflow, to ensure that the financial assessment can be completed at the earliest opportunity. For Strengthening Independence Service (previously known as Disabled and Young Peoples Service), use the updated Finance Referral form on KNet. A guidance video explaining the changes on Mosaic can be found here. Section B2 updated accordingly. New B2.6: *When and who to request the means tested assessment.*	Jean Wells
1	10 April 23	All references to KCC practice guidance, policies, letters, check list and forms are available on Tri-x,	Jean Wells

		unless otherwise stated. https://www.proceduresonline.com/kent/adults/index.html# Reference to "person" includes their representative or n*ominated third party* where applicable. The effective date, unless otherwise stated, for all changes to the rates payable and charges levied for Adult Social Care services will be the week beginning 10 April 2023, this coincides with the date of inflationary increases to related welfare benefits. Updated figures/limits provided by the Department of Health Charging for Care and Support (2023-2024) - local authority circular (LAC) **Mandatory Training:** Introduction to Charging e-learning (mandatory) and suite of charging and finance learning modules, a new mandatory Core Skills Programme Topic 10 – Finance to be launched soon, part of Kent Adult Social Care Practice Framework commitment to support practitioners to develop and refresh their knowledge and skills. All available on the Kent Academy platform. **Providing Information. New paragraph - B1.3: Charging Letters-signing** Guidance provided when there is a delay signing and person returning the relevant charging letter, **B4.4 Updated:** To facilitate the making of the decision to authorise a care home, in addition to the Practice Assurance Form, the delegated authorisor to be provided with the information listed. Section D4 updated. All Deferred Payments authorisations now Assistant Directors, not Operational Support Service as from 10 April 2023 **New section E2.5 - Former self funders remaining in the care home**. Thinking through issues related to a person's wellbeing when undertaking a risk assessment. **Appendix 5 updated -** Discretionary and non-discretionary funding explained. **Appendix 7 Protocol for self-funder** removed pending confirmation of the locality operating function/roles post April 2023 and implementation of new Financial Assessment Estimator Tool	

		Reference to Area Referral Management Service "ARMS" removed and replaced with "Area Adult Social Care Referral Service" Section B2.4 -Page 16. Dec 2022: For Homes for Ukraine hosts receiving £500 a month as a 'thank you' for ongoing support after Ukrainian's first year of sponsorship, this extended payment will be disregarded when carrying out financial assessments.	

References

Legislation	
Care Act 2014	Click here
The Care and Support (Charging and Assessment of Resources) Regulations 2014.	Click here
The Care and Support (Deferred Payment) Regulations 2014	
Care and Support Statutory Guidance Annex A (Choice of accommodation and additional payments) Care and Support Statutory Guidance Annex B (Treatment of capital) Care and Support Statutory Guidance Annex C (Treatment of income) Care and Support Statutory Guidance Annex D (Recovery of debts) Care and Support Statutory Guidance Annex E (Deprivation of assets)	Click here
Department of Health 2023-2024. Social Care: Charging for Care and Support	
Upper Capital Limit	£23,250.00
Lower Capital Limit	£14,250.00
Disposable Income Allowance	£144.00
Personal Expenses Allowance (PEA)	£ 28.25
Other references and related documents	

Tri-x adult social care: home of all KCC practice guidance, policies and templates and other useful documents and links to useful websites

All references to KCC practice guidance, policies, letters, check list and forms are available on Tri-x, unless otherwise stated.
https://www.proceduresonline.com/kent/adults/index.html#

www.kent.gov.uk :-

- *https://www.kent.gov.uk/social-care-and-health/adult-social-care/paying-for-care*
- KCC Charges and Rates Payable Booklet 2023-2024
- Your guide to Charging for Residential Care Booklet (Red Book) (updated every April).
- Your Guide: Charging for Care Provided in Your Own Home and Support in the Community (Blue Book) (updated every April).
- Benefits and Financial Support advice available for people link to the KCC Website below which gives a list of organisations who can give advice and offer Benefits and Financial Support. *http://www.kent.gov.uk/socialcare-and-health/care-and-support/benefits*

Glossary

APT	Adult Placement Team
ASCH	Adult Social Care and Health Directorate
ICB	Integrated Care Boards (replaced CCG in the NHS in England from July 2022)
CFS	Client Financial Services
CNA	Care Needs Assessment
CPT	County Placement Team
CQC	Care Quality Commission
DLA	Disability Living Allowance
DoLS	Deprivation of Liberty Safeguards
ESA	Employment and Support Allowance
FNC	Funded Nursing Care
KCC	Kent County Council
KEaH	Kent Enablement at Home
LD	Learning Disability
MH	Mental Health
OP	Older Persons
OSS	Operational Support Services
PD	Physical Disability
PEA	Personal Expenses Allowance
PISI	Promoting Independence & Supporting Independence
TECS	Technology Enabled Care Services
TPTU	Third Party Top Up

Section A: Policy

A1. Introduction

A 1.1 The policy of Kent County Council (KCC) is to enable people to continue to live safely and independently in their own homes for as long as possible. However, it is recognised that for some people, needs can best be met by moving into a residential care or nursing home.

A 1.2 This document contains essential information on the legislation, guidance and procedures related to KCC responsibilities for people entering residential care and nursing homes. Hereafter the term 'care home' should be taken to include residential and nursing homes unless specifically stated otherwise.

A 1.3 This document is for managers and operational staff working in Kent Adult Social Care as well as relevant staff in Client Financial Services.

A 1.4 For older people needing a care home placement, the County Placement Team has additional responsibilities that include liaising with families and care homes to identify a suitable placement, providing certain information and action preferred placement options with the person/family and care home. Practitioners retain overall responsibility for care and support planning for the individual, including the review of the placement

A1.5 For people with a learning disability, mental health condition or physical disability, the practitioner completes a Care Needs Assessment (CNA[1]). On receipt of the CNA, Purchasing provides a list of care homes to the practitioner who then identifies a suitable care home to meet eligible needs. Once a provider identified, Purchasing calculates the fees (based on the Cost Model[2]) and send to both practitioner and the care home for financial approval and acceptance of the proposal. Purchasing will then liaise with the practitioner and the care home if there is a need to negotiate. Once an agreement reached and a start date identified, Purchasing input the service on the persons System Record, inform finance and raise the relevant documentation so that the care home can be paid.

A1.6 All references to "*delegated authorisor*" in this document, the reader must refer to the Authorisation (of funding) Levels Policy (levels of delegation) on Tri-x (click here)

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[1] Care Needs Assessment (CNA) matrix (Residential Care Needs Assessment Form on Tri-x template area) calculate the number of hours support a person requires to meet their needs and will determine the type of care home which will meet those needs.

[2] Cost model is a tool which compares a pre-defined set of costs against those submitted by care homes. The costs used for comparison in this model are based on national benchmarks and previously submitted costs from all care homes within Kent. Some of the values in the model vary depending on the location of the home, number of beds, and the type and level of care offered by the home.

A2 Policy Statement

A 2.1 Placements in care homes must only be arranged after all the alternatives below have been fully explored including (not exhaustive):

- Home care including Direct Payments.
- Technology Enabled Care Services (TECS)- community equipment (e.g. telecare, GPS devises etc.)
- Supported Living and Extra Care Housing settings.
- Shared Lives placement.
- Rehabilitation/enablement/Kent Enablement at Home (KEaH)/Kent Pathway Service/Kent Enablement and Recovery Service (Mental Health)/Autism enablement.

A 2.2 The assessment and care and support planning process will have determined what type of accommodation will best suit a person's needs. Care home accommodation (in addition to supported living schemes and shared lives) is a type of accommodation specified in the Care and Support and After-care (Choice of Accommodation) Regulations 2014 and as such, a person has a right to choose the particular care home or location- including in another local authority area (not the type), subject to certain conditions. (See section C).

A 2.3 If the persons 'preferred accommodation' costs more than KCC would usually expect to pay for the provision of accommodation of that kind to meet the relevant level of need, someone else (or in some cases the person themselves (known as first party top up) can make up the difference between that figure and the home's fee by making a third-party contribution (top up). (See section C).

A 2.4 Residential care or care home should not be recorded as a person's need but, if appropriate, recorded on the care and support plan as the only way of meeting their needs. (See Care and Support Planning Policy and Guidance).

A 2.5 It is expected that most care home placements will be made on a temporary basis so that all alternative options can be fully considered. However, it is possible to make placements permanent from day one if it is clear that there is no prospect of the person returning to their home or for example, a former self under when the risk assessment indicates that the person should not be moved. See Fig 4 section C6 for Care Act definition of short-term resident, temporary resident, and permanent resident.

A 2.6 Placements made on a permanent basis from day one includes the trail period of 28 days. What this means in practice is if a permanent placement at a particular care home ends (i.e., person moves to another care home), KCC contractual arrangement require 5-day notice. If the permanent care home placement ends after this period, contractually 4-week (28 days) notice required. More details in B10.

A 2.7 Decisions about permanency should be considered carefully. Making a decision about permanency too early, does not take into account the fact that people often regain a degree of confidence and independence and do not need to remain in a care home.

A 2.8 Direct Payments cannot be used to pay people to live in long-term care homes. They can be used to enable people to purchase themselves a short stay in a care home, provided that the stay does not exceed a period of four consecutive weeks in any 12-month period. This could be used to provide a respite break for the carer. When a direct payment used to purchase a respite break in a care home, the non-residential charging rules apply. (See Direct Payment Practice Guidance).

A3 Legal Framework

Fig 1.

Charging	The Care Act 2014 provides a single legal framework for charging for care and support under sections 14 and 17, The Care and Support (Charging and Assessment of Resources) Regulations 2014 and Annex B and C of the Care and Support Statutory Guidance.
Choice of Accommodation	Section 30 of the Care Act and The Care and Support (Choice of Accommodation) Regulations 2014. Annex A: Choice of accommodation and additional payments of the Care and Support Statutory Guidance.
Ordinary Residence	Sections 39, 40, 41 of the Care Act; The Care and Support (Ordinary Residence) (specified Accommodation) Regulations 2014; The Care and Support (Ordinary Residence Disputes, etc.) Regulations 2014; The Care and Support (Continuity of Care) Regulations 2014. The above duty only applies to a person who is accepted as being “ordinarily resident” in the local authority’s area or who is in urgent need of residential accommodation. Please see the Ordinary Residence guidance for further details. Ordinary Residence E Learning available on Delta.
Deferred Payment	Sections 34 and 35 of the Care Act and The Care and Support (Deferred Payments) Regulations 2014.
Deprivation of Assets	Section 70 of the Care Act and The Care and Support (Charging and Assessment of Resources) Regulations 2014 and Annex E of the Statutory Guidance.
Recovery of Debts	Section 69 of the Care Act and The Care and Support (Charging and Assessment of Resources) Regulations 2014 and Annex D of the Statutory Guidance.
Human Rights	Section 73 of the Care Act.

A4 Principles and Standards

A 4.1 KCC aim to enable people to continue to live safely and independently in their own homes for as long as possible.

A 4.2 Decisions about a permanent care home will not be taken until independence and potential abilities have been fully maximised.

A 4.3 The option of a care home is often considered during a crisis or hospital admission. Wherever possible, persons will be enabled to access rehabilitation, community equipment and recovery services so that a care home can be avoided.

A 4.4 A person moving into a care home can expect to receive a comprehensive needs assessment using a strengths-based approach. This can include people who will be self-funded.

A 4.5 When a person moves into a care home, KCC will ensure that adequate information is given to the care home to help with their provision of support. This will include a care and support plan and other relevant documentation.

A 4.6 A prospective resident and their carer will be given all relevant information about care homes to allow them to make a genuine informed choice about where they wish to live.

A 4.7 KCC will endeavour to ensure a genuine choice, taking a whole County approach to commissioning.

A 4.8 The needs of people placed in care homes will be reviewed within 8 weeks of the placement starting and thereafter annually or sooner, if necessary, in line with the “Care and Support Plan Review Practice Guidance”

A 4.9 Through KCC Strategic Commissioning and care and support reviews, KCC will monitor and ensure compliance with KCC service specification for care homes to ensure standards are maintained.

A 4.10 People will not be charged more than the cost KCC incurs in meeting the assessed needs to which the charge applies s14(4) Care Act.

A 4.11 People will only be required to pay what they can afford and will know what they will be charged.

Section B: Practice Guidance

B1 Providing Information

B1.1 Until a firm decision has been taken place by the delegated authorisor, **no guarantees** should be given to the person about whether KCC will fund their care home.

B 1.2 As soon as possible, a person considering residential care, must be provided with the following information (reading through and providing opportunity to seek clarification) regardless of whether it is believed they will be **self-funders**[3]or not:

- the price KCC usually expects to have to pay for a care home within Kent to meet the relevant level of need.
- information about accessing the online Kent Care Directory.
- the leaflet "People funding themselves in residential and nursing care homes" (updated every April) on www.kent.gov/paying for care and support/paying for residential care
- the Residential Charging (Red Book) which contains information about the charging policy (updated every April). www.kent.gov.uk/paying for care and support/paying for a care home
- relevant "Charging Letter Residential" signed and dated to evidence received "Red Book" and other details about charging. See B1.3 below for other information.
- information (Factsheets) on Deferred Payments on www. Kent.gov/ Deferred payments for care home costs information on Care Quality Commission (CQC)

B1.3 Charging Letters-signing

In line with KCC adult social care charging polices, a person and/or representative is provided with information about care and support charges as detailed above. Depending on the persons circumstances and the care and support to be provided i.e. residential or non-residential, a Charging Letter is issued.

To supplement your conversations about charging, it is established practice the person signs and returns the Charging Letter. The signed letter is a record of understanding they have been told about care and support charges pertaining to their circumstance. Sometimes there is a delay signing and returning the letter including practical reasons such as being unwell, lacking capacity or refusing to sign the letter. In these circumstances it is essential you record on the persons records the date the letter issued, why it is not signed, the discussions you have had and actions you have taken. Once you have recorded the details described on the persons record, refer to Client Financial Services to undertake the financial assessment as normal.

[3] A self-funder is a person who makes his or her own arrangements to contract with and pays for the care home. See Section E for more details.

For whatever reason there is a delay returning the signed Charging Letter, it must not delay meeting a person's assessed eligible needs.

B.1.4 In addition, practitioners must ensure that prospective residents and their families understand the following points:

Use of a short-term bed (**when not used for assessment**) and there is a delay with a homecare provider package of care	The practitioner must be clear, in writing, with the person/ their carer that this arrangement is temporary and is chargeable (subject to a means tested assessment following non-residential charging rules policy) and care and support plan (which is updated as the arrangements may be changed). See Appendix 2 for more details
When the care home is more expensive than KCC usually expects to pay to meet relevant needs.	KCC will only fund if there is a Third Party willing and able to pay the difference- "top up" (except in exceptional circumstances when KCC decides to offer an available care home that exceeds the usual price –because there is no suitable home available within the price to meet care and support needs. See section C1.4 for more details about top ups.
How their former home will be treated in the means tested assessment	Whether it will be disregarded because certain people still live there or not (see section D 3) and Appendix 4: Qualifying Relative.
Former home taken into account in means tested assessment	Value will usually be disregarded for first 12 weeks unless they have already been in permanent care for over 12 weeks (see section D 3) **HOWEVER,** during this period, they will still be **expected to contribute** from their income and other assets (apart from the former home). Some residents in the past have mistakenly thought that during the 12-week property disregard period they did not have to contribute.
If the person has savings over the upper capital limit (self-funder) and has mental capacity	People expected to make their own arrangements. **KCC MAY (**not a duty[4]**)** help with the arrangement only in exceptional circumstances. In these exceptional circumstances, the person remains responsible for paying the costs of their care and support as a full coster, but KCC takes on the responsibility for meeting those needs and contracts directly with the care home. Delegated authorisor approval required to exercise this discretion. See Authorisation (of funding) Levels Policy (levels of delegation) and Care and Support Planning practice guidance and policy.
If the person has <u>savings</u> over the upper capital limit and lacks mental capacity	If the person lacks mental capacity and there is no one authorised to make the arrangements under the Mental Capacity Act 2005 or otherwise in a position to do so on their behalf, refer the person to a

[4] Discretionary powers to meet a person's needs by arranging a care home, including in another local authority area under section 19 of the Care Act.

	local solicitor who can apply to the Court of Protection (CoP) to be their Deputy and handle their affairs **However,** there may be exceptional circumstances when a referral to a solicitor is not possible (e.g. safeguarding concerns): **KCC then has a duty to meet eligible needs;** place the person; contract directly with the care home; and charge the person the full cost. (See section E) and Care and Support Planning policy. There may be circumstances when KCC must temporarily fund a care home i.e. pending an application for Deputyship by the family/others. When Deputyship in place and the family have made own contractual arrangements with the care home, temporary funding will cease and KCC will seek reimbursement from the person's capital when the Deputy has been appointed. Relevant delegated authorisation required (Complete Disregard- Funding Residential Nursing Care (replaces CMD form). Form available on Tri-x.
When a person becomes a self-funder	**Must be clearly advised of the price KCC usually expects to pay for a care home within Kent to meet the relevant level of need.** If they later need to seek financial assistance, KCC will normally only pay up to the usual price and that they will only be able to remain in their care home if there is a third party willing and able to pay a top-up. See section C about top ups. (When a former self funder seeks financial assistance from KCC, a risk assessment may determine move not appropriate, therefore any top up must be waived. See E2.5(3). Advised of the current upper capital limit, where to find updates. Contact KCC when there is 3 months private funding left before their capital reaches the upper capital limit.

B2 Means Tested Assessment Process

Note: Where Client Financial Services already hold a person's financial information from a previous financial assessment or where a person's income and capital has already been verified by the Department for Work and Pensions, Client Financial Services can complete the financial assessment without needing to contact the person or their representative.

B2.1 The Officer responsible for carrying out a means tested assessment will look in detail at a person's income and capital. In the means tested assessment, the person's capital is taken into account unless it is subject to one of the disregards set out in Schedule 2 to the regulations and described in Annex B Care and Support Statutory Guidance. The main examples of assets are property and savings.

B2.2 Most forms of capital and savings are included in the means test, including bank, or building society accounts, National Savings accounts, Premium Bonds, stocks and shares, and property (buildings or land). See section D: Residents with their own home, for other details.

B2.3 Practitioners (exception: County Placement Team will do this for older people care home placements) will be making all referrals to the Assessment Team (Residential) within Client Financial Services.

B2.4 Briefly, the means tested assessment works as follows:

- The person's assets are assessed. If this exceeds the **upper capital limit,** they will have to pay the full cost of their care (either as a self-funder or as a **full-cost person)[5].** For permanent residents this can include the value of the former home except in certain circumstances when it is disregarded – see section D 5.

- If assets are less than the **lower capital limit,** the person will pay only what they can afford from their income. The person must be left with a minimum amount of income, known as Personal Expenses Allowance (PEA)[6][11] as set out in the Department of Health Social Care charging regulations.

- Any assets between the lower capital limit and the upper capital limit the person will be charged £1 per week of every £250, or part thereof. towards the cost of their care. This will be added to their weekly income when assessing their weekly charge. For example, if a person has capital of £18,100, this is £3,850 above the lower capital limit of £14,250. Dividing the £3,850 by £250 produces a figure of £15.40. When calculating tariff income, the amount is always rounded up. This therefore gives a tariff income of £16 per week.

- Income derived from a capital asset, for example, building society interest, or dividends from shares, will be treated as capital and added to the balance and counts as part of your capital – not as income. This does not apply to income from certain disregarded capital[7]

- **From 10 April 2017**, payments to veterans under the War Pension Scheme, with the exception of Constant Attendance Allowance, which is specifically intended to pay for care, must be fully disregarded in the assessment of what a veteran can pay for care.

For disregarded income see Appendix 6.

- From the weekly income[8], a standard PEA is deducted. In addition, certain other income is disregarded (e.g. DLA Mobility Component). Apart from the PEA and any other agreed disregards, the person is expected to contribute all of the rest of their income. In some circumstances, the PEA can be increased but only with the approval of the delegated authoriser.

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[5] A full cost person means KCC arranges and pays for the placement but then charges the person in full, See section E for more details
[6] PEA is not a benefit but the amount of a person's own income to spend as they wish. See reference at beginning of this document
[7] See Annex B Treatment of capital for list of capital assets that must be fully disregarded.
[8] See Annex C Treatment of Income for details on Income that is disregarded either fully or partially and PEA (para 43).

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

- In March 2022, the government established the “**Homes for Ukraine scheme”.**
  In recognition of the offer of accommodation, sponsor can receive a £350 per month ‘thank you’ payment which is payable up to a maximum of 12 months.
  Where a sponsor is currently receiving means-tested support towards meeting their care costs, local authorities should disregard these payments when carrying out social care financial assessments, and it is the government’s view that local authorities may rely on Schedule 1, paragraph 6 in the Charging Regulations to do so. This will allow the care recipient to retain the £350 payment in line with the intention of the Homes for Ukrainians policy. Since families opened up their homes to Ukrainians, they now receive a package of further support. These increased “Thank you payments” to hosts of £500 a month for guests who have been in the country for over a year will be extended from 12 months to 2 years. Where a sponsor is currently receiving means-tested support towards meeting their care costs, these increased payments will be disregarded when carrying out financial assessments.

B2.5 Personal Injury Payments: capital disregarded[9]

Where a person has been awarded damages in consequence of a personal injury to that person, the amount shall be fully disregarded from the calculation of the person’s capital when the sum is

- held in trust or;
- administered on behalf of that person by the court or;
- only able to be disposed of by the direction of the court.

Note:

1) For the first 52 weeks, the capital must be disregarded unless specifically identified by the courts to pay for care. NB: even if it is for care, it must be disregarded if it is in a trust or administered by the Court.

2) After 52 weeks, the capital may be taken into account unless held in a trust or administered by the court. Staff must be provided with the originals of trust documents etc. and if necessary, take advice from Legal Services.

B2.5.1 Where a person has used their Personal Injury Payment to purchase a property the property is also disregarded, including when it is a second property.

[9] In addition to Annex B, refer to the Care and Support (Charging and Assessment of Resources) Regulations 2014

B2.5.2 With effect from July 2021, two Northern Ireland statutory compensation schemes have been added to the list of capital sums to be disregarded when financial assessments are undertaken.

1. Payments made under the Victims' Payments Regulations 2020 – to those injured during the troubles conflict in Northern Ireland.

2. Compensation payments made under the Redress Board (Northern Ireland) as set up under the Historical Abuse (Northern Ireland) Act 2019 for survivors of historical child abuse.

B2.6 When and who to request the means tested assessment.

Effective from 10 May 2023 (5pm), the Practitioner, will be responsible for requesting a financial assessment at the end of the care needs eligibility via a "*next action*" on the Mosaic System Record –*for Strengthening Independence Service previously known as Disabled and Young People Service, use the updated Finance Referral form on KNet.*

This enables the financial assessment to be completed by Client Financial Services in parallel with the care and support planning. This is a change to the practice whereby the Purchasing team made the request after the commissioned care service had been arranged.
A guidance video explaining the changes to Mosaic can be found here.

There may be a need to request a financial assessment at other times. Therefore, practitioners can also request the financial assessment from the Emergency Request and/ or the *Significant Information on an Open Case* (SIOC) available from the start menu on the Mosaic System Record. The SIOC should be used to make financial assessment referrals for all those who are already within the care and support planning and arranging services on Mosaic workflow, to ensure that the financial assessment can be completed at the earliest opportunity.

B2.7 People receiving services provided under section 117 of the Mental Health Act (1983)

During the assessment and care planning, it will be considered if the need for any service to be provided arises from or relates to the person's mental health disorder, and will reduce the risk of deterioration of the person's mental condition (and, accordingly, reduce the risk of the person requiring admission to hospital again for treatment for mental disorder).

Services provided under section 117 are non-chargeable. A care and support plan may have wider assessed needs/outcome than those that are provided under section 117. In these circumstances, services which are not related to assessed mental health needs may be eligible for a charge.

B2.8 Nominated third party when person has mental capacity.

B2.8.1 A person who has mental capacity, may wish to nominate another person to act on their behalf to liaise with KCC officers. In these circumstances a "*Third Party Authorisation Form (finance*) has been introduced and available on Tri-x. This completed form documents the persons wishes to formally share their personal information with their chosen nominated person /representative.

B2.8.2 The *Third-Party Authorisation Form (finance)* to be completed by practitioner during the initial meeting with the person. The signed and dated form should be scanned and emailed to the Assessment Team (residential) together with the referral for a. means tested assessment.

B 2.9 Referring to KCC Financial Affairs Team if appropriate.

B2.9.1 Officers in the Financial Affairs Team are KCC staff who are appointed by the Department for Work and Pensions to act on behalf of persons receiving KCC social care in relation to their benefits. They are known as the "*Corporate Appointee*" for that person. They take on the responsibility for claiming benefits, reporting any change of circumstances that may affect benefit claims and for arranging for the person's contribution to be paid to KCC.

B2.9.2 The criteria for referring to the Financial Affairs Team are as follows:

- There is no other suitable person (i.e. relative or friend) able to act on their behalf and the Financial Affairs team are considered as a last resort
- There is an open chargeable service for the person (a service that requires a means tested assessment)
- There must be open Social Care Team on the persons System Record
- The person:
    - has savings of less than £23,250
    - does not own, or have interest in, a property or land
    - does not own or lease a private vehicle is not in receipt of a Direct Payment

Further details on Client Financial Services KNet page. Click here for link

B2.9.3 The Department for Work and Pensions and the Court of Protection will not allow KCC to manage the financial affairs of a person where there is a relative that should be able to assist. The only exception to this rule is for safeguarding concerns – and financial affairs will therefore expect an alert to be opened prior to receiving a referral from the practitioner.

B2.9.4 To refer a person to the Financial Affairs Team – Financial Affairs Intervention Request Form must be completed. This form and further instructions can be found on Tri-x. Click here for Client Financial Services Page which has the link to the form.

B2.10 Effect on Housing Benefit on a permanent resident

B2.10.1 Once a person is classified as a permanent resident, their Housing Benefit or Mortgage Interest payments will stop unless the District/ Borough Council are told that they are in a "trial" period, for this purpose trial period is defined in the benefits regulations i.e. they are trying out the particular home with a view to permanent admission. In these cases, the Housing Benefit or Mortgage Interest payments can continue for up to 13 weeks. (See also A2.5 and A2.6).

B2.10.2 If this is not possible then, for Housing Benefit only, it should be possible for a permanent resident to continue getting Housing Benefit for up to 28 days after they have become permanent if they are still liable for the rent during the notice period and this could not reasonably have been avoided. Benefit Officers will be able to provide further advice if necessary. If a tenancy is not ended when a person has entered permanent care, the person will remain liable for the full amount of rent once the Housing Benefit has ceased until the tenancy has been ended.

B3 Deprivation of Assets (detailed guidance on Tri-x) click here

B3.1 When undertaking or reviewing a means tested assessment, we may identify circumstances that suggest that a person may have deliberately deprived or decreased their overall assets (includes income) to reduce the level of the contribution towards the cost of their care.

B3.2 This means that they must have known that they needed care and support and have reduced their assets. This includes someone who has been self-funding their care and have deliberately deprived/decreased their assets to be eligible for local authority support sooner than expected.

B3.3 To decide if this is the case, individual circumstances must be fully explored and recorded on the persons System Record. Whether deprivation for the purpose of avoiding care and support charges has occurred (which would include someone with proper legal authority for property and financial affairs to act on their behalf) the following should be considered:

- Whether avoiding the care and support charge was a significant motivation in the timing of the disposal of the asset;
- At the point the capital was disposed of could the person have a reasonable expectation of the need for care and support;
- Did the person have a reasonable expectation of needing to contribute to the cost of their eligible care needs?

Key message

It would be unreasonable to decide that a person had disposed of an asset in order to reduce the level of charges for their care and support needs if at the time the disposal took place they were fit and healthy and could not have foreseen the need for care and support.

B3.4 It is up to the person to prove to us that they no longer have the asset (e.g. trust deed, deed of gift, receipts for expenditure, proof that debts have been repaid). If they are not able to, we will assess them as if they still had the asset.

B3.5 Where the person has transferred the asset to another person to avoid the charge, that person is liable to pay KCC the difference between what we would have charged and did charge the person receiving care. However, the other person is not liable to pay anything which exceeds the benefit they have received from the transfer.

B3.6 Where a person has accrued a debt, KCC may use its powers under section 69 of the Care Act to recover that debt. In deciding how to proceed, KCC will consider the circumstances before deciding a course of action to recover the debt (whole or part of) For example, consider whether this was a deliberate avoidance of payment or due to circumstances beyond the person's control.

B3.7 As with any other debt, we can use the county court process to recover debts, but this should only be used after other avenues have been exhausted and reasonable alternatives explored.

Further details in Care and Support Statutory Guidance Annex E: Deprivation of Assets

B4 Authorising a care home

B4.1 The policy of KCC is to enable people to continue to live safely and independently in their own homes for as long as possible and decisions about a permanent care home will not be taken until all other alternative support options had been considered.

B4.2 It is recognised that for some people the needs assessment and care and support planning process demonstrate needs to be met by moving into a care home. In these instances, the practitioner is the decision make. KCC has processes in place to provide assurance of the decision.

B4.3 The Authorisor has the following functions:

- Agree that a care home is the most appropriate way of meeting persons' needs (in terms of appropriateness) or whether other options should be pursued. See A2.1 above.
- To decide whether KCC will arrange the care home under the Care Act.

- If assets over the upper limit and they have mental capacity, can ask person to make their own arrangements. Therefore, details of their savings including whether they have a property need to be available to the delegated authorisor.

- B4.4 To facilitate the making of the above decisions, in addition to the Practice Assurance Form, the delegated authorisor to be provided with the following information before a decision can be made Relevant risk assessment
- Charging letter.
- Financial information – capital and whether a property is involved.
- Details of any relatives or others that are willing and able to assist if applicable (i.e. assist a self-funder to contract with the home if they lack capacity).
- Other documentation required by the delegated authorisor.

<u>Other decisions to be taken by the relevant delegated authorisor includes:</u>

B.4.5 Authorising a care home from hospital

B4.5.1 If possible, placements arranged from hospital should be to assessment or rehabilitation beds (or if necessary, a care home on a temporary basis) so that **full consideration is given to an eventual return home.**

B4.5.2 Only in exceptional circumstances should a permanent placement be made straight from hospital. The <u>delegated authorisor</u> can only make this decision (depending on the local arrangements).

B5 When funding and charging start.

B 5.1 Fig 3.

1. Cases where no property is involved, and the person is **already** in the care home	Funding to run from the date the person requests an assessment provided their assets have already dropped below the upper capital limit. See example 10: E2.4. If they have not yet reached the upper capital limit, then funding should run from the date they drop below it. See example 11: E2.4. **Any processes within KCC which cause a delay should not financially disadvantage the resident, or delay meeting eligible needs.**

2. Cases where no property is involved but the person is **not yet** in the care home	Funding starts from the date they enter the care home provided their assets are below the upper capital limit and they have requested an assessment by then.
3. Following a 12-week property disregards a deferred payment arrangement agreed	KCC funds for the 12-week disregard period as in no.1 above. Funding continues, to include property from week 13
4. Former self-funding arrangement. The person's finances have dropped below the upper capital limit they have a property, and a deferred payment arrangement has been agreed.	No 12-week property disregard period (if the person has been living in the care home for more than 12 weeks, otherwise this is pro rata) An application for a deferred payment is made. Funding applies from the date the person requests an assessment provided their assets have already dropped below the upper capital limit. See example 10: E2.4. If they have not yet reached the upper capital limit, then funding applies from the date their finances reach the upper capital limit. See example 11; E2.4. **NB.** This may also apply where a person has previously been in receipt of Continuing Healthcare funding.

B 5.2 The date KCC can charge a resident.

B5.2.1 Charging will be from the start of the placement and not from the start of the means tested assessment. The financial referral and means tested assessment should be completed as soon as possible to avoid people being faced with large, unexpected bills. Where any arrears of charges are due, people should be given a reasonable length of time in which to pay.

B5.2.2 If the person has difficulty paying the invoice in one go, they will be expected to contact KCC Debt Recovery to arrange payment over a longer period.

B6 Circumstances when people are NOT charged

- A person who is receiving funding under NHS Continuing Healthcare
- A person who is receiving Intermediate Care/Enablement services/Assessment bed/Short Term Bed[10] up to 6 weeks (exceptions require appropriate approval)
- Services provided under Section 117 of the Mental Health Act (1983), where the provision is related to their MH need

[10] Unless not used as an assessment bed because there is no appropriate Home Care provider available. See Appendix 2

- Certain war pensioners -The Service Personnel and Veterans Agency (part of the Ministry of Defence) can pay towards the cost of a short period of skilled nursing care or convalescence in exceptional circumstances
- A person suffering from variant Creutzfeldt-Jakob disease [11]

B7 **Circumstances when people <u>WILL be charged IN FULL</u>**

- A person with assets (savings, capital, and other assets) above the upper capital
- limit.
- A person assessed as full charge payer by the means tested assessment because they have sufficient weekly income to pay the cost of their care home.
- A person who refuses to comply with the means tested assessment process.

B8 **Deprivation of Liberty Safeguards (DoLS) and Charging**

It is appropriate to charge people subject to DoLS.

B9 **Residential Schools or Colleges**

B9.1 A person (18 yrs.+) who is living in a residential school or college may be entitled to assistance towards their funding for the residential element of the placement, which is not funded by education. The person will be financially assessed to determine any contribution towards this residential element.

B9.2

The person will only pay a contribution while they are living in the college or school and not when they are living at home between terms or weekends. If the person receives any other services while they are at home between term times/weekends, another means tested assessment may be required, and this may result in an additional charge for the service under the non-residential charging rules.

B9.3 County Placement Team/practitioner, must indicate on the financial assessment referral form if the placement is a residential college and how many nights per week the person will be resident (e.g. 4 nights). The County Placement Team/Adult Purchasing Team to inform finance by email, every time a new provision is added to the persons System Record for each college term. See Appendix 1 for more details.

B10 Contractual arrangements

NB: This section applies to all care home placements made by KCC including those during the 12 Week Property Disregard Period and those made under Deferred Payments (see section D 4 for further details).

B 10.1 **Private top ups.** There should be no “private top-ups” outside of the contractual arrangements entered between KCC and the care home. Any known breaches of this must be reported to the Strategic Commissioning Team and the relevant delegated

[11] A degenerative neurological disorder that is incurable and invariably fatal. Evidence same strain that causes bovine spongiform encephalopathy (BSE).

authorisor. The only payments that can be made direct by the person to the home are for things like hairdressing, newspapers etc.

B 10.2 What price should the contract be made at?

B10.2.1 This is determined by the contract price which KCC will usually pay (*guide*) for each care home. The person will be placed at this contract price unless the level of need requires a higher individual care home contract price.

B10.2.2 In this instance, KCC will place the person and pay the provider the actual cost to meet assessed needs. The County Placement Team identify suitable care homes for older persons at the necessary contract price.

B10.2.3 For people with a mental health condition, a learning disability, autism, d/Deaf, deafblind and sight impaired or have a physical disability, the Cost Model tool[12] provides the contract price: the basis to place the person.

See section C1 about choosing accommodation/ top ups and C2 when to request to exceed the usual price.

B 10.3 Annual price increases

KCC strategic commissioning will agree any price uplift to be applied to care homes including those made under Deferred Payment. If the care home makes a request for an uplift outside the commissioning process this should be referred to strategic commissioning. If a particular home is requesting a higher percentage increase this could be in breach of the contract.

B 10.4 NHS Funded Nursing Care (FNC).

Care homes are required to invoice their relevant Integrated Care Boards (ICB) for the FNC contribution separately from any invoice for a care home to KCC.

B 10.5 Actions when KCC ceases funding

When a person is no longer eligible for KCC funding due to excess assets, it is the practitioner responsibility to advise the care home using the

- template letter “Self- funding to care home” or
- letter to advise the person is now fully funded by Continuing Healthcare.

[12] Cost model is a tool which compares a pre-defined set of costs against those submitted by care homes. The costs used for comparison in this model are based on national benchmarks and previously submitted costs from all care homes within Kent. Some of the values in the model vary depending on the location of the home, number of beds, and the type and level of care offered by the home.

Section C: Choice and Third-Party Top Up (TPTU)

C1 Care and support planning

C1.1 KCC will have regard to the following principles:

- good communication of clear information and advice to ensure well informed decisions.
- a consistent approach to ensure genuine choice.
- clear and transparent arrangements for choice and any ‘top-up’ arrangements.
- clear understanding of potential consequences should ‘top-up’ arrangements fail with clear exit strategies.
- the choice is suitable to the person’s needs and identified outcomes.

C1.2 Care and support planning **must:**

- have determined what type of accommodation will best meet a person’s needs.
- demonstrate that the cost, when setting its price, is sufficient to meet assessed care needs.
- provide residents with the level of care services that they could reasonably expect to receive if the possibility of first party and third-party contributions did not exist.
- make sure the personal budget is always sufficient to meet the needs identified in the assessment and care and support/support plan.

C1.3 Care and support planning **must not:**

- seek **a resident**[13] or a third party top up contribution in cases when KCC decides to offer someone a place in more expensive accommodation in order to meet assessed needs, or for other reasons.
- seek a top up because of commissioning failures leading to lack of choice
- leave the person to make their own arrangements when there are no placements at KCC’s usual rate. In these instances, KCC will make suitable alternative arrangements and seek top up from the person other than their means assessed contribution (i.e. their contribution based on their pensions, benefits etc.).
- never encourage or otherwise imply that care home can or should seek further contributions from a person in order to meet assessed needs.

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[13] Resident/First party top ups **only** when residents that are subject to the 12 Week Property Disregard (see section D4) or have agreed a deferred payment agreement (see section D4) with the council or under section 117 of the Mental Health Act 1983 may make top-ups from specified resources on their own behalf. **These are the only situations where the person may self-top up.**

C 1.4 Choice of accommodation Care Act rules

The person will have a right to choose accommodation between different care homes and locations, this includes in another local authority area[14] (not the type of accommodation) when the:

- type of accommodation is one of those specified in the Care Act regulations (care home, shared lives placement or supported living accommodation[15]). This includes extra care housing settings.
- care and support plan specify that the needs are going to be met by the provision of accommodation of the specified type defined by the Care Act.
- preferred accommodation is of the same type as that specified in the care and support plan.
- preferred accommodation is suitable to the person's assessed needs and identified outcomes in the care and support planning process.
- preferred accommodation is available.
- care home agrees to provide the accommodation at the rate identified in the actual personal budget to meet relevant level of need's and on KCC terms and conditions.

> **Key message**
>
> When a person requests, KCC must arrange for care in a care home more expensive than it would usually fund, provided the conditions above are met and a third party (might be a relative, a friend, or any other source) or in some circumstances the person (first party), is willing and able to pay the difference between the costs KCC agrees to pay to meet the relevant levels of need, and the actual cost of the accommodation (to 'top-up').
>
> See C1.5 "Top Ups" for more details and C3 "When placing outside Kent".

C1.5 Top Ups

C1.5.1 When a person actively chooses a setting that is more expensive than the amount identified in the personal budget, an additional cost or 'top-up' payment will need to be agreed (the difference between the amount specified in the personal budget and the actual cost).

C1.5.2 The personal budget is the actual cost to KCC of meeting the person's needs, this means the lowest cost placement which meets the Care and Support Plan outcomes (not necessarily the cheapest option), the top up is applied where a placement cost more than this.

[14] See section C3 for more details when making arrangements outside Kent.

[15] Includes extra care housing. In supported living accommodation, the person usually takes the tenancy and pays the rent.

To illustrate: Home (a) meets needs and costs £100 per week Home (b) meets needs and costs £150 per week Personal Budget = £100 Top up = £50

C1.5.3 When entering into a contract to provide care in a setting that is more expensive than the amount identified in the personal budget, KCC is responsible for the total cost of that placement.

C1.5.4 This means that if there is a break down in the arrangement of a 'top-up', for instance if the person making the 'top-up' ceases to make the agreed payments, then KCC would be liable for the fees until it has either recovered the additional costs it incurs or made alternative arrangements to meet the cared for person's needs.

C1.5.5 In terms of securing the funds needed to meet the total cost of the care (including the 'top-up' element), the person making the 'top-up' payments pay the 'top-up' amount direct to KCC. KCC then pays the full amount for the placement to the care home.

C1.5.6 A person must not be asked to pay a top up towards the cost of accommodation when there are no lower cost alternatives available that are suitable to meet assessed needs. A top up should not be for something that is agreed to meet needs.

Key message Care and support planning must not seek a resident, or a third party top up contribution in cases when KCC decides to offer someone a place in more expensive accommodation in order to meet assessed needs or for other reasons.

C1.5.7 In all circumstances where a third party top up (TPTU) is reasonable, KCC should seek the full TPTU, but a partial TPTU is better than no TPTU where options are quite limited. Relatives may sometimes need support in approaching other family members or relevant charities for a partial contribution – i.e. sharing the cost. See C2, C3 and D4 for other details about top ups.

C1.5.8 Where a Third Party Top Up is required, the person agreeing to pay the top up will be required to complete a light touch means tested assessment to satisfy KCC of its ongoing sustainability. Where more than one person is agreeing to pay a share of the top up, a means tested assessment will only be required if each share. The County Placement Team are responsible for coordinating the completion, return (signed) and dissemination of the Third Party Top Up Letter and Agreement and Third-Party Top Up Financial Assessment (available on Tri-x)

Separate guidance on Tri-x when a third party top up arrangement fails for any reason, including when KCC becomes aware the agreed top up amount is no longer sustainable. https://proceduresonline.com/trixcms2/media/17267/ending-third-party-top-ups-practice-guidance.docx

C 2 When a request to exceed the usual price should be made

C2.1 When there are no reasonable alternatives within KCC usual price within Kent, agreement is required to exceed the usual price by completing a "Third Party Top Up Waiver" Form. KCC will arrange care in the more expensive accommodation and adjust the personal budget accordingly.

In effect this equates to:

> Estimated personal budget is the usual price.
> Two care homes are identified which can meet need (a) at £100 per week (b) at £150 per week, so the actual Personal Budget is set at (a).

C2.2 There may also be instances when KCC agree to pay more than the usual price to meet the relevant level of need, but still ask for an element of TPTU if an even higher cost home is being requested. See example 1 below.

Example 1: Usual price is £350 per week. KCC agree to exceed this to £400 for a person because there is not a suitable home available within the usual price but there are plenty at the £400 price. The resident, however, chooses to go into a home costing £450 per week. The top up should only be £50 per week (i.e. the difference between £400 and £450), not £100 (the difference between £350 and £450).

C2.3 The rate that KCC agrees to pay towards care home fees must be based on the assessed needs as agreed and recorded in the needs assessment and care and support plan.

C2.4 It is extremely important the practitioner think very carefully about the manner in which assessed needs are described. See example 2 below.

> **Example 2:**
>
> "*Mrs. X needs to maintain contact with her family"*
>
> is different from
>
> "*Mrs. X needs to be close to her family,"*
>
> as contact might be able to be maintained without being in the same town in certain circumstances.

C 2.5 When relatives want a person to move nearer to them within Kent.

C2.5.1 The practitioner must explore what other options there are for meeting the person's need for social contact and emotional support, the extent of their existing local social network, where other family members are, and the recent pattern of family contact. It is crucial to consider how vital contact with family/ friends is to the person's health and wellbeing - i.e. to meeting their needs and/or Article 8 European Convention on Human Rights: right to a private and family life.

C2.5.2 Each set of circumstances needs to be considered carefully. Physical frailty and disability may be a limiting factor for some relatives and for others cost will be a factor. Visitors' difficulty with travel costs needs to be considered carefully and various potential solutions looked at – e.g. is local volunteer transport available or is the home itself able to assist.

C2.5.3 KCC is not obliged to fund the most convenient/nearest placement unless individual circumstances clearly justify this, i.e. because it is necessary to meet their needs.

C3 Placing outside of Kent

C3.1 When the assessment and care and support planning process has determined that, to meet an eligible need, a move to another local authority area is necessary e.g. because a need prevents them from developing/maintaining domestic, personal or family relationships in Kent; Article 8- Right to a private and family life, and there is a significant impact on their wellbeing, the arrangements must be made in the other area if this is the persons preferred option in accordance with The Care and Support and After-care (Choice of Accommodation) Regulations 2014.

C3.2 A person has a right to choose affordable accommodation options between different care homes in the other area (host), including a more expensive setting than the amount specified in the personal budget for accommodation of that type, even if the specified accommodation is available in Kent.

C3.3 When the persons chosen option offers more than is required to meet needs, a third party or in certain circumstances the resident, must be willing and able to pay the additional cost (‘top-up’). See C1.5 above and example 3 below for more details about top ups.

C3.4 KCC starting point would be to agree the price at **no more than the host rate, then negotiate with the care home/s to determine the actual cost to meet needs**. In exceptional circumstances, the contract with the care home could be agreed at a higher price.

C3.5 The personal budget allocated (which does not include a top up amount if applicable), must be based on the actual cost of the care home in the host area which is suitable and available to meet needs.

See example 3 below for illustrations to determine when a top up is required.

C4

Example 3

A) KCC has determined that care and support needs can only be met in a care home outside Kent and the suitable care home available to meet care and support plan outcomes costs £400

Available host care home cost = £400 per week

KCC available and comparable care home price = £350.00

Top up = £0.00 per week

No top up required because KCC agreed to place the person outside Kent to meet care and support plan outcomes

B) KCC has determined that care and support needs can only be met in a care home outside Kent and the suitable care home available costs £400, but the person has chosen a more expensive care home in the host area

Available Host care home cost = £400 per week

KCC usual price = £350.00

Person chosen care home in host area = £500 per week

Top up = £100.00 per week

Top up required because person has chosen a home in the host area that costs more than the cost of a suitable care home KCC identified in the host area to meet care and support plan outcomes.

The top up amount is the difference between host actual cost and persons preferred option in the host area.

Former self-funders already living in care homes

C4.1 A former self funder is typically someone who becomes eligible for KCC funding but has been paying a higher ‘private’ rate in the care home. See E2.4 and example 10 and 11 when funding should start.

C4.2 When the needs assessment has determined person has eligible needs and the outcome of the care and support planning process involving the person and the family (where relevant) is a decision to meet needs in a care home, the following applies:

- consideration needs to be given to the length of residence at the home, what information and advice was given at the time of the placement regarding future funding and what ‘understanding’ there was with the home regarding the time when the person would need KCC funding.
- a move to a lower tariff room within the same home may be appropriate, and it may be necessary for senior managers (for OPPD County Placement Team/Adult Placement Team underrate negotiations) to negotiate directly with the home if there is no readiness to accept continuation of the placement at KCC usual price. In some instances, a care homeowner and managers should be asked to evidence how they have applied ‘due diligence’ in anticipating the sustainability of fee levels for specific residents.
- if it is not possible to negotiate the price down to the KCC usual price, a risk assessment should be carried out to determine if it is appropriate to move the person. Line managers always need to be informed as early as possible if there is an actual threat of eviction.
- If a risk assessment indicates that the person should not be moved a request to exceed the usual price KCC would pay must be made. Further details in E2.5 “remaining in the care home”.

C5 People no longer eligible for NHS Continuing Healthcare

C5.1 The same general principles apply regarding TPTUs, but it will be important to consider whether the individual has any needs that exceed the normal range of care usually delivered in that band of care.

C5.2 Practitioners will need to discuss with their line managers the basis for negotiating with the home. For older people, County Placement Team/Adult Placement Team will undertake the home negotiation.

C5.3 NHS funding should not be withdrawn from an existing package of care until all the following applied:

- Continuing Healthcare review;
- An appropriate joint reassessment for NHS Continuing Healthcare using Decision Support Tool;
- The outcome of the review is a change in need/NHS Continuing Healthcare
- eligibility;

- An agreement on alternative funding arrangements in place (in order to ensure continuity of care).

C5.4 If agreement between KCC and the NHS cannot be reached on the proposed change, the current funding should remain in place until the dispute has been resolved. Full details in National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care October 2018 (Revised) pages 53-54.

C5.5 Any suggestion that funding will be withdrawn before alternative funding in place, must be brought to the attention of the relevant community team manager / Continuing Healthcare lead.

C6 Temporary residents (including respite)

C6.1 It is expected that most placements will be made on a temporary basis so that all alternative options can be fully considered. A temporary resident is defined as a person intending to stay for a limited period of time and plan to return home (unlikely to exceed 52 weeks).

Fig 4

> **Definition:** The Care and Support (Charging and Assessment of Resources) Regulations 2014 defines:
>
> "short-term resident" means a person who is provided with accommodation in a care home under the Act for a period not exceeding 8 weeks;
> "temporary resident" means a resident whose stay is—
> (a) unlikely to exceed 52 weeks; or
> (b) in exceptional circumstances, unlikely to substantially exceed that period;"
> "permanent resident" means a resident who is not a temporary

C6.2 Placements made on a temporary basis are charged for in the same way as permanent placements except for the following differences:

- respite when a direct payment is made (see Fig 5 below)
- assessment/short term beds (up to 6 weeks) (exceptions apply)
- Attendance Allowance or Disability Living Allowance Care Component or Personal Independence Payment (Daily Living Component) is completely ignored. (They will still stop being paid by the Department for Work and Pensions after 29 days including the periods of hospital stay preceding this)

C6.3 Although one member of a couple[16] is assessed as an individual, KCC must make sure that the partner remaining at home receives, as a minimum, the basic level of ESA/Income Support/Pension Credit for a single person and any premiums/additions

C6.4 In addition to the "Personal Expenses Allowance", KCC allows an extra £10 per week for home commitments (£5 for one of a couple); extra allowances may be allowed in exceptional circumstances to maintain the home to which they will eventually be returning.

C6.5 If a person is provided with respite, then the way their charge is worked out depends on how the service is provided. See Fig 5 below:

Fig.5.

How respite provided	How charged is calculated (also refer to C6.2 above)
In one of KCC's own care home or KCC contracts directly with a care home for the respite.	Calculated using the charging regulations and Care and Support Statutory guidance for a care home.
Via a Direct Payment	Calculated using non-residential charging regulations and Care and Support Statutory guidance. This then gives the person more flexibility about how to use the payment.
In an Assessment Bed	Free of charge for up to the first 6 weeks (see Appendix 2 for exception when a bed is not used for assessment). See Residential and Nursing Care Home Placement Guidance on Tri-x for more details.

Section D: Residents with their own home

For detailed guidance on the treatment of property, see the Care and Support Statutory Guidance and The Care and Support (Deferred Payment) Regulations 2014. Some of the main points regarding property are summarised below.

D1 Temporary and short-term residents (see Fig 4 above for definition)

[16] Partner and couple has the same meaning as in the Income Support Regulations: Partner as a member of a couple i.e. a man and woman who are married to each other and are members of the same household; (b) a man and woman who are not married to each other but are living together as husband and wife; (c) two people of the same sex who are civil partners of each other and are members of the same household; or (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners, and for the purposes of paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex

D1.1 Arranging a placement as temporary has a number of advantages for the person including:

- there is more incentive to work towards returning the person to their home, once the necessary support systems are in place and rehabilitation/ enablement complete.
- the person is more likely to view going home as a possibility.
- the persons Housing Benefit or Mortgage Interest payments (made with Income Support/Employment Support Allowance /Pension Credit)/Universal Credit and Council Tax Benefit can continue which helps to maintain a home for them to return to.
- their house will be disregarded in the charging assessment; thus, they will not be forced to sell it. They are also allowed additional allowances, which helps them maintain their home, very important if they are to return to it.

D1.2 People who are in a care home on a temporary basis (whether for respite or because it is felt they may eventually return to their home) do NOT have the value of their home (main or only) taken into account in the charging assessment.

D1.3 In addition to the Personal Expenses Allowance (changes each April), an extra £10 per week is allowed for home commitments; in exceptional circumstances extra allowances may also be allowed to maintain the former home to which they will eventually be returning

D2 Property Disregards

D2.1 The value of the persons former home will be disregarded if it has been continuously occupied in part or whole before the person was first provided with accommodation under the Care Act, by any of the following people:

i. the persons partner, former partner, or civil partner, except where they are estranged;
ii. a lone parent who is the person's estranged or divorced partner;
iii. a relative of the person or member of the person's family who is
iv. aged 60 or over, or
v. is a child of the person aged under 18, or
vi. is incapacitated[17]

Full qualifying relatives list Appendix 4

D2.2 In addition to the mandatory disregards listed above, KCC does have the discretion to ignore a property in other circumstances.

The Care and Support Statutory Guidance Annex B; Treatment of capital, Discretionary disregard provides help examples extract below.

42) …An example where it may be appropriate to apply the disregard is where it is the sole residence of someone who has given up their own home in order to care for the person who is now in a care home or is perhaps the elderly companion of the person. See example 4.

43) …A property may be disregarded when a qualifying relative moves into the property after the resident enters a care home. Where this happens, the local authority will need to consider all the relevant factors in deciding whether the property must be disregarded. Factors such as the timing and purpose of the move may be relevant to establishing if the property is the relative's main or only home. The purpose of the disregard in these circumstances is to safeguard certain categories of people from the risk of homelessness. See example 5 and 6 and Care and Support Statutory Guidance supplementary notes which may be helpful to consider in making a decision.

[17] Care Act Statutory Guidance does not clearly define this. Below is the extract from the guidance that may assist when determining if the person is a "qualifying relative. "However, it will be reasonable to conclude that a relative is incapacitated if either of the following conditions apply: (a) the relative is receiving one (or more) of the following benefits: incapacity benefit, severe disablement allowance, disability living allowance, personal independence payments, armed forces independence payments, attendance allowance, constant attendance allowance, or a similar benefit; or (b) the relative does not receive any disability related benefit but their degree of incapacity is equivalent to that required to qualify for such a benefit. Medical or other evidence may be needed before a decision is reached".

Example 4 Example of local authority discretion to apply a property disregard	Jayne has the early signs of dementia but wishes to continue living in her own home. She is not assessed as having eligible needs but would benefit from some occasional support. Her best friend Penny gives up her own home to move in with Jayne. At this point, there is no suggestion that Jayne may need care in a care home. After 5 years Jayne's dementia has reached the point where she needs a far greater level of care and support and following an assessment it is agreed her needs would best be met in a care home. On moving into the care home, the local authority uses its discretion to apply the property disregard as this has now become Penny's main or only home.
Example 5 Example of local authority discretion to apply a property disregard where the qualifying person moves into the property after the resident entered the care home	Fred's family home is unoccupied because his father has died, and his mother is in a care home and Fred and his siblings have their own homes. The property is subject to a deferred payments agreement. Fred has a serious accident and becomes incapacitated. As a result, he unable to work or pay for his existing home. He has nowhere else to live so he moves into the family home which becomes his only home. In the circumstances, the local authority exercises its discretion to disregard the property.
Example 6 Example of local authority discretion to apply a property disregard	Hilda is 63 and lives in a rented flat. Her brother, Stephen, has recently died and his wife, Charlotte, has moved into a care home. Hilda suddenly loses her job and finds she unable to afford to live in her rented flat. As a result, Hilda moves into Stephen and Charlotte's house and this becomes her only home. In the circumstances, the local authority exercises its discretion to disregard the property.

Supplementary notes for example 5 and 6:

44) The local authority should consider if the principle reason for the move is that it is necessary to ensure the relative has somewhere to live as their main or only home. A disregard would not be appropriate, for example where a person moves into a property solely to protect the family inheritance. Local authorities need to ensure that people are not needlessly maintained at public expense. A local authority will need to take account of the individual circumstances of each case; however, it may be helpful to consider the factors listed above for the mandatory disregard plus the following additional factors in making a decision:

- was the relative occupying another property as their main or only home at the time of the previous financial assessment?
- could the relative have reasonably expected to have the property taken into account at the time they moved into the property?

- would failure to disregard the property result in the eligible relative becoming homeless?
- would failure to disregard the property negatively impact on the eligible relatives own health and wellbeing?

Each individual circumstance needs to be considered on its own merits and a property disregard application form will need to be completed and sent to the delegated authorisor. for careful consideration and agreement.

D3 12-Week Property Disregard

D3.1 If none of the disregards above apply, the former home will be included in the means tested assessment. However, for most people the former home will be disregarded for the first 12 weeks. The person will be expected to pay their contribution in accordance with the outcome of the means tested assessment during this 12-weeks.

D3.2 The 12-week period aims to create time for residents to make decisions as to how to meet their contribution to the cost of their eligible care needs.

D3.3 The 12-week disregard applies in the following circumstances:

a. **from the date that the person first enters** a care home as a permanent resident and is funded by KCC from the same date; **or**

b. when the property is disregarded (other than the 12-week property disregard), **unexpectedly ends** because the reason for the disregard no longer exists e.g. qualifying relative has died, moved out or into a care home. See example 7 below.

D3.4

Example 7. End of a property disregard:

Win and Ern have been married for 60 years and brought a home together 18 months ago Win moved into a care home as a result of dementia. During her means tested assessment, the value of the home she shared with Ern was disregarded as Ern is her husband, and still lived in the property.

Ern has been in good health and there is no reason to anticipate a sudden change in circumstance. Unfortunately, Ern suffers a heart attack and passes away, leaving the property to Win. There is no longer an eligible person living in the property, meaning its’ value can now be taken into account in what Win can afford to contribute to the cost of her care. Given this was unplanned for, Win and her family need time to consider what the best option might be. The 12-week property disregard would therefore be applied.

In addition, discretion can be applied to disregard when there is a sudden and unexpected change in the person’s financial circumstances. See example 8 below:

Example 8 . Unexpected changes in financial circumstances:

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

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

D3.5 The 12-week property disregard cannot be used for other properties. So, for example, if a person moves into a care home from a rented sheltered flat but they still own the property they lived in before that, then that former property cannot be disregarded for the 12 weeks, as it is not their former main residence.

D3.6 If a person has been in permanent care for longer than 12 weeks when KCC approached for assistance towards funding, the person will not qualify for a 12-week property disregard. This is because the person has already been in a care home for longer than 12 weeks.

D3.7 During the 12-week property disregard period, the person receives local authority support where they are ordinarily resident. The local authority may place the person in a care home in the area of another local authority (see section C3 for details about placing outside Kent. **However, the placing authority remains the responsible authority during this period.** The 12-week property disregard means that the value of the property (former main or only home) is disregarded in the calculation of the person's assets for 12 weeks.

D3.8 If the person has been in permanent care less than 12 weeks, the property disregard is adjusted accordingly. For example, if person permanent for 9 weeks when approached KCC for a need's assessment, has eligible needs and the outcome of care and support planning is a decision to meet needs in a care home, the property disregard period will be 3 weeks. See section B5 when KCC funding will start.

D3.9 They would need to apply for a Deferred Payment if they needed help with funding (see section D4).

D3.10 **It is only the property that is disregarded for the first 12 weeks**. If the property is sold before the 12-week property disregard period ends, the released capital is not disregarded and is included in the means tested assessment from the date the sale completes.

D3.11 Where a person leaves a placement (where they have been living on a permanent basis), before the end of the 12 weeks property disregard period and then re-enters on a permanent basis within 52 weeks, they will be entitled to the remaining balance of the 12-week disregard. If a person leaves permanent care and re-enters more than 52 weeks later, they will qualify for the full 12-week disregard again.

D3.12 A person (or legal representative) can put their house on the market during the 12week period. If they are taking steps to sell the house, they can apply for Income Support/Employment and Support Allowance (ESA) (income-based)/Pension Credit because for at least 6 months it can be disregarded from the Department for Work and Pensions financial assessment.

D3.13 Finance will assume that they are in receipt of these benefits unless told otherwise and it is in KCC interests to encourage people to be able to claim them. However, they may want the 12 weeks to think about this rather than coming to a hasty decision.

D3.14 Even if the person (or legal representative) is going to apply for Deferred Payments during the 12-week property disregard, (and thus be able to claim Attendance Allowance (AA) / Personal Independence Payment (PIP), they are not entitled to claim AA / PIP daily living component during the 12-week disregard period (except for the first 29 days of a stay in a care home /hospital – whether temporary or permanent).

D3.15 PIP/DLA mobility component continues to be paid through any period of local authority funded residential /nursing care. Both the daily living and mobility component are suspended in some (but not all) NHS funded placements

D3.16 Placements made during the 12-week property disregard should be made at KCC usual contract price or at the agreed higher price if level of need requires it, or if person has chosen a more expensive care home than required to meet care and support outcomes, a sustainable top-up required. (see C1.5 above).

D3.17 During the 12-week property disregard period a person is allowed to self-top-up (if this is required) out of their own available liquid capital[18] (i.e. a first party top-up).

D3.18 If there are no other resources available for a top-up then, if this rule were to be applied strictly, a person would have to go into a home within KCC usual price for the 12 weeks and possibly only move afterwards into a home of their choice. If this situation applies, then consider doing the following: • Waiving the top-up for the 12 weeks (provided it is only a small top-up) 16 Liquid Capital is an easily convertible asset, such as money. …

D3.19 When a person is in permanent care home (as they are by definition during the 12week property disregard period) KCC is not obliged to make any allowance for housing costs such as mortgage interest payments.

D3.20 **What if the person has assets abroad?**

[18] Liquid Capital is an easily convertible asset, such as money.

D3.20.1 A British citizen returning to England after a period of residing abroad, (who has given up their previous home in England) may have property/assets abroad. D

D3.20.2 Where assets are held abroad and all of it can be transferred to UK, its value in the other country should be obtained and taken into account less any appropriate deductions. Assets held jointly to be treated the same way as joint assets held in the UK.

D3.20.3 If assets (that includes the persons former main or only home) cannot be wholly transferred to the UK, then evidence will need to be obtained that confirms this and the asset is not taken into account in the means tested assessment.

D 3.21 **What happens after the 12-Week Property Disregard?**

D3.21.1 Once the value of the property is taken into account, it may take the persons assets well over the upper capital limit. In most situations, it will be expected that they will make their own arrangements with the care home as a "self-funder". However, KCC (the placing authority) is required to offer a deferred payment during the 12-week period. If person accepts the offer, KCC who made the arrangements remain responsible until the deferred payment agreement concluded. (See D4 about deferred payment criteria etc.)

D3.21.2 If the person lacks mental capacity and there is no one authorised to arrange under the Mental Capacity Act 2005 or otherwise in a position to do so on their behalf KCC **CANNOT** expect them to make their own arrangements. See section E1 and Care and Support Planning policy for full details. In these circumstances, KCC should either:

- Refer the person to a local solicitor who can apply to the Court of Protection to be their Deputy **OR**
- Maintain the contract with the home and charge the person the full cost. These residents are known as "full-costers".

D 3.22 Valuing the person's share of the property

D3.22.1 Solely owned properties: the value for charging purposes should be the market value (Estate Agents estimate should suffice in most cases), minus 10% for the costs of sale and minus any mortgages, secured loans etc.

D3.22.2 **Jointly owned properties[19]17** If a person jointly owns their property with someone else, the person's (resident's) share will be taken into account.

D3.22.3 To begin with, it will be valued by taking the market value of the whole property and then calculating the resident's percentage share of this. If the person is not happy with this method of calculating the value of their share, they can ask KCC to obtain a specialist valuation.

D3.22.4 Finance will arrange this and KCC will pay for this. It is important to note that if the property is jointly owned with any of the people mentioned in section D2 and Appendix 4, and one of these people still occupies the property, then the property is completely disregarded and so there will be no need for a valuation of the resident's share.

[19] Residents who KCC began funding in a care home before 6 June 2011 and whose property was disregarded because it was jointly owned will continue to have their property disregarded

D3.23 Date the valuation applies from

D3.23.1 This will not usually be an issue but if a specialist valuation has had to be carried out and this is only done some time after the request for funding, then the valuation should be based on the conditions pertaining at the time of the request for funding.

Example 9 Person approaches us for funding on 1 January. Their other assets are already below £23,250 but they own a part share in a property. It is decided to get a specialist valuation of their interest. However, this is not actually carried out until 4 months later. By this time, some relevant facts have changed, (i.e. one of the joint owners has moved in). This will not necessarily the value, but it may do. The valuer should be valuing the interest based on the conditions pertaining at the time LA support was requested – i.e. 1 January.

D4 Deferred Payment Agreement

D4.1 The Care Act 2014 (sections 34-36) gives local authorities the power to enter into a Deferred Payment Agreement with a person whereby the value of their main or only home is disregarded from the means tested assessment on a temporary basis, either because they do not want to sell it or cannot sell it quickly enough.

D4.2 The Deferred Payment Agreement must be offered to those people who meet certain criteria governing eligibility for the scheme and who are able to provide adequate security for the debt (exemptions apply see D4.16 below).

D4.3 It is the local authority in which a person is ordinary resident that is responsible for offering and arranging for a deferred payment agreement. The local authority remains responsible for the deferred payment agreement until the agreement is concluded.

D4.4 The Care and Support (Deferred Payment Agreements) Regulations 2014 contain further guidance about the implementation of the above Act.

D4.5 It is important that people who have a property are made aware of the Deferred Payments scheme. A Deferred Payments Factsheet has been produced to give out to people and their representatives and is available on http://www.kent.gov.uk/

D4.6 Eligibility

D4.6.1 KCC is not obliged to agree to a Deferred Payment Agreement for every person who requests this. To be eligible the following criteria, at the point of applying for a Deferred Payment Agreement, must be met:

a) person is:

(i) ordinarily resident in the local authority area or present in the area but of no settled residence; or

(ii) ordinarily resident in another local authority area but the local authority has determined that they will or would meet the individual's care needs.

b) anyone who meets the eligibility criteria for care and support and whose needs (agreed with Kent) are to be met by the provision of a care home (regardless of whether KCC arranged or self-funders)

c) the person must have a legal or beneficial interest in a property that is their main or only home (and that interest should be taken into account – i.e. it is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support (see Appendix 4)

d) their other assets, for example, in savings, other non-housing assets and housing assets (excluding the value of their main or only home) are less than (or equal to) upper capital limit.

D4.6.2 Also, KCC are permitted to exercise its discretion and offer a Deferred Payment Agreement to people who do not meet all of the above criteria. Consideration could be given to:

- Properties where KCC would not be the registered first charge
- Where a person does not have immediate access to the capital that is included within the means tested assessment
- If a person has liquid capital[20] that exceeds the upper capital limit, but the amount is not enough to meet care home fees for a 3-month period or more. This should include people who are likely to meet the criteria in the near future.

D4.6.3 For a mandatory Deferred Payment, there must be no outstanding mortgage or loan already secured on the property. However, a person may qualify for a discretionary Deferred Payment if it is decided there is adequate security on the property where a first charge cannot be secured.

D4.6.4 A formal application for a Deferred Payment must be submitted to Client Financial Services before a Deferred Payment can be considered. Agreement and authorisation will be confirmed between Client Financial Services (Email: Financial Services Customer Relationship Team - ST Tel: 03000 412800) **and the relevant Assistant Director**

- Properties where KCC would not be the registered first charge

[20] Liquid Capital is an easily convertible asset, such as money.

- Where a person does not have immediate access to the capital that is included within the means tested assessment

- If a person has liquid capital[21] that exceeds the upper capital limit, but the amount is not enough to meet care home fees for a 3-month period or more. This should include people who are likely to meet the criteria in the near future.

D 4.7 Adequate security

D4.7.1 A legal charge on a property via the Land Registry must be accepted. If the property is jointly owned, both/all owners must consent (and agree) to the charge being placed on the property, with both/ all signatures on the Deferred Payment Agreement.

D4.7.2 . Client Financial Services will undertake all requisite actions relating to beneficial interests in a property.

> **Key Message**
> Client Financial Services obtain re-evaluation of the property and assess any risk in relation to security on an annual basis

D 4.8 How much can be deferred?

D4.8.1 The weekly gross care home fee and the amount to be deferred is agreed between Client Financial Services, Assistant Director and County Placement Team before the start of the Deferred Payment Agreement.

D4.8.2 Each application will be considered on an individual basis taking into account various factors including the amount of equity in the property. Even though the Deferred Payment is individually negotiated, it can never go above the care home **Indicative Price**[22]

> **Example 10**
> House is worth £400,000. For KCC funded residents the rate for the chosen home is normally about £400 per week. However, the private rate being quoted is £900 per week, i.e. £46,800 per year. £46,800 X 8 years = £374,400. The resident has more than enough equity to fund care for about 8 years and, so it is unlikely their wealth would ever deplete to a level whereby KCC had to start contributing to the cost of care (KCC would be unable to continue funding at £900 per week and so this is an important consideration). Therefore, in this case,

[22] Definition: The Indicative Price is the ceiling or maximum price that a care home can charge for any KCC funded placement. Care homes should be pricing against the individual needs of the person and the price of every placement should therefore be between the usual price KCC would pay in Kent and the Indicative Price.

it may be acceptable to agree to the private rate, if necessary, but this must be approved by the delegated authorisor.
Example 11 House is worth £140,000. For KCC funded residents the rate for the chosen home is normally about £400 per week, i.e. £20,800 per year. However, the private rate being quoted is £900 per week, i.e. £46,800 per year. The resident has enough equity to fund care for about 5 years at the normal £400 price. However, if the placement was to be made at the private rate of £900 per week, the resident would only have enough equity to fund about 2.5 years before they had depleted their assets to the upper capital limit. This would be too risky for KCC as, unless the price was reduced, they would be faced with a choice of paying the £900 per week or moving the resident (which may by then be considered too detrimental to their health and wellbeing). Therefore, it is highly unlikely that a price of £900 would be agreed. For more examples, please see Deferred Payment Factsheet

D4.8.3 Once the gross price has been agreed, a person should be able to defer all of their care costs EXCEPT the assessed contribution that is required to be paid from their income. They will be able, if they wish, to keep a higher proportion of their weekly income for ongoing expenditure. However, this will eventually have to be paid back to KCC so will increase the amount deferred (see “Resident’s Contribution” below and factsheet for details).

D4.8.4 Prior to entering into the agreement, both parties should discuss the amount deferred and the security of their Deferred Payment and the sustainability.

D4.8.5 When calculating progress towards the upper equity limit it must include any interest or fees to be deferred.

D4.8.6 If the person intends to secure their Deferred Payment Agreement with a property, KCC must obtain a valuation of the property. The person may also request an independent valuation (recommended).

D4.8.7 Where a property is used as security to offer a Deferred Payment Agreement, the equity limit must be set at the value of the property minus 10%, minus the lower capital limit. See case study 1 below.

Case study 1: The equity limit

Lucille decides to secure her Deferred Payment Agreement with her house, which is worth £165,000.
The amount of equity available will be the value of the property minus ten percent, minus a further £14,250 (the lower capital limit).

£165,000 – £16,500 - £14,250 = £134,250

Therefore, her 'equity limit' for the total amount she could defer would consequently be £134, 250, which would leave £30,750 in equity in her home

D4.8.8 Client Financial Services regularly review a person's Deferred Payment. When the deferred care home fees are approaching 70% of the value of the property the following should take place:

- ASCH / County Placement Team to review Care home fees
- ASCH/ County Placement Team to identify the implications of any potential tops up's and how this will be met in the future
- Client Financial Services will signpost and advise a person on any entitlement to means tested support

D 4.9 Making the Agreement

A Deferred Payment Agreement should be finalised and in place by 12 weeks (either by the end of the 12-week disregard or within 12 weeks of the person approaching the local authority regarding a Deferred Payment).

D 4.10 Person's Means Tested Contribution

During the period of the agreement, the person will be required to pay a means tested contribution towards the full cost of their care fees, the person has a right to retain a proportion of their income (disposable income allowance[23]). The contribution they make is based on their weekly income. The person is liable for the full cost of care fees, the deferred amount is recovered at the end of the agreement.

D 4.11 Annual price increases

A contract entered into with a care home for a person who has a Deferred Payment Agreement in place has the same conditions regarding annual increases to the care fees. If a care home is requesting an increase which differs from that set out in the

[23] See reference section at the beginning of this document.

Rates and Charges the request should be referred to Strategic Commissioning as this could be seen as breach of contract.

Please refer to Section B 10 Contractual arrangements.

D 4.12 Effect on Benefits

The person will be expected to repay the deferred amount of their care home fees, for Department for Work and Pensions benefit purposes, the person is considered to be self-funding. The person should be able to receive Attendance Allowance or Disability Living Allowance (Care Component) or PIP (daily living component) and should make an immediate claim. In addition, if their property is being actively marketed the Department for Work and Pensions will disregard its value for at least 6 months (possibly longer) and therefore they may be able to claim Income Support, Employment Support Allowance.

Practitioner should advise the person or their representative to contact the Department for Work and Pensions https://www.gov.uk/government/organisations/department-for-work-pensions

D4.13 **Termination of agreement**

D4.13.1 A Deferred Payment agreement can be terminated in three ways:

1. Voluntary by the person, or their legally appointed representative (in writing)
2. Automatic termination on sale of the property (or form of security). KCC expects immediate payment on sale of property.
3. Automatic termination when person dies.

D 4.14 **Time for repayment**

D4.14.1 After the person's death, the debt (Deferred Payment, interest, administration costs) needs to be settled by the estate or third party within 90 days. This may not mean the immediate sale of the property an alternative method of repayment may be used.

D4.14.2 KCC will approach the executor with a breakdown of the full costs.

D4.14.3 After 90 days if it is thought that active steps have not been taken to repay the debt, KCC will enter into legal proceedings to reclaim the amount due.

D 4.15 Interest and administrative costs.

Interest will be charged from day one and added to the deferred amount. The interest will accrue on a compound basis.

Example 12 (illustrative purposes only)

Agreement	Opening Balance	Interest	Closing Balance
Day 1	£50.00	£0.0036	£50.0036
Day 2	£100.004	£0.0073	£100.0109
Day 3	£150.011	£0.0109	£150.0218
Day 4	£200.022	£0.0145	£200.0363
Day 365	£18,493.282	£1.3427	£18,494.6251

Interest will accrue:

- After a person has died until the point the deferred amount is repaid in full.
- On the amount deferred even once the equity limit has been reached.

D 4.16 Terms and conditions and information

If a person asks for advice on the Deferred Payment Scheme, staff should advise the person or their legal representative to seek independent legal and financial advice before signing the legally binding Deferred Payment Agreement.

Key message

The Care Act prevents KCC staff from providing financial advice.

D 4.17 Refusing a Deferred Payment Agreement

The following may result in a Deferred Payment application not being progressed:

- The person does not agree to the terms and conditions of the agreement.
- (Any request for a variation on the terms and conditions should be referred for legal advice.)
- Unable to secure a first charge on the property.
- Where a person property is uninsurable.
- Where a person is seeking a top-up that is not considered sustainable for 2 years.

D 4.18 Refusal to defer any more charges

- A review or re-assessment and revision of the Care and Support Plan has demonstrated the person's needs can be met in a community setting.
- The terms and conditions of the Deferred Payment Agreement is breached.
- If the property becomes disregarded after the Deferred Payment has started and as a result the person qualifies for KCC support.

D4.18.1 The practitioner has responsibility for recording decisions relating to the Deferred Payment Agreement in the persons System Record.

D4.18.2 Client Financial Services maintain a record of Deferred Payment refusals and 'end' of agreements.

Section E: Self funders and former self funders

E1 Self-Funders

E1.1 **A 'Self Funder'** is a person who has over the capital threshold and is deemed in The Care Act 2014 to be able to pay for their care and support in full, so makes own arrangements regarding contracting and paying for a care home.

E1.2 **A 'Full Coster'** is a person who does not have over the upper capital limit, but their assessed contribution is higher than the cost of the home and whose arrangements are made by KCC, who then charges that person the full cost of the placement.

E1.3 A person who is self-funding is entitled to a need's assessment, information, and advice. It is in both the persons and KCC's interest that these services are provided so that the person:

- does not enter a care home before they really need to.
- must be provided with the Guide 'People funding themselves in residential and nursing care homes' (Green Book)

E1.4 Following the needs assessment and the provision of information and advice, persons with savings over the upper capital limit are normally expected to make their own arrangements (i.e. to be self-funders).

E1.5 Where the person does not have a legally appointed representative or a suitable person to support them:

If the person lacks mental capacity to make the arrangements and contract direct with the care home, practitioners should normally refer the person to a local solicitor who will be able to make an application to the Court of Protection to become their Deputy and handle their financial affairs.

E1.6 There will be some circumstances, however, when this will not be appropriate and KCC should make the arrangements and enter into a contract with the home and charge the person full cost. The practitioner or Operational support Service (OSS) must refer to Client Financial Services and a Court of Protection Application must be made. Ordinary residence continues with Kent which made the arrangements (and contracted with the care home) on behalf of the person.

These circumstances include:

- When it has not been possible to secure the services of a solicitor.
- When the person is particularly vulnerable – for example if abuse has occurred/is suspected.
- When the home in question is one of KCC's care homes.

- When it has not been possible to secure the services of a solicitor.
- When the person is particularly vulnerable – for example if abuse has occurred/is suspected.
- When the home in question is one of KCC's care homes.

E2 Former Self-Funders

E2.1 If the person is ordinarily resident[24] in Kent, they are entitled to a need's assessment with a view to financial support from KCC. A needs assessment and means tested assessment must be undertaken as soon as possible.

E2.2 When a contact is received by the area **Adult Social Care Referral Service** to request assessment and funding for a person who has previously been self-funding

The following must be considered:

- needs assessment has determined eligible needs
- whether their assessed needs are best met in a care home
- whether the assessed needs are eligible for NHS Continuing Healthcare funding
- if the current care home is within the contracted price KCC would usually pay to meet the relevant level of needs (then the care home can continue and no Third Party Top Up will be required)
- if the care home costs more than the usual contract price KCC would pay

[24] The person will be regarded as ordinarily resident in Kent if they contracted directly with the care home in Kent before they contacted KCC for assistance. Reminder: if the person has a Deferred Payment Agreement with another local authority, the person is ordinarily resident with that local authority

NOTE The home must be informed in writing (CPT (Older persons) send a letter to care home when informed by Area Referral Service) as soon as possible that KCC are considering taking over the funding so that the agreed price can be backdated to the date that we do take over funding (if this is the outcome).

E2.3 When KCC contribution to costs commences

E2.3.1 Following completion of assessment, application of eligibility criteria and Care and Support planning and confirmation KCC will contribute to the cost of the care home placement, financial support must run **from the date the person first contacts KCC for financial support, provided their assets have already reached or dropped below the upper capital limit**. See example 13 below.

E2.3.2 If person has not yet reached the upper capital limit, then financial support will run from the date the person drops below it. See example 14 below.

Example 13 (when upper capital reached or below when first contacted KCC) 1st June 2018: Person contacts KCC for financial support. 5th June 2018; Area Adult Social Care Referral Service referral to Client Financial Services 10th June 2018: Client Financial Services completes a means tested assessment, which confirms assets have reached or below the upper capital limit and calculation suggests person was below the limit when first contacted KCC on 1st June. 1st July 2018: KCC completes all assessments; the care and support planning process determined care home type of accommodation will best suit the person's needs. KCC will contribute to the cost of a care home from 1st June 2018.
Example 14 (when upper capital not reached when first contacted KCC) 1st June 2018: Person contacts KCC for financial support. 5th June 2018: Area Adult Social Care Referral Service referral to Client Financial Services 10th June 2018: Client Financial Services completes means tested assessment; confirms assets will be below the upper capital limit on 30th July 2018. 1st July 2018: KCC completes all assessments; the care and support planning process determined care home type of accommodation will best suit the person's needs. KCC will contribute to the cost of a care home from 30th July 2018

Key message

Any delay by KCC to undertake the means tested assessment should not financially disadvantage the resident. It is preferable to have completed all the assessments before the person's assets have reached the upper capital limit.

E2.4 If the private arrangements price is more than KCC usual price

When a person has been previously self-funding in a care home and the contract [with the person or their legal representative and care home] was above the usual price KCC would pay, **the following steps must be taken**:

Fig 6

Private placement above KCC usual price	Steps to be taken
. Negotiation with the care home	Effort to have the price reduced to the usual price KCC would pay or at least to the level that KCC contracts are normally made at. County Placement Team (CPT) will, upon receipt of the referral from make contact (within three working days) with the care home to confirm KCC's potential involvement in the funding of the placement and commence negotiation with the care home. CPT contact the care home about interim funding. This is to agree interim funding from KCC start date whilst The County placements Team and practitioner work through the former self-funder process. In addition, CPT will ask the care home to advise of the weekly rate it will accept the former self funder at, as a KCC funded person?

2. Not possible to reduce the price of the home to KCC usual contract price	A risk assessment undertaken by practitioner to see if it possible to move the person to a home within the usual KCC contract price to meet assessed level of need. (see following note 3)
3. Risk assessment demonstrates that a move will be detrimental to aspects of the person's wellbeing or outcomes most relevant to them See section E2.5 "Remaining in the Care Home" for further details.	Consideration can be given to a placement in the current home. **In these circumstances, any top up must be waived**. The risk assessment will need to be progressed to the Practice Assurance for authorisation the person will remain in the care home. . Think through issues related to a person's wellbeing when undertaking a risk assessment. This will support practitioners to demonstrate their reasoning for any subsequent decisions made.
4. Needs assessment and risk assessment (where completed) and subsequent Care and Support Plan indicates that the person can be moved	Before commencing arrangements to move the person CPT will, check whether there is a third party willing and able to make up the difference between the usual KCC contract price (or the higher price if person's assessed level of need requires it), and the price the care home has advised CPT they require for the person. CPT will be responsible for coordinating the completion, return (signed) and dissemination of the Third Party Top Up letter/agreement and the Third-Party Top Up Financial Assessment form.

5. There is a third party willing and able	The person can stay in the home and a Third-Party Top Up agreement set up. Third Party Top Up agreement for former self funders must be approved by the usual approval process. Note: Only legitimate to seek a Third Party Top Up if there is actually a suitable home available within the KCC usual price to meet needs, but the person/ or legal representative has actively chosen a care home that is more expensive than the amount identified to meet needs in a care home and allocated in the personal budget[25]. (Details in section C: Choice of Accommodation and Third Party Top Up
6. When a first party top up permitted.	Only during the 12-week property disregard period **or** if they have entered a Deferred Payment Agreement. Where the person is eligible for s117 aftercare in relation to the needs which the placement is required to meet.

E2.5 Remaining in the care home

When a person has been previously self-funding in a care home and the contract (with the person or their legal representative and care home) was above the usual price KCC would pay, the following will help practitioners to think through issues related to a person's wellbeing when undertaking a risk assessment. This will support practitioners to demonstrate their reasoning for any subsequent decisions made.

Thinking about: **Could the move be detrimental to a person's wellbeing?**
The wellbeing principles of the Care Act 2014 are underpinned by respect for people's dignity and autonomy and their right to freedom from inhuman treatment (Article 3 European Convention on Human Rights):

Practitioner to consider:

- Person's need for social contact and emotional support.

[25] The Care Act places personal budgets into law, making them the norm for people with care and support needs. The actual personal budget is an important tool that gives the person clear information regarding the money that has been allocated to meet the needs identified in the assessment and recorded in the care and support plan. The personal budget must always be an amount sufficient to meet the person's care and support needs.

- The extent of their existing local social network.
- How vital contact with family/ friends is to the person's health and wellbeing - i.e., to meeting their needs and/or Article 8 European Convention on Human Rights: right to a private and family life.
- Physical frailty and disability for some visiting relatives/friends. This may be a limiting factor for some and for others cost will be a factor.

Having considered the factors above, the practitioner may need to have what could be difficult conversations with family members with the aim of finding the best solutions for the person when neither party can afford to continue supporting the person within the care home where they currently reside.

Practitioners will need to engage everyone in considering that there may be mitigations to take into consideration to support a move such as:

- When thinking about contact with loved ones, consider paying for transport for family member(s) which may prove a more cost-effective option than the person staying in the home.
- Consider use of technology such as a Kara device to enable virtual calls between visits.
- Consider what the person particularly likes about the current home and whether this can be replicated elsewhere.

When the risk assessment demonstrates that a move will be detrimental to aspects of the person's wellbeing or outcomes most relevant to them, a top up will be waived.

Appendix 1: Practice Guidance for charging accommodation costs in a residential school or college placement. Also see section B9.

Task	By whom
Information: Inform family about the residential element of the college/school which is not funded by education. Person will be means tested for a contribution towards their residential college accommodation costs. The person will only pay a contribution to the accommodation **while they are living in the college or school** and not when they are living at home between terms (*holidays*) or weekends. (*A separate means tested assessment if in receipt of services when at home under Charging Policy for Homecare and other non-residential services*).	Practitioner
Update the persons System Record with residential college provision details	The locality o team
Provider notification (was called a *FAN*). The placement notification will be generated by County Placement Team (CPT) or Adult Placement Team (APT) from the persons system record. Providers will be notified by CPT The notification will have a start and finish date (i.e. a college term with specified actual days (nights) living in the college accommodation per week e.g. 4 days/nights during that term) Need to write in the notes field how many nights per week the charge	CPT - older persons APT will raise the provider notification which is sent to the **practitioner/** (LD, MH, PD) to sign and forward to the provider.
Complete Financial Assessment referral form and send to Client Financial Services. NOTE: complete section 4 on the referral form: Yes or No is this a residential college placement and, if yes, how many nights per week will the person be resident?	CPT- older persons Practitioner (LD.MH, PD)
The persons System Record update on each occasion the person is away from the placement (i.e. record a separate provision for each occasion)	The practitioner informs CPT or APT of the break in service. CPT or APT update the persons System Record
Client Financial Services notified every time a new provision is added to the persons System Record for each college term.	APT or CPT
New provider notification sent for each college term.	APT or CPT

Appendix 2: Short term bed - charging

1. Where the bed is used for assessment, no charge is applied for up to 6 weeks.

2. Where no appropriate package of care is available from a Home Care provider and a “short term bed” is used, the “Charging for Home Care and other Non-residential Services Policy” must be applied, NOT the Charging Policy for Residential and Nursing home Placements.

3. For other short-term placements such as temporary, planned and emergency respite, the “Charging Policy for Residential and Nursing home Placements” must be followed, and the practitioner must:

   - ensure any approvals required are appropriately evidenced, including approvals following urgent placements
   - the appropriate placement letter must be sent to the person/legal representative
   - the Care and Support Plan must be updated accordingly
   - send financial assessment notification to finance by County Placement Team/Adult Purchasing Team (workflow from MOSAIC) and
   - provide Residential Charging booklet (red book), it may also be necessary to consider providing the” Your Guide: Funding yourself in a care home” booklet (green book).

Appendix 3: Useful Contacts

Information-list Disability Rights Handbook

Counsel and Care

Telephone: **0845 300 7585**
Email: advice@counselandcare.org.uk
Website: http://www.counselandcare.org.uk

Age UK
Age UK is the new force combining Age Concern and Help the Aged. It provides advice and information for people in later life through publications, online or by calling Age UK Advice.
Age UK Advice: 0800 169 65 65 Website: www.ageuk.org.uk Email: www.ageuk.org.uk

These independent charities advise individuals as well as publishing factsheets on a wide range of issues facing older people.

Appendix 4: Qualifying Relative

Reference: Care and Support Statutory Guidance (February 2023): Annex B: Treatment of capital extract.

Property disregards

34) In the following circumstances the value of the person's main or only home must be disregarded:

(a) where the person is receiving care in a setting that is not a care home

(b) if the person's stay in a care home is temporary and they either:
- (i) intend to return to that property and that property is still available to them
- (ii) are taking reasonable steps to dispose of the property in order to acquire another more suitable property to return to

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

- (i) the persons partner, former partner, or civil partner, except where they are estranged
- (ii) a lone parent who is the person's estranged or divorced partner
- (iii) a relative as defined in **paragraph 35 below** of the person or member of the person's family who is either:
  1) aged 60 or over
  2) is a child of the person aged under 18 years of age
  3) is incapacitated[26].

35) For the purposes of the disregard **a relative is defined** as including **any** of the following:
- (a) parent (including an adoptive parent)
- (b) parent-in-law
- (c) son (including an adoptive son)
- (d) son-in-law
- (e) daughter (including an adoptive daughter)
- (f) daughter-in-law
- (g) step-parent

[26] Care Act Statutory Guidance does not clearly define this. Below is the extract from the guidance that may assist when determining if the person is a "qualifying relative. "However, it will be reasonable to conclude that a relative is incapacitated if either of the following conditions apply: (a) the relative is receiving one (or more) of the following benefits: incapacity benefit, severe disablement allowance, disability living allowance, personal independence payments, armed forces independence payments, attendance allowance, constant attendance allowance, or a similar benefit; or (b) the relative does not receive any disability related benefit but their degree of incapacity is equivalent to that required to qualify for such a benefit. Medical or other evidence may be needed before a decision is reached".

(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.

36) 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".

Appendix 5: Discretionary and non-discretionary funding.

Discretionary and non-discretionary KCC funding applies to a person who has financial assets above the upper capital limit. A person's mental capacity to manage their finances determines if KCC funding is discretionary (person has capacity/ financial representative) or non-discretionary (person lacking capacity and no legal financial representative).

1 Discretionary funding[27]

Discretionary funding applies when a person has capacity to manage their finances, assets are above the upper capital limit and KCC chooses to fund their care and support.

All decisions to exercise discretion require the delegated authorisor making a judgment based on the facts presented. **Decisions must withstand hindsight scrutiny**.

The delegated authorisor must promote the wellbeing of the person when making decisions and need to balance this discretion with ensuring a person's assets are not maintained at public expense and are sustainable.

Best practice guidance in the application of defensible decision making on Tri-x: https://proceduresonline.com/trixcms2/media/14174/discretionary-funding-practice-guidance.pdf

Examples are, but not limited to:

1. When there is a justified delay in a person's application for Deferred Payment being made or a delay in the application being processed/approved. We could consider offering Discretionary Funding as an interim measure to ensure the care home placement is not put at risk by the provider not being paid due to the delay.
2. Someone who has mental capacity to manage their own finances has lived abroad and has moved to England and now requires residential care. They only have a small amount in savings, but their savings and the value of the property abroad takes their capital over £23,250. They would not qualify for Deferred Payments, but equally they are unable to pay the care home due to their money being tied up in the property. We could consider offering Discretionary Funding whilst the property abroad is being sold.

Best practice guidance in the application of defensible decision making on Tri-x: https://proceduresonline.com/trixcms2/media/14174/discretionary-funding-practice-guidance.pdf

2. Non-discretionary funding - financial assets above the upper capital limit

Generally, people with eligible needs and financial assets above the upper capital limit are not entitled to receive any financial assistance from KCC and should pay the full cost of their care and support until their capital falls below the upper capital limit.

We are not required to meet eligible needs where needs are to be met in a care home, **<u>unless</u>** the person lacks capacity and there is no one authorised under the Mental Capacity Act 2005 or

[27] Fettering discretion. "*An authority will be acting unreasonably where it refuses to hear applications or makes certain decisions without taking individual circumstances into account by reference to a certain policy. When an authority is given discretion, it cannot bind itself as to the way in which this discretion will be exercised either by internal policies or obligations to others. Even though an authority may establish internal guidelines, it should be prepared to make exceptions on the basis of every individual case*"- Judicial review in English law.

otherwise in a position to do so on their behalf to make the arrangements. (See other example of non-discretionary funding (*a*) below).

In exceptional circumstances, when a referral to a solicitor is not appropriate (determined by the ASCH practitioner), we have a duty to meet eligible needs, place the person, contract directly with the care home and charge the person the full cost. We must not charge an arrangement fee[28].

Another example of non-discretionary funding, but not limited to:

a) Temporarily fully fund an agreed care/nursing home placement for a person with eligible needs and financial assets above the upper capital limit pending application for appointment of a property and affairs deputyship by family/friends/solicitor. We will seek appropriate reimbursement for all the charges due. Further details on tr-ix: https://proceduresonline.com/trixcms2/media/11505/non-discretionary-funding-temporary-basis-self-funder-lacking-capacity.pdf

Third Party Top ups:

b) Not seek a *Top Up* payment where there is no suitable care home available, and we have decided to place the person in the more expensive setting solely because we have been unable to make arrangements at the expected cost. Full details in Care and Support Statutory Guidance *Annex A: Choice of accommodation and additional payments*.

c) Not seek a *Top Up* payment when a person has been previously self-funding in a care home and a risk assessment demonstrates that a move to another care home will be detrimental to aspects of the person's wellbeing or outcomes most relevant to them. See section E2.5 "Remaining in the Care Home" for further details.

[28] This is because KCC would support that person under its power (rather than its duty) to meet needs, and the ability to charge the arrangement fee applies only to circumstances when the authority is required to meet needs.

Appendix 6: The treatment of income in the means tested assessment

Residential Charging			
Include (A)			
Disregard (B)			
Partial Disregard (C)			

Income	Temp/Respite	Permanent	Additional Comments
AA/DLA/PIP	(B)	(A)	
AA/DLA/PIP Mobility	(B)	(B)	
Bereavement Allowance	(A)	(A)	
Pension Credit	(A)	(A)	
Severe Disability Premium (Pension Credit)	(A)	(A)	
Carers Allowance	(B)	(B)	
Carers Premium	(A)	(A)	
Occupational Pension	(C)	(C)	Disregard 50% if spouse/partner at home
Annuity	(C)	(C)	Disregard 50% if spouse/partner at home
War Pension (Paid to Veteran)	(B)	(B)	
War Pension (Paid to Spouse)	(C)	(C)	Disregard £10.00
War Disablement Pension (Veteran)	(B)	(B)	
War Disablement Pension (Paid to Spouse)	(C)	(C)	Disregard £10.00
War Widows Pension	(C)	(C)	Disregard £10.00 & Mobility Supplement
Guaranteed Income Payments (Veterans under Armed Forces Compensation Scheme	(B)	(B)	
Survivor Guaranteed Income Payments (Armed Forces Compensation Scheme)	(C)	(C)	Disregard £10.00
Universal Credit	(A) (A)	(A) (A)	Disregard any Child Related & Housing Elements
Maternity Allowance	(A)	(A)	
ESA	(A)	(A)	
Wages/Earnings	(B)	(B)	
Job Seekers Allowance	(A)	(A)	
Child Tax Credits & Child Benefit	(B)	(B)	
Working Tax Credits	(A)	(A)	
Industrial Injuries Benefits	(A)	(A)	
State Retirement Pension	(A)	(A)	
Severe Disablement Allowance	(A)	(A)	
Income Support	(A)	(A)	Disregard any Child Related Premiums
Incapacity Benefit	(A)	(A)	
Statuary Sick Pay	(B)	(B)	
Charitable and Voluntary Payments *(that are made regularly)*	(B) (B)	(B) (B)	
Spousal Maintenance	(A)	(A)	