Upper and lower capital limits

24) The capital limits set out at what point a person is able to access local authority support and how much support they receive. However, local authorities have discretion to set higher capital limits for people receiving care other than in a care home. Subject to the above the local authority must apply the capital limits. The capital limits for financial year 2015 to 2016 are:

1. (a) upper capital limit: £23,250
2. (b) lower capital limit: £14,250

25) If a person clearly has capital in excess of the upper capital limit, there is no need to make a wider assessment. If a person is near the upper capital limit, the local authority should be mindful of the need to plan ahead for when assets have been spent down and a person may therefore fall below the upper capital limit.

This will help reduce burdens on both the local authority and the person from needing to repeat the financial assessment within a short timeframe.

26) The capital which a person has below the lower capital limit must be disregarded in the calculation of tariff income (see below).

Tariff income

27) Where a person has assets between the lower and upper capital limits the local authority must apply tariff income. This assumes that for every £250 of capital, or part thereof, a person is able to afford to contribute £1 per week towards the cost of their eligible care needs.

Example of tariff income

Nora 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.

Notional capital

28) In some circumstances a person may be treated as possessing a capital asset even where they do not actually possess it. This is called notional capital.

29) Notional capital may be capital which:

1. (a) would be available to the person if they applied for it

2. (b) is paid to a third party in respect of the person
3. (c) the person has deprived themselves of in order to reduce the amount of charge they have to pay for their care

30) A person's capital should therefore be the total of both actual and notional capital. However, if a person has actual capital above the upper capital limit, it may not be necessary to consider notional capital.

31) Where a person has been assessed as having notional capital, the value of this must be reduced over time. The rule is that the value of notional capital must be reduced weekly by the difference between the weekly rate the person is paying for their care and the weekly rate they would have paid if notional capital did not apply.

Example of diminishing notional capital

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

The notional capital should therefore be reduced by the difference between the sum Hayley is paying (£400) and would have paid without the notional capital (£100).

If she did not have the notional capital it would not affect her ability to pay. This is as she has an income of £120.40 and a personal allowance of £24.40 per week and would therefore be assessed as being able to pay £100.

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32) Where a person is benefiting from the 12-week property disregard and has chosen to pay a 'top-up' fee from their capital resources between the upper and lower capital limits, the level of tariff income that applies during those 12 weeks is the same as it would be if the person were not using the capital to 'top-up'.

Capital disregarded

33) The following capital assets must be disregarded:

1. (a) property in specified circumstances (see paragraph 34)
2. (b) the surrender value of any:
    1. (i) life insurance policy
    2. (ii) annuity
3. (c) payments of training bonuses of up to £200
4. (d) payments in kind from a charity

5. (e) any personal possessions such as paintings or antiques, unless they were purchased with the intention of reducing capital in order to avoid care and support charges (Schedule 2, para. 13)
6. (f) any capital which is to be treated as income or student loans
7. (g) any payment that may be derived from the:
    1. (i) Macfarlane Trust
    2. (ii) Macfarlane (Special Payments) Trust
    3. (iii) Macfarlane (Special Payment) (No 2) Trust
    4. (iv) Caxton Foundation
    5. (v) The Fund (payments to non-haemophiliacs infected with HIV)
    6. (vi) Eileen Trust
    7. (vii) MFET Trust
    8. (viii) Independent Living Fund (2006)
    9. (ix) Skipton Fund
    10. (x) London Bombings Relief Charitable Fund
8. (h) the value of funds held in trust or administered by a court which derive from a payment for personal injury to the person. For example, the vaccine damage and criminal injuries compensation funds
9. (i) the value of a right to receive:
    1. (i) income under an annuity
    2. (ii) outstanding instalments under an agreement to repay a capital sum
    3. (iii) payment under a trust where the funds derive from a personal injury
    4. (iv) income under a life interest or a life-rent
    5. (v) income (including earnings) payable in a country outside the UK which cannot be transferred to the UK
    6. (vi) an occupational pension
    7. (vii) any rent. Please note however that this does not necessarily mean the income is disregarded. Please see Annex C for guidance on the treatment of income.
10. (j) capital derived from an award of damages for personal injury which is administered by a court or which can only be disposed of by a court order or direction
11. (k) the value of the right to receive any income under an annuity purchased pursuant to any agreement or court order to make payments in consequence of personal injury or from funds derived from a payment in consequence of a personal injury and any surrender value of such an annuity
12. (l) periodic payments in consequence of personal injury pursuant to a court order or agreement to the extent that they are not a payment of income and area treated as income (and disregarded in the calculation of income)
13. (m) any Social Fund payment
14. (n) refund of tax on interest on a loan which was obtained to acquire an interest in a home or for repairs or improvements to the home
15. (o) any capital resources which the person has no rights to as yet, but which will come into his possession at a later date, for example on reaching a certain age
16. (p) payments from the Department of Work and Pensions to compensate for the loss of entitlement to Housing Benefit or Housing Benefit Supplement
17. (q) the amount of any bank charges or commission paid to convert capital from foreign currency to sterling

18. (r) payments to jurors or witnesses for court attendance (but not compensation for loss of earnings or benefit)
19. (s) community charge rebate/council tax rebate
20. (t) money deposited with a Housing Association as a condition of occupying a dwelling
21. (u) any Child Support Maintenance Payment
22. (v) the value of any ex-gratia payments made on or after 1 February 2001 by the Secretary of State in consequence of a person's, or person's spouse or civil partner's imprisonment or internment by the Japanese during the Second World War
23. (w) any payment made by a local authority under the Adoption and Children Act 2002 (under section 2(b)(b) or 3 of this act)
24. (x) the value of any ex-gratia payments from the Skipton Fund made by the Secretary of State for Health to people infected with Hepatitis C as a result of NHS treatment with blood or blood products
25. (y) payments made under a trust established out of funds provided by the Secretary of State for Health in respect of persons suffering from variant Creutzfeldt-Jakob disease to the victim or their partner (at the time of death of the victim)
26. (z) any payments under Section 2, 3 or 7 of the Age-Related Payments Act 2004 or Age Related Payments Regulations 2005 (SI No 1983)
27. (aa) any payments made under section 63(6)(b) of the Health Services and Public Health Act 1968 to a person to meet childcare costs where he or she is undertaking instruction connected with the health service by virtue of arrangements made under that section
28. (bb) any payment made in accordance with regulations under Section 14F of the Children Act 1989 to a resident who is a prospective special guardian or special guardian, whether income or capital

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Example of disregarded capital

Mr T is a former Far East prisoner of war and receives a £10,000 ex-gratia payment as a result of his imprisonment. He now requires care and support and has a total of £25,000 in capital. When calculating how much capital should be taken into account, the local authority must disregard the first £10,000 – the value of the ex-gratia payment.

The normal capital rules are then applied to the remaining £15,000. In this case, the first £14,250 would be completely disregarded in addition to the £10,000. Tariff income would therefore only be applied to the remaining £750 giving a charge of £3.

Property disregards

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

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

2. (b) if the person's stay in a care home is temporary and they either:
    1. (i) intend to return to that property and that property is still available to them
    2. (ii) are taking reasonable steps to dispose of the property in order to acquire another more suitable property to return to
3. (c) where the person no longer occupies the property but it is occupied in part or whole as their main or only home by any of the people listed below, the mandatory disregard only applies where the property has been continuously occupied since before the person went into a care home (for discretionary disregards see below):
    1. (i) the persons partner, former partner or civil partner, except where they are estranged
    2. (ii) a lone parent who is the person's estranged or divorced partner;
    3. (iii) a relative as defined in paragraph 35 of the person or member of the person's family who is either:
        1. 1) aged 60 or over
        2. 2) is a child of the resident aged under 18
        3. 3) is incapacitated

35) For the purposes of the disregard a relative is defined as including any of the following:

1. (a) parent (including an adoptive parent)
2. (b) parent-in-law
3. (c) son (including an adoptive son)
4. (d) son-in-law
5. (e) daughter (including an adoptive daughter)
6. (f) daughter-in-law
7. (g) step-parent
8. (h) step-son
9. (i) step-daughter
10. (j) brother
11. (k) sister
12. (l) grandparent
13. (m) grandchild
14. (n) uncle
15. (o) aunt
16. (p) nephew
17. (q) niece
18. (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.

37) For the purposes of the disregard the meaning of 'incapacitated' is not closely defined. However, it will be reasonable to conclude that a relative is incapacitated if one of the following conditions apply:

1. (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

2. (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

38) For the purpose of the property disregard, the meaning of 'occupy' is not closely defined. In most cases it will be obvious whether or not the property is occupied by a qualifying relative as their main or only home. However, there will be some cases where this may not be clear and the local authority should undertake a factual inquiry weighing up all relevant factors in order to reach a decision. An emotional attachment to the property alone is not sufficient for the disregard to apply.

39) Circumstances where it may be unclear might include where a qualifying relative has to live elsewhere for the purposes of their employment, for example a member of the armed services or the diplomatic service. Whilst they live elsewhere in order to undertake their employment, the property remains their main or only home. Another example may be someone serving a prison sentence. It would not be reasonable to regard the prison as the person's main or only home and they may well intend to return to the property in question at the end of their sentence. In such circumstances the local authority may wish to consider the qualifying relative's length of sentence and the likelihood of them returning to the property. Essentially the qualifying relative is occupying the property but is not physically present.

Example of emotional attachment to a property

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

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

Example of occupying a property when not physically present

Matt is 60 years old and has been living overseas for the past 10 years due to his job in the diplomatic service. When he is in England, he lives at the family home he grew up in. His father Ken has been assessed as having eligible care and support needs that are best met by moving into a care home. In Ken's financial assessment, the value of his property is disregarded as his son Matt is a qualifying relative that occupies the property as his main or only home. Although Matt is not physically present at the property at the point Ken moves into the care home, his alternative accommodation is only as a result of his employment and the family home is his main home.

40) The local authority will need to take account of the individual circumstances of each case. However, it may be helpful to consider the following factors in making a decision:

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

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

Discretionary disregard

42) A local authority may also use its discretion to apply a property disregard in other circumstances. However, the local authority will need to balance this discretion with ensuring a person's assets are not maintained at public expense. 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.

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.

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.

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?

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 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 in to 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.

'12-week property disregard'

45) An important aim of the charging framework is to prevent people being forced to sell their home at a time of crisis. The regulations under the Care Act 2014 therefore create space for people to make decisions as to how to meet their contribution to the cost of their eligible care needs. A local authority must therefore disregard the value of a person's main or only home for 12 weeks in the following circumstances:

(a) when they first enter a care home as a permanent resident

(b) when a property disregard other than the 12-week property disregard unexpectedly ends because the qualifying relative has died or moved into a care home

46) In addition, a local authority has discretion to choose to apply the disregar when there is a sudden and unexpected change in the person's financial circumstances. In deciding whether to do so, the local authority will want to consider the individual circumstances of the case. Such circumstances might include a fall in share prices or an unanticipated debt. An example is given below.

Example of the 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 financial assessment, the value of the home she shared with Ern was disregarded as Ern is her husband, was over 60 years old 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 disregard would therefore be applied.

Example of an unexpected change in financial circumstances

Harry is a widower who owns his own home. Ten 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 make arrangements for the Deferred Payment Agreement to be put in place and enable him to continue to meet the cost of his care.

'26-week disregard'

47) The following capital assets must be disregarded for at least 26 weeks in a financial assessment. However, a local authority may choose to apply the disregard for longer where it considers this appropriate. For example where a person is taking legal steps to occupy premises as their home, but the legal processes take more than 26 weeks to complete.

a) Assets of any business owned or part-owned by the person in which they were a self-employed worker and has stopped work due to some disease or disablement but intends to take up work again when they are fit to do so. Where the person is in a care home, this should apply from the date they first took up residence. [Schedule 2 Paragraph 9]

b) Money acquired specifically for repairs to or replacement of the person's home or personal possessions provided it is used for that purpose. This should apply from the date the funds were received. [Schedule 2 Paragraph 12]

c) Premises which the person intends to occupy as their home where they have started legal proceedings to obtain possession. This should be from the date legal advice was first sought or proceedings first commenced. [Schedule 2 Paragraph 22]

d) Premises which the person intends to occupy as their home where essential repairs or alterations are required. This should apply from the date the person takes action to effect the repairs. [Schedule 2 Paragraph 21]

e) Capital received from the sale of a former home where the capital is to be used by the person to buy another home. This should apply from the date of completion of the sale. [Schedule 2 Paragraph 6]

f) Money deposited with a Housing Association which is to be used by the person to purchase another home. This should apply from the date on which the money was deposited. [Schedule 2 Paragraph 11]

g) Grant made under a Housing Act which is to be used by the person to purchase a home or pay for repairs to make the home habitable. This should apply from the date the grant is received [Schedule 4 Paragraph 22]

'52-week disregard'

48) The following payments of capital must be disregarded for a maximum of 52 weeks from the date they are received:

- (a) the balance of any arrears of or any compensation due to non-payment of:
  - (i) mobility supplement
  - (ii) Attendance Allowance
  - (iii) Constant Attendance Allowance
  - (iv) Disability Living Allowance / Personal Independence Payment
  - (v) Exceptionally Severe Disablement Allowance
  - (vi) Severe Disablement Occupational Allowance
  - (vii) Armed forces service pension based on need for attendance

- (viii) Pension under the Personal Injuries (Civilians) Scheme 1983, based on the need for attendance
- (ix) Income Support/Pension Credit
- (x) Minimum Income Guarantee
- (xi) Working Tax Credit
- (xii) Child Tax Credit
- (xiii) Housing Benefit
- (xiv) Universal Credit
- (xv) special payments to pre-1973 war widows

As the above payments will be paid for specific periods, they should be treated as income over the period for which they are payable. Any money left over after the period for which they are treated as income has elapsed should be treated as capital. [Schedule 2 Paragraphs 10 and 11]

- (b) payments or refunds for:
  - (i) NHS glasses, dental treatment or patient's travelling expenses
  - (ii) cash equivalent of free milk and vitamins
  - (iii) expenses in connection with prison visits. [Schedule 2 Paragraph 22]
- (c) Personal Injury Payments

Example of a disregard for 52 weeks

During his financial assessment it is identified that Colin is eligible for Pension Credit but is not currently claiming the support. He is therefore assessed as being able to pay £75 per week towards the cost of his care. Colin tells the local authority that he will apply for Pension Credit. It is explained to him that the level of what he can afford to contribute will be reassessed once he started receiving the additional support. If the payments are backdated, his contributions to the cost of his care will also be backdated and he may therefore need to make an additional payment to meet any arrears. Colin therefore chooses to pay £90 per week. After six weeks, arrears of Pension Credit at £35 per week (£210) are received. What Colin can afford to contribute is reassessed and he is now asked to pay £110 per week. As Colin has been paying £15 a week more than required, he only owes £120 rather than the full £210 of Pension Credit arrears. The remaining £90 of arrears payments should therefore be treated as capital and disregarded

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'2-year disregard'

49) Local authorities must disregard payments made under a trust established out of funds by the Secretary of State for Health in respect of vCJD to either a:

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

Other disregards

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

1. (a) a description of the nature of the business asset
2. (b) the person's estimate of the length of time necessary to realise the asset or their share of it
3. (c) t statement of what, if any, steps have been taken to realise the asset, what these were and what is intended in the near future
4. (d) any other relevant evidence, for example the person's health, receivership, liquidation, estate agent's confirmation of placing any property on the market

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

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

Treatment of investment bonds

53) The treatment of investment bonds is currently complex. This is in part because of the differing products that are on offer. As such, local authorities may wish to seek advice from their legal departments.

54) Where an investment bond includes one or more element of life insurance policies that contain cashing-in rights by way of options for total or partial surrender, then the value of those rights must be disregarded as a capital asset in the financial assessment.

Capital treated as income

55) The following capital payments should be treated as income. Local authorities therefore must have regard to Annex C before conducting their assessments:

1. (a) any payment under an annuity.
2. (b) capital paid by instalment where the total of: